

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1963

The following opinions have been furnished by this office in response to inquiries submitted by the various state officers and departments, district attorneys and city attorneys.

1 Savings Associations, Commissioner of—Certificates of investment when issued by a profit corporation incorporated under Chapter 78 of NRS, must contain provisions permitting the holder to participate in profits. Certificates of investment when issued by a corporation created under Chapter 673 of NRS are not required to contain such participation provisions. Sections 78.070, 78.305 and 673.070 of NRS construed.

CARSON CITY, January 14, 1963

HON. JOHN H. BELL, *Commissioner of Savings Associations, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BELL: The Legislature of 1925 enacted Chapter 177, constituting a complete revision of the corporation law, and in respect to powers, provided that as a means of obtaining capital, corporations formed under the chapter might “issue, sell and dispose of certificates of investment, or participation certificates.” Section 9, subsection 1 thereof has become [NRS 78.070](#). Section 10 thereof provides the manner in which “certificates of investment, or participation certificates,” may be issued, specifically setting out the preliminary responsibilities of the board of directors in obtaining consent of stockholders to the end that their contractual rights be protected. This section has become [NRS 78.305](#).

The Legislature of 1931 enacted Chapter 51, an act to provide for the formation and regulation of domestic building and loan associations and companies, and by Chapter 378, Statutes 1961, Section 5, created the Department of Savings Associations and the office of Commissioner of Savings Associations. See [NRS 673.035](#) et seq.

Under Section 1, Chapter 51, Statutes 1931, now [NRS 673.070](#), it is provided that “companies and associations which issue membership shares or investment certificates” may be incorporated under this chapter. Under Section 2 thereof, a “membership share or investment certificate” is defined. The date of the general corporation law and the later date of the savings and loan associations law are specifically recited in respect to the possibility of repeal, or in any event, a conflict.

QUESTION

Do the provisions of 673.070 empower the Commissioner of Savings Associations to supervise, regulate or control the issuance by a Nevada corporation of an “investment certificate” or “thrift certificate,” the proceeds of which are to be used in financial transactions involving personal property?

CONCLUSION

We have come to the conclusion that, under the general corporate law ([NRS 78.070](#)), a corporation may issue certificates of investment only when those certificates by their terms contain participation privileges, i.e., provisions defining and limiting the conditions under which the certificate holder will participate in the profits of the corporation.

When investment certificates are to be issued by a corporation, which do not contain provisions for participation in profits (a provisions for the payment of interest only would not do this), the issuing corporation will fall under the jurisdiction of the Commissioner of Savings Associations.

ANALYSIS

[NRS 78.070](#), in part, provides:

78.070 (Specific powers.) Subject to such limitations, if any, as may be contained in its certificate or articles of incorporation, or any amendment thereof, every corporation shall have the following powers:

1. To borrow money and contract debts when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges and franchises, or for any other lawful purpose of its incorporation; to issue bonds, promissory notes, bills of exchange, debentures, and other obligations and evidences of indebtedness, payable at a specified time or times, or payable upon the happening of a specified event or events, whether secured by mortgage, pledge or otherwise, or unsecured, for money borrowed, or in payment of property purchased, or acquired, or for any other lawful object; to issue, sell and dispose of *certificates of investment or participation certificates*, upon such terms and under such conditions as may be prescribed in the certificate or articles of incorporation, or, if no such provision shall be made in the certificate or articles of incorporation, then as prescribed in [NRS 78.305](#). (Italics supplied.)

It will be observed that [NRS 78.070](#) makes reference to [NRS 78.305](#) and to the manner of issuance of certificates of investment, or participation certificates. [NRS 78.305](#) provides:

78.305 (Investment or participation certificates in lieu of or in addition to stock: Procedure for issuance.)

1. The board of directors of trustees of any corporation which is organized under this chapter, and which may desire to issue *certificates of investment or participation certificates* in lieu of or in addition to stocks, bonds, promissory notes, bills of exchange, debentures and other obligations and evidences of indebtedness, shall adopt a resolution setting forth the purpose of the issuance of such certificates of investment or participation certificates, the amount of such certificates to be issued, the terms upon and the conditions under which such certificates shall be issued, and calling a meeting of the stockholders entitled to vote for the consideration thereof.

2. At such meeting, of which notice shall be given in the manner provided in [NRS 78.370](#), a vote of the stockholders entitled to vote, in person or by proxy, shall be taken for and against the issuance of such certificates. If it shall appear upon the canvassing of the votes that the stockholders holding stock in the corporation, entitling them to exercise at least a majority of the voting power (or such larger proportion of stock holders as may be required in the case of a vote by classes, as hereinafter provided, or as may be required by the provisions of the certificate or articles of incorporation, or any amendment thereof), have voted in

favor of the issuance of such certificates, thereupon such certificates may be issued; provided:

(a) That if the issuance of any of such certificates would decrease the amount payable as a preference or modify alter or change the preference given to any one or more classes of stock authorized by the certificate or articles of incorporation, or any amendment thereof, then, unless provided in the certificate or articles of incorporation, the holders of the stock of each class of stock so affected by the issuance of such certificates shall be entitled to vote as a class upon the issuance of such certificates, whether by the terms of the certificate or articles of incorporation such class shall be entitled to vote or not; and the affirmative vote of holders of the majority of the shares of each such class of stock so affected by the issuance of such certificates must be included in the affirmative vote of stockholders herein required; and

(b) That it shall be lawful to make provision in the certificate or articles of incorporation, or an amendment thereof, requiring a larger vote of stockholders upon the issuance of such certificates that that required b the foregoing provisions of this section. (*Italics supplied.*)

A number of deductions of analysis impel us to the conclusion that the language “certificates of investment or participation certificates” is descriptive of but one type of certificate, and that “certificates of investment” and “participation certificates” are one and the same thing. The word “or” is not disjunctive but conjunctive, and is so used in Sections 78.070 and 78.305 of NRS, as for example:

(a) If a certificate of investment is issued “in lieu of stock,” it would of necessity have participation privileges, for otherwise no group would be authorized to take the profits of a successful corporation, which has been incorporated for profit.

(b) If the certificate of investment had no participation privileges, it would be totally unnecessary to provide in great detail the manner in which the consent of stockholders should be obtained. ([NRS 78.305](#)) for under such circumstances the issuance of the certificates would not contingently impair the right of such stockholders to share in the profits of the corporation. Such consent of the stockholders is not required for the mere borrowing of money upon interest, by bonds or promissory notes or other evidences of indebtedness. (See subsection 1 of [NRS 78.070](#).)

(c) The punctuation employed under [NRS 78.305](#) is compatible with this view.

We, therefore, conclude that a corporation, formed under Chapter 78 of NRS for profit, has no authority to issue certificates of investment unless those certificates contain provisions which provide for participation in profits.

[NRS 673.070](#) provides:

673.070 (Incorporation of domestic building and loan associations: Procedure; applicability of chapter 78 of NRS.)

Building and loan associations and companies and joint-stock associations and companies and other associations and companies, except banks, trust companies and brokers, whose principal and primary business is to borrow, loan and invest money, and companies and associations which issue membership shares or *investment certificates*, may be incorporated under the provisions of this chapter. For that purpose all of the provisions of chapter 78 of NRS (Private corporations) which are to in conflict with this chapter are hereby adopted as parts of this chapter, and all the rights, privileges, and powers and all the duties and obligations of such domestic corporations and of the officers and stockholders thereof shall be as provided in chapter 78 of NRS except as otherwise provided in this chapter. (*Italics supplied.*)

If a corporation is formed under the provisions of Chapter 673 of NRS and desires to issue investment certificates, such certificates are not required to contain provisions allowing participation in profits. These conclusions which distinguish the statutes in this particular are, we think, consistent with reason, for the safeguards that are contained under Chapter 673 of NRS, including supervisions by the commissioner and protection under the Federal Deposit Insurance Corporation, are nonexistent and not applicable to Chapter 78 of NRS. Moneys that purchase an investment certificate issued by a corporation formed under Chapter 78 of NRS, with participation provisions, will normally, from the nature of the statutes, be invested in a more speculative project than moneys invested in an investment certificate issued by a corporation organized under the provisions of Chapter 673 of NRS.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

2 State Health Department; State Director—Chapter 311 of the 1961 Statutes and Chapter 443 NRS construed. Widow entitled to benefits for death of husband receiving benefits under Silicotic Act, and decedent to usual funeral allowance, if at time of death it had not been determined that decedent was suffering from active tuberculosis.

CARSON CITY, January 28, 1963

DR. DANIEL J. HURLEY, *State Health Officer, Nevada State Department of Health, Carson City, Nevada*

DEAR DR. HURLEY: In a letter to this office dated January 21, 1963, you have set forth the following facts:

On July 10, 1961, an applicant filed for compensation under the special silicosis program set up in Chapter 311 of the Statutes of 1961, and filed an affidavit that he was unable to pay for his own care and maintenance. On September 10, 1961, an examination showed this applicant to be suffering from active tuberculosis and he was placed under the Tuberculosis Care Program. On May 14, 1962, a third negative gastric specimen on culture enabled this man to be declared eligible for benefits under the Special Silicotic Act above referred to.

The applicant received benefits under the Silicotic Act from May 14, 1962, to the date of his death on November 26, 1962, when his tuberculosis was still considered inactive. On December 7, 1962, a gastric specimen submitted to the state laboratory on October 23, 1962, was reported as for acid for bacilli indicating active tuberculosis.

QUESTION

Under the circumstances listed, do you, as State Health Officer, have the authority to pay survivor's benefits to the widow and to pay the usual funeral allowance as allowed by the Nevada Industrial Commission?

CONCLUSION

The answer is Yes.

ANALYSIS

At the time of his death, the applicant was receiving benefits under Chapter 443 of NRS. It had been determined on May 14, 1962, that the applicant was not suffering from tuberculosis, but from silicosis. That determination had not been altered at the time of his death. Any determination arrived at subsequent to his death could not alter or affect the benefits which immediately accrued to his widow, and which provided for funeral allowance, as of the date of November 26, 1962.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

3 Public Officers—[NRS 281.055](#) construed. Person holding office of municipal judge and justice of the peace, who was re-elected justice of the peace at last general election to become effective January 7, 1963, must on that date elect which of the two positions he wishes to fill, and resign the other.

CARSON CITY, February 5, 1963

HON. JOHN MANZONIE, *City Attorney, Henderson, Nevada*

DEAR MR. MANZONIE: Replying to your letter of January 30, 1963, you have submitted the following question:

Can a person holding the position of municipal judge and justice of the peace prior to November 6, 1962, continue to hold the office of municipal judge after January 7, 1963, having been elected on November 6, 1962, to the office of justice of the peace for a second term?

CONCLUSION

The answer is No.

ANALYSIS

[NRS 281.055](#) provides as follows:

1. Except as otherwise provided in subsection 2, no person may:
 - (a) File nomination papers for more than one salaried elective office at any election.
 - (b) Hold more than one salaried elective office at the same time.
2. The provisions of subsection 1 shall not be construed to prevent any person from filing nomination papers for or holding an elective office of any special district (other than a school district), such as an irrigation district, a local or general improvement district, a soil conservation district or a fire protection district, and at the same time filing nomination papers for or holding an elective office of the state, or any political subdivision or municipal corporation thereof.

We point out that under [NRS 281.055, 1\(b\)](#), above that a person cannot hold two elective offices at the same time unless they fall under the exemption set forth in [NRS 281.055\(2\)](#).

[NRS 281.055\(2\)](#) exempts from the provisions of Section 1 elective offices in special districts only (other than a school district) and the Legislature specifically set forth the type of districts exempted.

That the Legislature exempted these special districts because of an absence of conflict in the duties imposed by the two segments of government is plain. A person

elected to the board of an irrigation district, for example, would have limited duties imposing no considerable burden on his time. His compensation in most cases comprises actual out-of-pocket expenses in attending meetings or a minimum figure for each board meeting. Thus the members of these special boards have time to devote to an elective office in the category outside the exempted districts.

The same is not true of two elective jobs requiring (ostensibly at least) full time of the elected official. In the office of municipal judge and that of justice of the peace there is an overlapping of authority which conflicts with legislative intent. Both jobs to be handled adequately should be full-time jobs.

May we also point out that nowhere in Section 2 of [NRS 281.055](#) is there any mention of municipalities as comprising a special district. On the contrary, the law clearly distinguishes between the special districts and the municipality by stating that nothing in Section 1 shall be construed to prevent a person from filing nomination papers or holding office in one of the special districts and at the same time filing nomination papers for or holding an elective office in a municipality. But the law distinguishes the two, ergo, one cannot hold two elective offices at the same time when one of those elective offices is not with one of the specified special districts.

A person placed in the situation hereinbefore described should elect which of two elective offices he wishes to fill and resign the other.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

4 Motor Vehicle Department; Drivers' Licenses—Under provisions of [NRS 483.010](#) to [483.630](#), inclusive, it is mandatory that department conduct a test involving an actual demonstration of applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. Examination involving eyesight and knowledge of highway laws may be oral.

CARSON CITY, February 6, 1963

LOUIS P. SPITZ, *Director, Department of Motor Vehicles, Carson City, Nevada*

DEAR MR. SPITZ: You have directed to this office the following facts:

A person from another state, having equally comprehensive drivers' license tests as imposed by Nevada, applies for an original Nevada driver's license.

QUESTIONS

1. Under these conditions, does the Director of Motor Vehicles have the authority to waive the written test?
2. Under these conditions, does the director of Motor Vehicles have the authority to waive the behind-the-wheel test?

CONCLUSION

The answer to Question 1 is a modified Yes, and the answer to Question 2 is No, under the present law.

ANALYSIS

Under [NRS 483.220](#), the administrator is authorized to promulgate rules and regulations governing activities of the department under [NRS 483.010](#) to [483.630](#),

inclusive. These sections are known as the Uniform Motor Vehicle Operations' and Chauffeurs' License Act.

Thus, while [NRS 483.330](#) provides for an examination involving eyesight, knowledge of highway signs regulating, warning, and directing traffic, and the applicant's knowledge of traffic laws, under [NRS 483.220](#), the director could promulgate a regulation that this part of the examination be oral, rather than written. But the examination, whether oral or written, is mandatory.

Your second question cannot be answered in the same vein. The provisions in [NRS 483.330](#), with which Question 2 is directly concerned, is as follows: “* * * shall include an *actual* demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle * * *”

The word “actual,” italicized above, is defined in Black's Law Dictionary as “having a valid objective existence as opposed to that which is merely theoretical or possible.”

The word “shall” is legally defined as mandatory rather than permissive. It is thus clear that the Legislature intends applicants for a driver's or chauffeur's license to take an actual behind-the-wheel test.

Only a change in present laws could negate the necessity of the actual behind-the-wheel examination of an applicant, and a written or oral examination as to other phases of the test.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

5 Park System, State—The governing body of the State Park System has authority to name new or rename old, previously established, parks, monuments, and recreation areas. [NRS 407.065](#) and [NRS 407.080](#) et seq., construed.

CARSON CITY, February 11, 1963

MR. ERIC R. CRONKHITE, *Acting Director, State Park System, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. CRONKHITE: The Legislature of 1935 enacted Chapter 85, which set apart certain state-owned lands, therein specifically described and designated as “Cathedral Gorge State Park.” This section is now [NRS 407.080](#). Another section of Chapter 85, Statutes 1935, geographically described land to be thereafter known as “Kershaw Canyon-Ryan State Park.” ([NRS 407.090](#).) Similarly, this statute described and designated “Beaver Dam State Park” ([NRS 407.100](#)), and designated “Boulder Dam-Valley of Fire State Park” ([NRS 407.110](#)).

The Legislature of 1947, in Chapter 157, designated an historic site of Douglas County as “Genoa Fort Monument” ([NRS 407.140](#)); Chapter 137, Statutes 1931, and Chapter 94, Statutes 1933, established “Fort Churchill” ([NRS 407.150](#)); and Chapter 398, Statutes 1955, established “Ichthyosaur Park” ([NRS 407.160](#) et seq.).

The Legislature of 1961 enacted Chapter 136. P. 177, and completely revised the law respecting state park administration, created the “State Park System,” and the “State Park Commission.” (See [NRS 407.011](#) et seq.)

[NRS 407.065](#) in part provides:

407.065 (General powers of state park system.)
The system is hereby authorized to:

1. Designate, establish, *name*, plan, operate, control, protect, develop and maintain state parks, monuments and recreation areas for the use of the general public. (Italics supplied.)

Chapter 136, Statutes 1961, became effective on March 22, 1961.

QUESTIONS

1. Did the State Park System have the authority to rename the above designated parks, monuments, and recreation areas upon dates subsequent to March 22, 1961, to more fully and adequately designate such units and assist in fully developing an integrated park system?

2. If the answer to Question No. 1 is in the affirmative, would it be advisable or in any way advantageous to repeal the sections of NRS heretofore referred to, which sections originally designated and described geographically said parks?

CONCLUSIONS

Question No. 1 is answered in the affirmative.

Question No. 2 is answered in the negative.

ANALYSIS

Chapter 136, Statutes 1961, fully revised the State Park System insofar as the government thereof is concerned, but did not attempt to change the descriptions of parks, monuments and recreation areas theretofore designated. Geographically these units remain the same as formerly designated. However, clearly the Legislature intended to give to the governing body of the State Park System which it created, the power and authority to name new parks, monuments, and recreation areas which it might in the future create and establish, and, as well as, power and authority to rename those theretofore established. The name changes that the system effected subsequent to March 22, 1961, were therefore authorized by law.

The second question is respecting whether or not any useful purpose would be accomplished by the repeal of NRS Section 407.080 et seq. Nothing would be accomplished by repeal. These sections do more than give a park, monument, or recreation area a name. They also designate the area geographically by a full legal description. This purpose is important.

Perhaps a statute which would refer by name to the former and the present designations of each park, monument, or recreation area, would be informative and would, in the minds of the general public, remove an ambiguity, and would, we think, be of some value.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

6 State Legislature; An interpretation of [NRS 218.580](#)—Sale of supplies to state agencies by legislator who was not a member of the Legislature which formulated the contract under which said supplies are sold is not in violation of any state law, including [NRS 218.580](#).

CARSON CITY, February 11, 1963

HON. LEN HARRIS, ASSEMBLYMAN, *Washoe County, Assembly Chambers, Carson City, Nevada*

Dear Mr. Harris: We are in receipt of your request for an opinion wherein the following facts are involved:

STATEMENT OF FACTS

An Assemblyman owns 25 percent of the stock in a corporation doing business with state agencies of the State of Nevada. Prior to his election this Assemblyman was doing business through the corporation with the same agencies.

QUESTION

Is the Assemblyman estopped by reason of [NRS 218.580](#)?

This section reads as follows:

1. It shall be unlawful for any member of the legislature to become a contractor under the contract or order for supplies or any other kind of contract authorized by the legislature of which he is a member for the state or any department thereof, or the legislature or either house thereof, or to be in any manner interested, directly or indirectly, as principal, in any kind of contract so authorized.
2. It shall be unlawful for any member of the legislature to be interested in any contract made by the legislature of which he is a member, or to be a purchase or to be interested in any purchase or sale made by the legislature of which he is a member.
3. Any contract made in violation of the provisions of subsection 1 or 2 may be declared void at the instance of the state or of any other person interested in the contract except the member of the legislature prohibited in subsection 1 or 2 from making or being interested in the contract.
4. Any person violating the provisions of subsection 1 or 2, directly or indirectly, shall forfeit his office, and shall be punished by a fine of not less than \$500 nor more than \$5,000, or by imprisonment in the state prison for not less than 1 year nor more than 5 years, or by both fine and imprisonment.

ANALYSIS

It will be noted that this section closely follows [NRS 386.400](#), which reads as follows:

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

It will be noted that the express language in both statutes contains the clause “of which he is a member.”

In a lengthy opinion, well documented (see Attorney General Opinion No. 281, dated June 17, 1957, a copy of which is attached), this office held that a school trustee did not violate the law by continuing to furnish oil to the school district under a contract which was in existence prior to the time he became a member of the school board.

We pointed out in that opinion that this type of restriction is common, and that it was to prevent a personal interest which might come in conflict with the duty the officer owes to the public. (See 67 Corpus Juris Secundum 406.) Under *Beaudry v. Valdez*, 32 Cal. 269, and other citations, the interest must arise at the time the contract is entered into.

The language in the legislative barrier ([NRS 218.580](#)) is similar. (1) The contract must have been authorized by the Legislature of which he is a member (meaning in this

instance the present Legislature), and (2) the Assemblyman's interest in the contract must have arisen during the term of the Legislature in which he serves.

It can readily be seen by a legal analysis that if a Legislature does not authorize a contract between a state agency and the person or company of a present member of that Legislature, the act referred to is not applicable.

If the ridiculous connotation placed on this act by persons not lawyers were carried to its extreme by an interpretation that placed all contracts with persons who might become members of the Legislature under the restrictions imposed by [NRS 218.580](#), the search for men willing to serve might be severely restricted. This is particularly true where the state agency purchases on bid.

For the reasons stated, and because of a common misinterpretation of the law as written, this office concludes:

CONCLUSION

It is the opinion of this office that the sale of supplies to a state agency by a legislator, who was not a member of the Legislature authorizing the purchases, or where the Legislature had nothing to do with the contract, is not in conflict with any state law.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

7 Nevada Youth Center—Funds may be disbursed for the care of children paroled from the Nevada Youth Training Center, to foster homes, in the discretion of the superintendent, for that period when the child is between 18 and 20 years of age. [NRS 210.240](#) and [210.290](#) construed.

CARSON CITY, February 11, 1963

MR. OLIVER D. FORSTERER, *Superintendent and Administrator, Nevada Youth Training Center, P.O. Box 469, Elko, Nevada*

DEAR MR. FORSTERER: Your letter of January 21, 1963, propounds the following question:

QUESTION

Does the present law permit the State Department of Welfare to expend moneys for foster home care of children, who have been referred to the department by the Nevada Youth Training Center, who are over 18 and under 20 years of age?

CONCLUSION

We answer the question in the affirmative.

ANALYSIS

The Legislature of 1959 enacted Chapter 421, which modified the regulations of the Nevada School of Industry in such a manner as to provide for the parole of certain of the inmates who in the opinion of the superintendent were suitable for parole in order that they might go to a reputable home for administration of a school and work program. These provisions are now included in [NRS 210.240](#), which provides:

210.240 (Parole of inmates: Conditions; regulations; return of violators.)

1. When in the opinion of the superintendent, and inmate deserves parole according to regulations established for that purpose, and parole will be to the advantage of the inmate, the superintendent may grant parole under such conditions as he deems best.

2. Each person paroled shall be provided with a reputable home and a school or work program. The school may pay the expenses incurred in providing such a home, which expenses shall be paid from funds made available to the school for such purpose.

3. When any person so paroled has proven his ability to make an acceptable adjustment outside the school, the superintendent shall petition the committing court, requesting dismissal of all proceedings and accusations pending against such person.

4. Any person who violates the conditions of his parole may be returned to the school.

Although the statute provides that such foster home care may be paid from funds made available to the school, we understand that the appropriation was made for this purpose to the State Welfare Department. The State Welfare Department has a foster home program and responsibility (apart from this Youth Training Center group) and the appropriation to this department for this purpose is, therefore, not unnatural. We understand that heretofore sums have been paid by this department to foster homes for outlays of such homes in respect to children paroled by the Nevada Youth Training Center. However, recently a telephone call from the Department of Attorney General has cast doubt upon the regularity of this procedure.

We are, therefore, not concerned with the fact that the money is paid to the foster home by the State Welfare Department rather than by the funds made available to the Nevada Youth Training Center. This distinction does not disturb the public officials who are involved. We are solely concerned with the question of whether or not it may be paid to foster homes for the care of children paroled from the training center for a period of time after the involved child has reached 18 years and has not yet attained 20 years of age.

At the time of the enactment of Chapter 421, Statutes of 1959, Section 210.290 of NRS provided:

210.290 Inmates shall be discharged from the school upon reaching the age of 18 years.

However, by an amendment of 1961 (Chapter 228), Section 210.290 of NRS was amended to provide the following:

210.290 (Discharge of inmates from school.) Inmates may be discharged from the school upon reaching the age of 18 years and shall be discharged upon reaching the age of 20 years.

The Legislature of 1959 had provided for the foster home care of such inmates who could be retained at that time until they reached the age of 18 years. The Legislature of 1961, in its wisdom, saw fit to enlarge the age to which children might, in the discretion of the superintendent, be retained. The Legislature knew of the provisions for foster home care of such children, and did not see fit to change these provisions. The conclusion is, therefore, inescapable that this provision for foster home care may, in the discretion of the Superintendent of the Nevada Youth Training Center, be extended until the child reaches the age of 20 years.

This conclusion is strengthened by the fact that we are here concerned with construction of welfare statutes, which must be liberally construed to effectuate their purposes.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

8 Retirement Board, Public Employees—Certain of the public employees may, without retirement, protect a designated beneficiary, in securing a contingent retirement allowance to such beneficiary, by complying fully with the provisions of [NRS 286.610](#) and [NRS 286.590](#).

CARSON CITY, February 14, 1963

MR. KENNETH BUCK, *Executive Secretary, Public Employees Retirement Board, P.O. Box 637, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BUCK: In February 1959, a public school teacher with more than 25 years of accredited service as a teacher in Nevada public schools, being then under 60 years of age, called in person at the office of the Public Employees Retirement Board. He expressed an interest in the protection of his wife, as his beneficiary, under the provisions of [NRS 286.610](#) by complying with the formal requirements thereof prior to the time that he hoped to retire. He was informed that it would be necessary to have filed with the official records of the board documentary proof of the date of birth of both himself and his wife, proof of marriage, and an election of retirement benefits under the provisions of [NRS 286.590](#), as well as other data, and that with such information, the actuaries would compute and supply the final figures, by which the member could make his decision, either to protect his wife during the period prior to his retirement, or to decline to provide such protection and thereby obtain for himself a higher retirement benefit at the time of his actual retirement. He was then supplied with the proper forms.

On July 8, 1959, this teacher delivered the application form to the retirement office. His application was incomplete, however, in that he did not file proof of the date of his birth, nor did he file proof of marriage. On July 8, 1959, the executive secretary of the said board wrote to the teacher, stating that it would be necessary for him to file proof of the date of his birth and proof of his marriage to his wife, whose proper proof of date of birth he had filed. It was asked that these records be promptly filed. It was anticipated that upon the supplying of this information, the calculations would be made and the final election would be made by the member, by his execution of and filing of forms showing such elections. With no further communication between the retirement office and the member, and no further filings, he died suddenly on July 14, 1959. We are also informed that in a number of cases in the past when a member has expressed an interest in protecting a beneficiary, prior to his retirement, upon receipt of the computations, and upon observing that such protection does substantially reduce his retirement benefits contingently available, the member has decided to not continue further in the proposed protection to a beneficiary.

QUESTIONS

1. Does the filing of a request for calculations under the provisions of [NRS 286.610](#) constitute sufficient authority to permit the Public Employees Retirement Board to grant an allowance to the widow of a member, if the member dies before the application has been regularly cleared and statutory elections made?

2. If the answer to Question No. 1 is in the affirmative, under which option plan, Nos. 2 through 5 of [NRS 286.590](#), would payment be made?

CONCLUSIONS

Question No. 1 must reluctantly be answered in the negative.

Question No. 2 requires no treatment, by reason of the conclusion reached in respect to Question No. 1.

ANALYSIS

At the time a member retires, he may elect to have his retirement benefit allowance computed in such a manner as to be payable only for the remainder of his life, or he may elect to have it computed to be payable for the life of his designated beneficiary, as provided in [NRS 286.590](#). A number of options are available to a member upon retirement, hereinafter to be mentioned.

The privilege of protecting a designated beneficiary is also available, prior to retirement, to certain long-term employees, i.e., (1) A member eligible for retirement as to both age (normally 60 years and as to policemen and firemen, 55 years) and accredited service (10 years minimum) under the provisions of [NRS 286.600](#), and (2) A member with at least 25 years of accredited service, but not qualified for retirement as to age, under the provisions of [NRS 286.610](#). It is under the provisions of [NRS 286.610](#) that this member in question apparently could have qualified to protect his beneficiary, had he complied with the prescribed requirements, and made the necessary elections.

[NRS 286.610](#) in part provides:

286.610 (Protection of beneficiary if member has 25 or more years of service.)

1. A member with 25 or more years of service but who is not yet eligible for retirement by reason of age may elect to protect a beneficiary under the terms and conditions of one of Options 2 to 5, inclusive, as described in [NRS 286.590](#).
2. The protection to the beneficiary shall be calculated upon the member's conditions of service and average salary obtaining on the 1st day of the month in which the application for such protection, upon a form prescribed by the board, shall be received in the office of the board.
3. Should the member die *after the election has become effective*, the designated beneficiary, if surviving, shall become eligible for receipt of an allowance *under the elected plan* at such time as the deceased member would have reached retirement age or, if either Option 4 or Option 5 has been elected, under the terms and conditions of such option, whichever is later. * * *. (Italics supplied.)

From the content of the above, two things are clear, viz: (1) An election to protect a beneficiary becomes effective at the time that certain things are done or accomplished, and (2) It is clearly contemplated that the member should elect one of the four options delineated by the provisions of [NRS 286.590](#).

Four requirements of law, in this situation, appear to be imperfectly met by the member in his incompleting attempt to designate a beneficiary, under [NRS 286.610](#), namely: (1) The member did not file proof of his date of birth; (2) The member did not file proof of marriage, to properly identify the wife; (3) The member had not received computations of proposed benefits to the beneficiary under any of the Options 1 to 5 of [NRS 286.590](#); and (4) The member had not exercised his discretion by selecting one of said options.

It may well be that the failure of the member in completing items (1) and (2) above is not significant or controlling, for administratively these records could be completed after his death. We, therefore, must consider whether or not, as a matter of

law, there must have been an election and acceptance of one of the options as a condition precedent to the existence of an effective election to protect a beneficiary.

Option 1 of [NRS 286.590](#) consists in voluntary reduced allowance to the member with obligation of the board to pay to a beneficiary designated by the member, at the member's death, the sum remaining from the member's accumulated contributions reduced by the sum paid by reason of his monthly allowance.

Option 2 thereof consists in a reduced allowance to the member during his life, with obligation of the board to his designated beneficiary during her (his) lifetime.

Option 3 thereof consists in a reduced allowance to the member during his life, with obligation of the board to continue an allowance to his designated beneficiary after his death for the life of the beneficiary, in the amount of one-half of the sum paid to the member.

Option 4 thereof consists in a reduced allowance to the member during his life, with provision that it continue after his death to his designated beneficiary in the same amount as to himself, the payments to the beneficiary, however, not to commence until the beneficiary reaches the age of 60 years.

Option 5 thereof is the same as Option 4, except that the benefits to the designated beneficiary, to commence at the time the beneficiary shall arrive at age 60 years, shall be in the amount of one-half the sum allowed to the member.

These varied options giving a wide choice in order that the member may fit his retirement to his (and the beneficiary's) circumstances, clearly show that it was legislative intent that an option be effectively selected, prior to the election to protect a beneficiary, becoming effective. These options were matters of discretion which the member alone had the right and duty to exercise. It would be manifestly unfair and improper for a widow to now elect with certainty to her advantage, by the use of the benefit of knowledge of her husband's death, upon those matters which the law contemplates shall be made by the member prospectively and not by another retrospectively, or at all.

There was no delay or neglect on the part of the retirement office in processing, or in explaining what was required of the member, and there was a great deal of neglect on the part of the member. There are, therefore, no equities which change the inescapable conclusion that the mandatory provisions of the law were not complied with.

Reluctantly, we conclude that the member in question did not make an effective election to award retirement beneficiary rights to his wife under the provisions of [NRS 286.610](#), or at all, and that all steps that he took to this object were totally ineffectual.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

9 Sales Tax—Act to impose county sales tax in all counties of State, which would be in addition to tax imposed by Chapter 397 of 1955 Statutes, would be unconstitutional unless submitted to direct vote of people in accordance with Article XIX of the Constitution of Nevada.

CARSON CITY, February 21, 1963

HON. GUILD GRAY, *Assembly Chambers, Carson City, Nevada*

DEAR MR. GRAY: You have inquired of this office as to whether legislation could be introduced at this session of the Legislature which would impose a county sales tax in

all counties, such tax to be in addition to the state sales tax now imposed by Chapter 397 of the 1955 Statutes of Nevada, with the machinery set up to collect the state sales tax being utilized to collect and disburse the proposed tax to the various counties of the State.

ANALYSIS

On December 10, 1956, this office, in an opinion directed to Mr. J. E. Springmeyer, Legislative Counsel, went fully into the matter of amending the state sales tax, which was adopted by a referendum vote of the people, and because of its applicability to the present problem, it is herewith set forth in its entirety:

228 Constitutional Law—Law approved by referendum vote of the people cannot be amended except by direct vote of the people, in conformity with Section 2 of Article XIX of the Constitution of the State of Nevada.

CARSON CITY, December 10, 1956

MR. J. E. SPRINGMEYER, *Legislative Counsel, Carson City, Nevada*

DEAR SIR: You have advised this office that the Legislative Commission requests an answer to the following question:

Under the provisions of Article XIX of the constitution of the State of Nevada, may the 1957 Session of the Nevada Legislature amend Chapter 397, Statutes of Nevada 1955, known as the Sales and Use Tax Act of 1955, in view of the fact that the said Chapter 397 was given referendum approval by the people of the State of Nevada at the general election held on November 6, 1956?

OPINION

An answer to this question requires a careful study and analysis of Section 2 of Article XIX of the Constitution of Nevada, particularly with reference to the meaning of the words and phrases "overruled," "annulled," "set aside," "suspended," "or in any way made inoperative." In order to facilitate reference to the pertinent provisions of Section 2 of Article XIX of the Constitution of Nevada, it is hereby set forth:

"When the majority of the electors voting at a state election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect."

The paramount question confronting the Legislature is in effect this: Are the words and phrases "overruled," "annulled," "set aside," "suspended," "or in any way made inoperative," synonymous with the word "amend." If they are, either grouped together or standing alone, then, the people having approved the Sales and Use Tax Act by a referendum vote, the Legislature could not amend the act at the forthcoming session of the Legislature. If they are not synonymous, then the act could be amended.

It is important to decide the intent to the Legislature in adding Article XIX to the Constitution of Nevada, in order to determine the true meaning of the words used. In short, did the legislators purposely omit the word "amend" from Section 2 of Article XIX, so as to leave the door open for legislative amendment, or did they omit it feeling that it was unnecessary in view of the words and phrases used?

We are constrained to feel that the words used by the Legislature are to be taken together so as to prevent amendment of a law that by referendum vote stands as the law of the State by the terms of Section 2 of Article XIX of the Constitution. The phrase "or in any way made inoperative" lends credence to this legal interpretation, for if the act as approved by the people can be emasculated by amendment, thus falling short of annulment, abrogation or suspension, yet it could most certainly to all intents and

purposes be made inoperative. Who is to say, if legislative amendment be possible under the constitutional prohibition, where such amendments are to end? We strongly feel that the method of amendment has, by the Constitution itself, been provided by the phrase, "except by the direct vote of the people." The people have adopted the law as it now stands. If they become dissatisfied with it, they can, by direct action, initiate such changes as they deem desirable.

That the reasoning of this office is correct is clearly indicated by the opinion of our Supreme Court in the case of *Tesoriere v. District Court*, [50 Nev. 302](#). In that case the Legislature had proposed a different measure than the initiative measure proposed and both were submitted to the people for approval or rejection at the general election held November 7, 1922. The measure proposed by the Legislature was approved and the measure proposed by initiative petition was rejected. The Supreme Court held that the measure approved by the people was subject to amendment because it had originated in the Legislature. That its holding would have been otherwise if the initiative measure proposed by the people had been approved is indicated by the language of Justice Ducker in his concurring opinion. We quote it herewith:

It will be observed from these provisions that three things must occur before a law is confirmed by the people so that it cannot be amended or repealed except by their direct vote: First, there must be a law; second, there must be the expressed wish of 10 per centum or more of the voters of the state that it be submitted to the vote of the people; and, third, a majority of the electors voting at a state election must signify approval of the law.

"None of these essentials appeared in the procedure followed as prescribed by section 3 of said article 19 by which the said measure became a law. It was not a law when submitted, but a measure proposed by the legislature with the approval of the governor under the right conferred by section 3. It was not referred to the electors for their approval or rejection by the expressed wish of 10 per centum or more of the voters of the state, but by the legislature under said authority of said section 3. It was approved by a majority of electors voting at a state election, but by a majority of the votes cast for and against the measure. Consequently it did not by referendum become enacted into a law that could not be amended by the legislature by reason of the prohibition of section 2 of article 19."

For the reasons above set forth, it is the opinion of this office that Chapter 397, Statutes of Nevada 1955, known as the Sales and Use Tax Act of 1955, cannot, because of its adoption by a referendum vote of the people at the general election on November 6, 1956, be amended except by a direct vote of the people in accordance with the provisions of Section 2 of Article XIX of the Constitution of Nevada.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

The question now arises: Would the imposition of an additional sales tax, statewide, at the county level, be such an amendment of the state sales tax act, as to bring it within the restrictions imposed by Article XIX of the constitution? When the people of Nevada adopted the state sales tax by referendum, they said, in effect, "we consent to a tax of 2 percent against retailers on the sale of tangible personal property, with said tax to be collected, so far as possible, from the consumer, and we consent to the imposition of an excise tax on the storage, use or other consumption in the State of tangible personal property purchased from any retailer for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property."

To now allow the Legislature to impose an additional sales or use tax on all of the people of Nevada, which, in effect, is what is proposed, would place a burden on the

citizens over and above what they consented to at the time they adopted the sales tax act by referendum. This, we feel, the Legislature cannot do.

Any act of the Legislature which proposes to impose a sales tax on all of the people in all of the counties of Nevada, over and above that imposed by the sales tax act of 1955, under whatever guise this is attempted, would have to be submitted to the voters in accordance with Section 2 of Article XIX of the Constitution of Nevada.

CONCLUSION

An act to impose a statewide county sales tax, which would be in addition to the state sales tax imposed by Chapter 397 of the 1955 Statutes of Nevada, would, in the opinion of this office, be unconstitutional.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

10 Sales and Use Tax—The imposition of a sales tax on the full amount of the sale of tangible, personal property is permissible under Chapter 397 of the 1955 Statutes, even though a trade-in allowance on an article taxed when purchased, is a part of the total aggregate sale.

CARSON CITY, February 21, 1963

HON. JAMES E. WOOD, *Assembly Chambers, Carson City, Nevada*

DEAR MR. WOOD: Under date of February 18, 1963, you have requested an opinion from this office as to whether it is proper to levy a sales tax on the full amount of the sale of tangible, personal property, where a trade-in allowance is a part of the total aggregate sale.

As an example, you set forth an imaginary transaction where a new, 1963 automobile is purchased, and the purchaser trades in a 1961 model. He has paid the sales tax on the 1961 model. He is now confronted with paying the sales tax on the full price of the 1963 car. You point out that the purchaser has an equity in the 1961 model which should be free and clear of the sales tax and that the tax should apply only to the difference between the equity he possesses and the total cost of the 1963 car.

ANALYSIS

A review of the Sales and Use Tax Act (Chapter 397 of the 1955 Statutes) reveals that the Legislature evidently intended to allow increased revenue to the State by permitting the imposition of the sales tax on the full value of the property sold, regardless of the fact that a sales tax had been imposed on the article traded in.

Under Section 11 of the Article, it is stated: The total amount for which property is sold includes all of the following. * * *

(b) Any amount for which credit is given to the purchaser by the seller.
* * *

Under the provisions of the law, the total amount taxable would include the value of the trade-in.

CONCLUSION

It is, therefore, the conclusion of this office that, under the Sales and Use Tax Act, it is legal to levy a sales tax on the full amount of the sale of tangible, personal property, where a trade-in allowance is a part of the total aggregate price.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

11 State Librarian—County library trustees may expend moneys of the county library gift fund without prior approval of the county commissioners.

CARSON CITY, March 1, 1963

MRS. MILDRED J. HEYER, *State Librarian, Nevada State Library, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MRS. HEYER: County libraries receive certain funds in the form of gifts or grants and the question arises whether these funds may be expended during the fiscal year in which they are received rather than being incorporated in a budget and only available after approval of such budget. Some of these funds are available only upon condition that other funds are budgeted, the amount of the gift being determined by the amount of the budget. In your capacity as consultant to the county libraries, you have asked the opinion of this office as to the question stated below.

QUESTION

May county library trustees expend moneys of the county library gift fund without including such moneys in the annual budget presented to the county commissioners?

CONCLUSION

Yes.

ANALYSIS

County financial administration requires generally that funds expended by county agencies be in accordance with a budget prepared pursuant to the provisions of [NRS Chapter 354](#),010 et seq.

There is a specific duty placed upon the trustees of any county free public library to submit an annual budget to the governing body of the county. [NRS 379.025](#)(2)(f). This subsection does not require approval of all expenditures, but only that where moneys are to be received from the governing body such moneys be appropriated according to the budget submitted.

A county library gift fund is authorized under [NRS 379.026](#). Subsection 2 of this section states that no expenditure from the gift fund shall be made until authorized by the library trustees.

No case on this point has been decided by the Nevada Supreme Court and case law from other jurisdictions is of little value due to differences in statutory wording. Therefore, it is necessary to read these statutes in *pari materia* or as a group to answer the question asked.

It should be noted again that budget requirements pertain to moneys to be provided out of county funds. It is, therefore, the opinion of this office that where moneys are received from other sources, the budget requirements are not applicable and such funds may be expended whenever available, subject to approval by the trustees.

The Legislature in passing [NRS 279.060](#)(7) has accepted this theory in permitting expenditures in excess of a budgeted amount. It is a fair construction, therefore, to imply the same thing where gift moneys are concerned.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By FRANCIS P. FINNEGAN, *Deputy Attorney General*

12 Assessor, Duties; Motor Vehicles, Licensing and Registration—A county assessor, or his deputy, under present Nevada law, cannot issue license plates and register motor vehicles to residents of another county.

CARSON CITY, March 5, 1963

HON. WILLIAM P. BEKO, *District Attorney, Nye County, Tonopah, Nevada*

STATEMENT OF FACTS

DEAR MR. BEKO: The County of Nye maintains a branch assessor's office at the main gate of the Nevada Test Site at Mercury, Nevada. One purpose of this office is to provide better service for the licensing and registration of motor vehicles in that area. Since the office was established the service has been available only to residents of Nye county.

Recently Nye County officials have been asked to expand this service and provide for the licensing and registration of motor vehicles owned by Clark County residents who are employed in Nye County at the test site. It has been pointed out that an estimated 5,000 man-days of work are lost each year by employees and that the State of Nevada may be losing a considerable amount of tax revenue from those owners who relicense their vehicles in another state by mail.

It is proposed that the Director of the Department of Motor Vehicles of the State of Nevada enter into a contract with the Assessor of the County of Nye whereby the mercury office would be authorized to issue the "C" (Clark) type license plates and register motor vehicles to owners who reside in Clark County but are employed at the Nevada Test Site in Nye County. This proposal is based on [NRS 482.160](#), which reads in part as follows:

2. The director [of the department of motor vehicles] may establish branch offices as provided in [NRS 481.055](#), and *may by contract appoint any person or public agency as an agent to assist in carrying out the duties of the department under this chapter*. The director shall designate the county assessor of each county with a population of less than 25,000 * * * as agent to assist in carrying out the duties of the department *in such county*. (Italics supplied.)

QUESTION

Whether the Deputy Nye County Assessor at Mercury, Nevada, could be authorized under present Nevada law to issue Clark County license plates and register motor vehicles to owners who reside in Clark County but are employed at the Nevada Test Site in Nye County.

CONCLUSION

No.

ANALYSIS

A construction of [NRS 482.160](#), standing alone, would seem to indicate that such a facility would be authorized as a valid delegation of the administrative power to license and register motor vehicles. However, this particular statute is only a part of a general legislative scheme and a consideration of the entire chapter dealing with vehicle licensing and registration is necessary to arrive at our conclusion.

[NRS 482.215](#) provides:

1. *All applications for registration, except applications for renewal registration, shall be made as provided in this section.*
2. *Applications for all registrations, except renewal registrations, shall be made in person to the office or agent of the department the county in which the applicant resides. (Italics supplied.)*

If a motor vehicle owner who is a resident of Clark County is to comply with these statutory directions, he could not use the facilities as proposed. The statute directs Clark County residents to apply to the office or agent of the department in Clark County and specifies that all applications shall be made in this manner. This indicates a legislative intention that the Director of the Department of Motor Vehicles provide offices or agents for residents of a particular county only in the county in which they reside under [NRS 482.160](#). Since Clark County residents cannot, according to [NRS 482.215](#), apply for registration in Nye County, a fortiori, the Nye County Deputy Assessor could not issue plates or register their motor vehicles in Nye County.

It is our conclusion that the Deputy Nye County Assessor could not be authorized, under present Nevada law, to issue plates and register motor vehicles to residents of Clark County.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

13 University of Nevada—Revenue bonds which are not secured by the public faith and credit of the State of Nevada are not debt within the meaning of Article IX, Section 3 of the Nevada Constitution.

CARSON CITY, March 5, 1963

DR. CHARLES J. ARMSTRONG, *President, University of Nevada, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. ARMSTRONG: The University of Nevada has many situations where a capital improvement may produce revenue. Such revenues may be in the form of rents or fees for usage. In addition to such revenues for capital improvements, the University has other sources of funds such as fees, gifts and grants. The University is constantly expanding and there is an ever increasing need for more capital structures. There is a ceiling on the amount of indebtedness which the ad valorem tax base is required to support. Due to this ceiling and the limited amount of funds available to the Legislature for distribution to state agencies, the University is seeking to solve the problem by the acquisition of capital improvements by means other than legislative appropriation.

QUESTION

May the University of Nevada, by authorization of the Legislature, issue bonds in a form that does not require that the fact amount be included in the state debt?

CONCLUSION

Yes, under provisions hereinafter set forth.

ANALYSIS

The framers of the Nevada Constitution debated at great length to arrive at suitable wording to express the theory that the cost of statehood should not bankrupt the State. These debates are reported in Marsh, *Nevada Constitutional Debates and Proceedings*, 1864, and are carefully analyzed in A.G.O. No. 3, January 29, 1959, and are, therefore, not treated in detail here.

The precise question is whether revenue bonds are debts within the meaning of Article IX, Section 3 of the Nevada Constitution of 1864. Assuming the theory stated above, what was in the minds of the delegates when the word debt was used? The word debt is defined in Webster's International Dictionary in one sense to mean that which one is bound to pay to another. If this was the debt contemplated by the delegates, then it should follow that unless the State of Nevada is bound to pay something to someone, then there is not debt of the State which is within the contemplation of the Nevada Constitution.

The matter has been considered by the Nevada Supreme Court in dicta contained in *Ronnow v. Las Vegas*, [57 Nev. 332](#), 65 P.2d 133 (1937):

General obligation bonds create a debt against the city, whereas bonds payable wholly from the earnings of a public utility do not.

Applying this reasoning to the instant problem, if the public faith and credit are not pledged as security for the retirement of bonds, then such bonds are not a debt of the State of Nevada. It is suggested that this be set forth clearly in the enabling legislation and also that the statement be included that the buyer of such a bond may look only to the revenue pledged and has no other recourse.

Michigan and Pennsylvania courts have approved a method of public financing which is, in theory, no different than the method used in California. This method provides that an authority is created and given the power to issue revenue bonds. The bonds are sold and the proceeds used to construct buildings. The authority then charges a "rent" for the use of the building and with the rent pays off the bonds. These acts provide that the authority shall have no power to pledge the credit or taxing power of the State as security of the bonds.

In *Walinske v. Detroit-Wayne Joint Bldg. Authority*, 39 N.W.2d 73 (Mich. 1949), an authority was created by the city-county council and authorized to issue revenue bonds. The constitutional debt limitation invoked in a suit to enjoin such issue related to limitations imposed by the constitution at city and county levels (5 percent of the assessed valuations, Mich. Const. Art. VIII, Sec. 12). The court said, "The Authority, not the city and county, is to pay for and erect the proposed building, and is to be the sole obligor on the proposed revenue bonds. The city and county will not pledge their full faith and credit, but they merely agree to pay over a term of years a reasonable annual rental for an absolute necessity the same as they would for any other services. * * * Inasmuch as the bonds proposed to be issued by the Authority are not full faith and credit obligations of its incorporators, they need not be voted on by the electorate, nor are they subject to the debt limitations of the municipalities."

Cases from other jurisdictions are contained in an annotation entitled "Pledge or appropriation of revenue from utility or other property in payment therefor as

indebtedness within constitutional or statutory limitation of indebtedness of municipality or other political subdivisions,” at 146 A.L.R. 328 (supplemental annotations at 72 A.L.R. 688 and 96 A.L.R. 1385). The editor makes the following statement:

Since the publication of the earlier annotations on this subject, there has been a great increase in litigation involving so-called revenue bonds. The recent cases support the general rule, stated in the original annotation, that the purchase or construction of a public utility or other property by a municipality or other political subdivision to be paid for wholly out of the income and revenue from the property so acquired, without any other liability on the part of the public body does not give rise to an indebtedness within the meaning of an organic debt limitation.

Numerous case citations follow, the most relevant being *Hopkins v. Baldwin*, 123 Fla. 619, 167 So. 677 (1936) where the purchase of dormitories and dining facilities was held not to be a debt where revenue bonds were the sole means of financing the project.

In summary, the bonds which you seek legislative authority to issue are not debts and are therefore not limited by Article IX, Section 3 of the Nevada Constitution of 1864. However, it should be clearly stated as a condition of issuance that the public faith and credit of the State of Nevada is not pledged as security for the repayment of such obligations.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By FRANCIS P. FINNEGAN, *Deputy Attorney General*

14 Labor Commissioner, State—[NRS 609 Interpreted](#)—Employer cannot work female employee more than 6 days or 48 hours in any 7 consecutive days.

CARSON CITY, March 11, 1963

MR. E. J. COMBS, *State Labor Commissioner, Carson City, Nevada*

DEAR MR. COMBS: You have asked this office as to whether an employer can cause a female employee to work 4 days in the calendar week from Sunday through Saturday, and then work the same employee from the next day (Sunday) through (Tuesday) and still comply with Chapter 609 of the Nevada Revised Statutes.

It would appear that under such an arrangement the female employee would work 7 days a week, 4 days in 1 calendar week and 3 days in the next calendar week, thus technically avoiding the prohibition contained in [NRS 609.110\(1\)](#) against working a female employee more than 6 days in any 1 calendar week.

ANALYSIS

The federal government and the states long ago determined that the employment of women and children could not be governed by the same rules and regulations covering the employment of adult males. The sweatshop conditions in the garment industry, where women and children worked 15 to 16 hours a day at starvation wages, gave rise to restrictive legislation.

The legislative intent in enacting Chapter 207 of the 1937 Statutes of Nevada, as amended, clearly indicates that the humanitarian approach to the plight of women forced the necessity to earn their living was duly considered.

Sutherland, in his great work on statutory construction, sets forth that the construction to be placed on the wording of a legislative act is the construction which most nearly approaches the intent of the legislation.

Their intent and the policy of the act is clearly set forth in [NRS 609.030](#):

1. With respect to the employment of females in private employment in this state, it is the sense of the legislature that the health and welfare of female persons required to earn their livings by their own endeavors require certain safeguards as to hours of service and compensation therefor.

2. The health and welfare of the female workers of this state are of concern to the state and the wisdom of the ages dictates that reasonable hours, not to exceed 8 hours in any 1 day, and 6 days in any calendar week, so as to provide a day of rest and recreation in each calendar week, are necessary to such health and welfare, and, further, that compensation for the work and labor of female workers must be sufficient to maintain that health and welfare.

3. The policy of this state is hereby declared to be:

(a) That 8 hours in any 1 13-hour period, and not more than 48 hours in any 1 calendar week, and not more than 6 days in any calendar week, are the maximum number of hours and days female workers shall be employed in private employment * * *.

We must then conclude that the Legislature, in using the words “calendar week,” could not have meant to place in the hands of unconscionable employees the tool by which they policy of the act could be evaded.

It was the intention of the Legislature that no woman should work more than 8 hours a day, nor more than 6 days a week. This is clearly indicated by the language in “[NRS 609.030\(2\)](#),” so as to provide a day of rest and recreation * * * necessary to such health and welfare * * *.”

Therefore, if a female employee works from Wednesday through Saturday one week, she can only be compelled to work Sunday and Monday of the following week, and is then entitled to Tuesday off. Any other conclusion would be an absurdity.

CONCLUSION

We conclude that an employer cannot work a female employee more than 6 days in succession, nor more than 48 hours in any 7 consecutive days.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

15 Motor Vehicles; Payment of Nevada Registration Fees by Servicemen Legally Domiciled in Another State—Servicemen stationed or living in Nevada solely because of military orders, but whose legal domicile is in another state, are to exempt by the Soldiers’ and Sailors’ Relief Act from paying Nevada personal property tax on automobiles when seeking to license said vehicles in Nevada unless all fees, taxes and excises have been paid on the automobile in his home state and registered therein; payment of Nevada personal property taxes on automobiles is a condition precedent to the issuance of a Nevada license.

CARSON CITY, March 11, 1963

HON. THEODORE H. STOKES, *District Attorney, Ormsby County, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. STOKES: This problem involves a serviceman on active duty with the United States Armed Forces and stationed in Mono County, California. He resides in Nevada, but his official legal domicile is in Tennessee. He desires to license his automobile in the State of Nevada, but asserts that under provisions of the Federal Soldiers' and Sailor's Relief Act he is exempt from paying the personal property tax levied by Nevada law on automobiles registered in this State.

QUESTION

Does Section 574 of the Federal Soldiers' and Sailors' Relief Act, Title 50 USCA, exempt servicemen, stationed or living in Nevada because of military orders but whose legal domicile is in another state, from paying the personal property tax on automobiles required by Nevada law when seeking to license said automobiles in Nevada, when it is not shown that all fees, taxes and excises have been paid in his home state and whether a Nevada license can be issued without payment of personal property taxes?

CONCLUSION

No.

ANALYSIS

The act, as amended, 50 U.S.C.A. Appendix, Section 574, provides:

(1) For the purpose of taxation in respect of any person, or of his personal property, income, or gross income, by any State * * * such person shall not be deemed to have lost a residence or domicile in any State, * * * solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any State * * * while, and solely by reason of being, so absent. * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State * * * Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders * * *.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises, imposed in respect to motor vehicles or the use thereof: *Provided, That the license fee, or excise required by the State, Territory, Possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.* (Italics supplied.)

This office has passed on this question before and the conclusions reached, based on *Dameron v. Brodhead*, *infra*, were to the effect that a serviceman registering his automobile in Nevada is exempt from payment of the personal property tax levied in connection with the purchase of license plates. See opinions dated February 3, 1954; April 16, 1954; June 24, 1955. However, having the benefit of recent case authority, we now conclude that a serviceman is not exempt.

The first case in point is *Dameron v. Brodhead*, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041.

In this case the petitioner, a domiciliary of Louisiana, was an Air Force officer stationed in Colorado. He sued and recovered a personal property tax assessed by that state on his household goods because, according to the majority opinion, Section 574 of the act forbade imposition of the tax by providing that "personal property shall not be deemed to be located or present in or to have situs for taxation in" the state where the person sought to be taxed was present solely because of military orders.

Dameron v. Brodhead was concerned with taxes on personal property, mostly household goods, kept in an apartment in Colorado by an Air Force officer who was a resident and qualified voter of Louisiana. The court dealt only with the provisions of paragraph (1) of Section 574. As pointed out in *Whiting v. City of Portsmouth*, 118 S.E.2d 505 (Vir. 1961), a license or a tax levied in connection with the issuance of a license falls within the provision of paragraph (2) of said Section 574, wherein it is provided that the term "personal property" shall include tangible and intangible personal property, including motor vehicles, and the term "taxation" shall include, but not be limited to, licenses, fees, or excises imposed in respect to motor vehicles or the use thereof; provided, that the license fee or excise required by the state * * * of which the person is a resident or which he is domiciled has been paid.

Because the *Dameron* case did not concern itself with paragraph (2) of Section 574, in our opinion, the particular problems involved in the instant question, it is not authority for the proposition that a serviceman may register his automobile in the state wherein he is stationed and avoid personal property taxation on the automobile in both that state and his domiciliary state. In light of paragraph (2) it seems apparent that the purpose of the act is to protect the serviceman from state action requiring him to license his automobile and pay taxes in the state wherein he is stationed or living when he has already paid the current registration fees and taxes in his home state. We do not believe Congress or the United States Supreme Court intended to give a serviceman, by reason of military assignment, a gimmick whereby he could pick and choose the state wherein to register his automobile, avoid payment of registration fees and taxes in his home state and refuse to pay the required fees and taxes, required of every other person, in the state wherein he desires to register the automobile.

The two cases we have been able to find on this question strengthen this conclusion. *Woodroffe v. Village of Park Forest*, 107 F.Supp. 906 (D.C. Ill. 1952), was concerned with the right of a village in Illinois to collect from a member of the Armed Forces, whose home was in Pennsylvania, a license tax on his automobile which was registered in Pennsylvania and bore Pennsylvania state license tags. The court held that the village could not collect the tax "provided that he pays the required license fees to that political subdivision of which he is a legal resident * * * and since it is undisputed that he has paid all required license fees to the State of Pennsylvania, the petitioner falls within the purview of the act, and is not required to pay the vehicle tax."

The language used by the court in the *Woodroffe* case indicates that the only reason the serviceman did not have to pay the village tax was because he already paid all the required license fees and taxes to his home state wherein the automobile was registered.

A case directly in point is *Whiting v. City of Portsmouth*, *supra*. In this case *Whiting* claimed residence in Colorado and was stationed by the Navy in Virginia. In 1958 he purchased an automobile, had it registered and titled in his name in Virginia and purchased Virginia tags. He paid no license tax or other tax on the automobile in any other state than Virginia. He operated this car on the streets of Portsmouth without securing an additional license required by a city ordinance, which he declined to purchase on the ground that he was exempt from payment of such tax under the Soldiers' and Sailors' Relief Act. The Virginia Supreme Court did not agree with him and held that he was not exempt, stating:

Such a license tax falls within the provision of paragraph (2) of said Sec. 574, under which the appellant would be exempt from payment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, or elsewhere than in Virginia, he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth. Such has been the view of the Attorney General of Virginia in several instances. See opinions of Attorney General, 198-1949, page 166; 1954-1955, page 155; 1958-1959, page 190.

It is our conclusion that a serviceman stationed or living in Nevada because of military orders has to pay all registration fees and taxes in connection therewith when he elects to register and license his automobile in this State. Of course, he has the alternative of keeping his care registered in his domiciliary state, but when he takes advantage of a Nevada registration he must abide by Nevada law governing registrations.

Payment of the taxes in question is a condition precedent to the issuance of a license under the Nevada statutes. [NRS 482.260](#) recites:

- (1) The department and its agents in registering a vehicle shall:
 - (a) Collect the annual license fee as provided for in this chapter.
 - (b) Collect, as agent for the county in which the applicant resides, the personal property tax on the vehicle, whether or not the applicant is the owner of any real property.

[NRS 482.225](#) recites:

The department shall not grant an application for the registration of a vehicle in any of the following events:

* * * * *

- 3. When the fees required therefor by law have to been paid.

Servicemen stationed or living in Nevada by reason of military orders may use their automobiles in this State if they are currently registered in their home state. ([NRS 482.385](#).) However, they cannot, under the Nevada Code, be registered in this State unless they pay all requires fees and taxes. ([NRS 482.225](#).)

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

16 Bail Forfeitures—Bail forfeitures turned over to the county treasurer under the provisions of [NRS 178.165](#) should be credited to the county general fund.

CARSON CITY, March 20, 1963

HON. GRANT L. ROBISON, *Superintendent of Banks, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ROBISON: Audits made by your department of the books and records of various counties in this State disclose numerous occasions where money put up as bail to insure a defendant's appearance for trial is forfeited when such defendant fails to appear. Disposition of "bail forfeiture" money has raised a question as to what fund should be credited with bail forfeitures turned over to the county treasurer under the provisions of [NRS 178.165](#).

QUESTION

Which fund should be credited with bail forfeitures turned over to the county treasurer under the provisions of [NRS 178.165](#)?

CONCLUSION

The general fund of the county should be credited with bail forfeitures.

ANALYSIS

A determination must first be made as to whether bail forfeiture constitutes a fine, since forfeiture of bail in traffic cases seems to have taken on a connotation that forfeiture of bail is in lieu of a fine or it is under a strict interpretation a penalty for failure to appear at the time and place designated and submit to the jurisdiction and judgment of the designated court.

A consideration is hereby given to the disposition of fines in general under the law and statutes of the State of Nevada.

The Nevada State Constitution, Article XI, Section 3 provides that all fines collected under the general law of the State, and all proceeds derived from such sources, shall be devoted to educational purposes only.

[NRS 387.010](#) provides:

State permanent school fund: Composition; investment.

1. The state permanent school fund, consisting of:

(a) All moneys accruing to the State of Nevada from the sale of lands heretofore given or bequeathed, or that may hereafter be given or bequeathed, for public school purposes; and

(b) *All fines collected under the penal laws of the state; and*

(c) All estates which may escheat to the state, *shall be and the same hereby is solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses.*

2. The State permanent school fund shall constitute an irreducible and indivisible fund which shall be invested by the state board of finance as provided by law. (Italics supplied.)

[NRS 169.050](#) provides:

Fines to be paid into state treasury; costs to be separate.

The full amount of all fines imposed and collected under and for violation of any penal law of this state shall be paid into the state treasury, and costs shall in no case be deducted from the fine fixed by law or imposed by the court, but shall be taxed against the defendant in addition to the fine and separately stated on the docket of the court. (Italics supplied.)

In the case of State of Nevada v. Rosenstock, 11 Nevada 128, the Supreme Court of this State ruled that Section 3 of Article XI of the Constitution of our State did not apply to fines recoverable for violations of city or county ordinances but applied only to fines recoverable under the penal laws of the State.

To quote the court:

The provisions of section 3 of Article XI of the Constitution providing that all fines collected under the penal laws of the state shall be pledged to educational purposes, has no application to fines recoverable for violations of city ordinances, *but applies to fines recoverable under the general laws of the state.* (Italics supplied.)

Based upon foregoing authority it must be concluded that where bail forfeiture results from the violation of a county ordinance the money therefrom shall go to the county treasurer as a credit to the county general fund.

Consideration must now be given to whether bail forfeiture resulting from the violation of the penal laws of the State should go to the permanent school fund or to the general fund of the county.

Black's Law Dictionary at page 759 defines a "fine" as:

A pecuniary punishment imposed by lawful tribunal upon person *convicted* of crime or misdemeanor. It may include a forfeiture or penalty recoverable in a civil action. (Italics supplied.)

The California Court of Appeals in Sawyer v. Barbour, 300 P.2d 187, 142 C.A.2d 827 defines a fine as:

A fine is a pecuniary punishment imposed upon a person *convicted* of a criminal offense while a penalty is, at times, a punishment for the performance of an unlawful act.

From the authority cited there must be a conviction before a fine comes into existence. Has there been a conviction where bail has been forfeited even though in common parlance bail forfeiture has come to mean "forfeiture in lieu of fine"?

Black's Law Dictionary at page 403 defines conviction as:

In a general sense, *the result of a criminal trial* which ends in a judgment or sentence that the prisoner is guilty as charged.

Black's Law Dictionary at page 177 defines bail, a verb, as:

To procure the release of a person *from legal custody*, by undertaking that *he shall appear at the time and place designated and submit himself* to the jurisdiction and judgment of the court. (Italics supplied.)

Bail forfeiture is a penalty paid when the defendant neglects or fails to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required.

[NRS 178.165](#) provides:

Payment of forfeited money deposit to county treasurer. *If by reason of the neglect of the defendant to appear, as provided in [NRS 178.150](#), money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted as provided in [NRS 178.155](#), the clerk or magistrate with whom it is deposited must, at the end of the time period provided in [NRS 178.155](#), unless the court has before that time discharged the forfeiture, pay over the money deposited to the county treasurer.* (Italics supplied.)

[NRS 178.155](#) provides:

Discharge of forfeiture of undertaking, deposit. If at any time within 90 days after such entry in the minutes the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

[NRS 178.150](#) provides:

Forfeiture of the undertaking or deposit. If without sufficient excuse the *defendant neglects to appear for arraignment, or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required*, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, *and the undertaking, or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.* (Italics supplied.)

Bail forfeiture is not a fine paid for the violation of a penal law but *is a penalty paid for not appearing* at an arraignment for the offense charged.

Sections 387.010 and 169.050 of the Nevada Revised Statutes specifically state that fines, resulting from violations of the penal laws of the State, shall be paid into the State Treasury and that all fines collected under the penal laws of the State shall be pledged for educational purposes. The word “fine” does not appear in Sections 178.150, 178.155 or 178.165. Instead, Section 155.165 provides that forfeited bail shall be paid over to the county treasurer without purpose such as set forth in Sections 387.010 and 169.050 of the said statutes. Surely if the legislative intent was to pay the money from forfeited bail into the county treasury for permanent school fund purposes, it would have so spelled it out in the said statutes.

A number of states, some of which were admitted to statehood before this State have similar provisions in their constitutions providing for fines to be pledged for a special purpose. Iowa provides such funds for county schools; Kansas provides such funds for the common schools; and Michigan provides such funds for library purposes. Indiana differs in this constitutional provision from other states, in that its constitution provides that the common school fund shall consist of * * * fines for breaches of the penal laws of the state and from all forfeitures that may accrue. The Nevada Constitution does not have this provision. Article XI, Section 3 provides only for fines. It is probable that if the proceeds arising from bail forfeitures as those now in question had been intended to be embraced by the Constitution, the words “fines and penalties” or “fines and forfeitures” instead of the word “fines” would have been used.

Again, it may be said that if the Legislature in enacting [NRS 178.165](#) had intended that bail forfeitures should go other than to the county treasurer, it would have employed language similar to that language used in [NRS 169.050](#), i.e., fines to be paid into State Treasury.

We are therefore of the opinion that the failure of a defendant to appear for arraignment resulting in the forfeiture of bail does *not* thereby constitute the forfeiture of said bail a fine within the provisions of Section 3 of Article XI of the Nevada State Constitution, which provides that all fines collected under the penal laws of the State should be pledged to educational purposes, and we further conclude that all bail forfeitures should be paid over to the county treasurer to be utilized for general county purposes.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By GABE HOFFENBERG, *Chief Deputy Attorney General*

17 Patented Mining Claims—[NRS 361.585](#) authorizing a reconveyance of property held by county treasurer does not apply to patented mining claims.

CARSON CITY, March 25, 1963

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

STATEMENT OF FACTS

DEAR MR. BLAISDELL: An apparent conflict exists between statutes in separate chapters of NRS.

3. * * * at any time prior to public notice of sale by a county treasurer * * * of any property held in trust by him by virtue of any deed made pursuant to this chapter (Collection and enforcement of property taxes), *any person who was the owner, beneficiary under a deed of trust or mortgage under a mortgage of such property, or to whom such property was assessed, prior to being conveyed to the county treasurer, shall have the right to have such property reconveyed to him upon tendering to the county treasurer the amount of the taxes, costs, penalties and interest legally chargeable against such property* * * *. (Italics supplied.)

[NRS 517.390](#) provides:

1. Whenever a patented mining claim has become the property of a county through operation of the revenue laws of this state, any citizen of the United States may present to a file with the board of county commissioners of such county an affidavit and petition to explore and develop the claim.

[NRS 517.410](#) provides that the county commissioners may then give such petitioner permission to enter and explore for a period of 6 months without charge and [NRS 517.420](#) provides that “at the expiration of 6 months, or sooner if the petitioner so desires, the board of county commissioners shall take and execute a deed conveying the title to such claims to the petitioner for the sum for which the property became the property of the county.”

We are asked to determine whether the county treasurer should issue a deed of reconveyance under the following fact situation:

Mr. X submitted his affidavit and petition to enter upon a county owned patented mining claim pursuant to [NRS 517.390](#). Before the petition is acted upon by the board of county commissioners Mr. Y, the former owner, requests a deed of reconveyance from the county treasurer pursuant to [NRS 361.585](#).

QUESTION

Whether the reconveyance statute, [NRS 361.585](#), applies to patented mining claims.

CONCLUSION

No.

ANALYSIS

Chapter 517 dealing with petitions to explore and develop mining claims is a special act enacted by the Legislature and pertains only to patented mining claims which

have become the property of counties by virtue of the revenue laws of the State. The levy and assessment of such claims is provided by another special act, [NRS 362.010](#) to [362.240](#), but the collection and enforcement of these assessments is provided by two reference statutes in Chapter 362 which adopt the general tax laws of the State.

[NRS 362.030](#):

The county assessor shall assess each patented mine in his county at not less than \$500 and return the assessment as required by law.

[NRS 362.220](#):

**** all laws relative to the collection and enforcement of taxes, and penalties for nonpayment of same, are continued in full force and effect, and shall be applicable insofar as may be to the provisions of [NRS 362.100](#) to [362.240](#) ***.* (Italics supplied.)

Reference laws that adopt the general laws of the State, for purposes of collection and enforcement of taxes, adopt the law on the subject as of the time the reference statutes were enacted. Ex rel. Walsh v. Buckingham, [58 Nev. 342](#), 349, 80 P.2d 910. This will include all the amendments and modifications subsequent to the time the reference statute was enacted. 2 Sutherland, Statutory Construction, Sec. 5208, p. 550 (3rd ed. 1943).

We, therefore, have the following situation:

Taxes on patented mining claims are levied through a special act; the collection and enforcement of these taxes is through the general tax laws of the State by virtue of reference statutes in the special act; another special act provides that any citizen may petition the county commissioners to explore and develop patented mining claims which have become the property of the county by virtue of the revenue laws of the State and shall have the right to have such property conveyed to him; the general tax laws of the State provide that at any time before notice of public sale of property held in trust by the county treasurer by virtue of any deed made pursuant to the provisions of Chapter 361, “any person who was the owner, beneficiary under a deed of trust or mortgagee under a mortgage of such property, or to whom such property was assessed, prior to being conveyed to the county treasurer, shall have the right to have such property reconveyed to him upon tendering to the county treasurer the amount of taxes, costs, penalties and interest legally chargeable against such property ***.”

We must, therefore, determine whether or not the reconveyance statute, which is a part of the general tax laws of the State, is applicable to patented mining claims. It will be noticed that the reference statutes in the special act adopt all laws *relative to the collection and enforcement of taxes* and provide for its return according to law. It is our conclusion that a reconveyance under the general statute after the period of redemption has run and a deed issued to the county treasurer is not relative to the collection and enforcement of taxes imposed on patented mining claims. A reconveyance is not part of the collection and enforcement process, therefore not adopted by the reference statutes. The prior owner could redeem the claim during the 2-year period of redemption as provided in [NRS 361.585](#) because this right is a part of the collection and enforcement process. The county treasurer does not receive a deed to any property under the revenue laws of the State until the period of redemption has expired. Until such time as the property becomes the property of the county, all the remedies provided the owner are available to him. However, once the deed is issued to the county treasurer after the period of redemption has run, the enforcement and collection process is complete. The additional right of reconveyance after the property has become the property of the county does not apply to patented mining claims.

This conclusion is supported by another reason. As noted in its analysis, the chapters of NRS dealing with the taxation and exploration of patented mining claims are special acts while the tax laws referred to for the collection of taxes imposed on these claims are part of a general act.

It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment. (2 Sutherland, Statutory Construction, Sec. 5204 (1962 Cum.Supp.))

Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnance between them, the special will prevail over the general. (*Langston v. Currie*, 95 Mont. 57, 26 P.2d 160, 162.)

The special act allowing exploration and development and a subsequent conveyance to the petitioner conflicts with the general statute allowing reconveyance, in that if both were allowed, we could have conflicting claimants to the property. Therefore, the special act prevails over the general. Any citizen, whether he be prior owner, mortgagee or stranger, could petition to explore and develop a patented mining claim and demand a subsequent conveyance. Once such a claim becomes the property of the county by operation of the revenue laws of the State this is the only way title can be acquired or reacquired.

We, therefore, conclude that the reconveyance statute does not apply to patented mining claims. The rights of the former owner under the general tax statutes are ended when the period of redemption has run and a deed has been issued to the county. Thereafter, the only way to acquire or reacquire title to a patented mining claim is by petition to explore and develop under [NRS 517.390](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

18 Interpretation [NRS 268.330](#), [268.340](#); Conflict of Interests—City councilmen prohibited from entering into contract to purchase property from city which they serve in their official capacity.

CARSON CITY, March 29, 1963

M. GENE MATTEUCCI, ESQ., *City Attorney of Boulder City, 120 South Third Street, Las Vegas, Nevada*

DEAR MR. MATTEUCCI: You have propounded to this office the following question:

“Is a City Councilman of Boulder City, Nevada, which City is incorporated pursuant to the provisions of Chapter 267, NRS, by virtue of the incorporation of the provisions of Chapter 268, NRS, and specifically 268.330 and 268.340, NRS, prohibited

from either directly or indirectly contracting with the city for the purchase of real property from the city?"

ANALYSIS

The Legislature has wisely foreseen that to allow the heads of government, at whatever level they may sit, to have a personal interest in a contract directly affecting the body politic of which they are a member would result in manipulations and consequences deleterious to the welfare of the people.

The Nevada Revised Statutes are replete with sections which prohibit an interest in contracts which are adverse to the general welfare. These affect city officers, county commissioners, county highway commissioners, county hospital trustees, county road supervisors, boards of drainage districts, the Highway Board of Directors, the State Highway Engineer, highway officers and employees, Housing Authority Commissioners, the Inspector of Mines, irrigation district officers, local improvement district officers, Nevada Athletic Commission members, Public Service Commissioners, Regents of the University of Nevada, school district trustees, State Gaming Control Board members, State officers, swimming pool district directors, town trustees and water and sanitation district directors.

We list these for the purpose of showing how all inclusive is the prohibition against public officials being interested in contracts which affect directly or indirectly the agency of which they are a part.

The law which prevents the participation of city officers in contracts affecting their cities ([NRS 268.330](#), [268.340](#)) is originally found in Chapter 108 of the 1866 Statutes, and has survived in amended form to the present day.

Even if the charter under which Boulder City was formed had a specific grant of power to councilmen to enter into contracts with the city which they serve in their official capacity, we strongly doubt its validity or constitutionality in view of the long accepted statutes prohibiting interests adverse to the general welfare. Even if a councilman refrained from voting on the granting of the contract, his influence with his fellow councilmen would carry great weight.

If any member of the first city council held a lease on real estate in Boulder City, he could exercise his option to purchase such realty. If any present member of the city council had exercised an option to purchase realty which he owned at the time of detachment, there would be no bar to such purchase.

On the other hand, if the city is now selling property, the present city councilmen would most certainly be prevented from contracting to purchase such land under the statutes above cited.

The wisdom of this must be apparent to all. The knowledge available to city councilmen as to which land will be available for sale, its prospective price, and the influence which could be exerted on fellow councilmen, could lead to collusion and the accrual of benefits not available to the general public.

CONCLUSION

It is, therefore, the opinion of this office that, with the exception of the exercise of the options available at detachment of Boulder City from the federal lands, city councilmen are prohibited, either directly or indirectly from entering into contracts with Boulder City for the purchase of land sold, or to be sold, by the city.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

19 Construction of [NRS 623.330\(5\)](#); Architects—Draftsman who accepts work which can be defined as the practice of architecture is not protected by [NRS 623.330\(5\)](#).

CARSON CITY, April 1, 1963

MR. RAYMOND HELLMANN, *Secretary-Treasurer, State Board of Architecture, 137 Vassar Street, Reno, Nevada*

DEAR MR. HELLMANN: You have directed to this office a letter asking for a construction of [NRS 623.330\(5\)](#). This section reads as follows:

623.330 Exemptions. The following shall be exempted from the provisions of this chapter. * * * (5) A draftsman who does not hold himself out to the public as an architect.

You allege that certain draftsmen, building designers, etc., have construed this provision of the law as permitting a draftsman to engage in the practice of architecture as long as he does not call himself an architect.

ANALYSIS

The purpose of the act (Chapter 623 NRS) is, according to [NRS 623.020](#), “to safeguard life, health and property and to promote the public welfare.”

An architect is defined in [NRS 623.020](#) as “a person who is qualified to practice architecture under the provisions of this chapter.”

[NRS 623.040](#) defines the practice of architecture as the holding out to the public of service embracing the scientific, aesthetic, and orderly coordination of all the processes which enter into the production of a completed building, performed through the medium of unbiased plans, specifications, supervision of construction, preliminary studies, consultations, evaluations, investigations, contract documents, and oral advice and direction.

A certificate is issued either upon examination or acceptable qualification in lieu thereof.

It can readily be determined from the foregoing that the duties imposed upon an architect are more burdensome, and subject to greater qualifications, than those imposed upon a draftsman. The distinct difference between the two occupations is shown by the variance in the definitions found in Webster’s New International Dictionary. A draftsman is defined as one who draws plans and sketches, as a machinery or structures; generally, one who makes drawings. An architect on the other hand is defined as a person skilled in the art of building; a professional student of architecture or one who makes it his occupation to form plans and designs of, and to draw up specifications for, buildings and to superintend their execution.

The meaning of the act can only be divined by reading all sections of the act, and especially those previously cited. Certainly the Legislature did not intend to exempt draftsmen from the provisions of the act merely because they do not call themselves architects. A person may hold himself out to be an architect, within the meaning of the act, without uttering a word, or without any printed material that he is such. He can convey this supposition to the layman and to the general public by accepting work which includes those duties detailed in [NRS 623.040](#).

This, it is the opinion of this office, he cannot do without breaching the directives and procedures set forth by the Legislature in Chapter 623 as qualifying architects.

CONCLUSION

It is the conclusion and opinion of this office that a draftsman cannot legally don the robe of an architect merely by refraining from calling himself an architect, if he, in fact, accepts work which falls within the purview of [NRS 623.040](#), and the board has the authority to retain counsel to protect the rights guaranteed to qualified architects under the act.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

20 County School District Funds—Proceeds from the sale of school bonds are county school district funds and must be paid into the county treasury at the end of each month.

CARSON CITY, April 5, 1963

HON. JOSEPH O. MCDANIEL, *District Attorney, Elko County Court House, Elko, Nevada*

STATEMENT OF FACTS

DEAR MR. MCDANIEL: Proceeds from the sale of Elko County school bonds are not always used immediately due to normal delays attendant to the planning and construction of school facilities. The funds in question are potentially available for interest bearing investment or deposit and the board of school trustees is desirous of placing said funds in interest bearing accounts with state or national banking institutions.

QUESTION

May the Elko County Board of School Trustees deposit the proceeds of bonds which are not immediately needed for school purposes in a state or national banking institution?

CONCLUSION

No.

ANALYSIS

The first determination to be made in the analysis of this problem is whether the proceeds of the sale of bonds issued under the authority of [NRS 387.335](#) are county school district funds within the meaning of [NRS 387.170](#) et seq.

[NRS 387.175](#) states the composition of the county school district fund. Subsection 6 of this statute requires that any receipts, including gifts for the operation and maintenance of the public schools in the county school district, be a part of the county school fund. This subsection does not mention receipts for the construction of public schools; however, the broad wording of [NRS 387.180](#) contemplates the inclusion of moneys received from whatever source and for whatever purpose in the fund. [NRS 387.180](#) reads as follows:

The board of trustees of each county school district shall pay all moneys from any source whatever collected by it for school purposes into the county treasury at the end of each month to be placed to the credit of the county school district fund.

The conclusion one must reach based on these statutes is that the intent of the Legislature is that county school district fund moneys shall only be deposited in the

county treasury. This is reasonable in that the county treasury is protected by rigid requirements as to bonding of the county treasurer and audit by the county auditor. The fact that the Legislature has seen fit to give the county treasurer specific authority to make deposits in banks under certain carefully restricted conditions set forth in [NRS 356.120](#) et seq., and no such authority has been given to the board of county school trustees is critical in this determination.

It is therefore the conclusion of this office that the Board of County School Trustees of Elko County may not deal with the proceeds of the sale of school bonds in any way other than depositing same with the County Treasurer of Elko County at the end of each month.

There are numerous ways in which the county treasurer may deal with funds in the county treasury. I have not gone into this because the statutes are reasonably specific, and because a negative answer to your first question obviates the need to answer your further questions.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By FRANCIS P. FINNEGAN, *Deputy Attorney General*

21 Mobile Homes; Boats—Servicemen stationed or living in Nevada solely by reason of military orders are not subject to personal property tax on mobile homes or boats.

CARSON CITY, April 15, 1963

MR. JAMES A. BILBRAY, *Clark County Assessor, Las Vegas, Nevada*

Attention: Mrs. Steve Rose, Supervisor, Personal Property Division.

STATEMENT OF FACTS

DEAR MR. BILBRAY: On March 11, 1963, an opinion was issued from this office holding that servicemen stationed or living in Nevada solely by reason of military orders, but legally domiciled in another state, are subject to the personal property tax on motor vehicles when registering their automobiles in this State. The question now arises as to whether such servicemen are subject to personal property tax on mobile homes and boats.

QUESTION

Are servicemen stationed or living in Nevada solely by reason of military orders subject to the personal property tax on mobile homes and boats?

CONCLUSION

No.

ANALYSIS

The determination of the question of taxation on mobile homes and boats belonging to servicemen presents a somewhat different problem than that posed in regard to motor vehicles. The analysis used in regard to motor vehicles is not necessarily valid when applied to this type of personal property.

The opinion of March 11, 1963, held that when a serviceman registers his automobile in Nevada he is subject to a personal property tax thereon because under

subsection (b), paragraph 2, Section 574 of the Soldiers' and Sailors' Relief Act, it is provided that *motor vehicles* are exempt from taxation only if the license, fee, or excise required by the state in which the serviceman is legally domiciled is paid. Motor vehicles have a status entirely different from other personal property under the act. Paragraph 1 of Section 564 exempts all other personal property belonging to servicemen from taxation by the state wherein they are stationed. Unless mobile homes and boats could be classified as motor vehicles within the purview of paragraph 2 of Section 574 of the act, they are exempt.

A motor vehicle is defined in [NRS 482.075](#) as "every vehicle defined in [NRS 482.135](#) which is *self propelled*." (Italics supplied.)

[NRS 482.135](#) reads: "'Vehicle' means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway."

Under these statutes mobile homes and boats are to motor vehicles. This being the case, they are exempt under paragraph 1, Section 574 of the Soldiers' and Sailors' Relief Act.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

22 Personnel Department; Interpretation of [NRS 284.395\(3\)](#)—Discharged employee, upon dismissal being sustained by Personnel Advisory Commission, may be placed on employment register or be transferred to comparable job in another department, at discretion of commission.

CARSON CITY, April 18, 1963

MR. IRVIN GARTNER, *Director, State Personnel Department, Carson City, Nevada*

DEAR MR. GARTNER: You have requested this office to interpret [NRS 284.395\(3\)](#). As facts calling for an interpretation of this statute, you advise that a classified employee was dismissed by his employer. That thereafter he appealed to the Personnel Advisory Commission and that the commission sustained the dismissal. On a petition for a rehearing the commission denied the same.

[NRS 284.395\(3\)](#) reads as follows:

When an employee is dismissed and not reinstated after an appeal, the commission, in its discretion, may direct that his name be placed on an appropriate register, or may take steps to effect the transfer of the employee to a comparable position in another department.

Your question is whether the dismissed employee, in view of the commission's sustaining his dismissal and refusing a rehearing, is eligible to have his name placed on an appropriate register or for transfer to a comparable position in another department.

ANALYSIS

Your attention is called to the fact that the commission may, in its discretion, direct either of the alternative proposals set forth above, (1) place his name on an appropriate register, or (2) transfer the employee to a comparable position in another department.

It was the intent of the Legislature to thus provide for cases where a distinct conflict of personalities could result in insubordination and dismissal, whereas the dismissed employee might be possessed of capabilities which would result in continued service to the State in another position and with another department.

Whether this would be beneficial to the State is left to the discretion of the commission, but the discretion is there.

CONCLUSION

It is, therefore, the conclusion of this office that an employee in the classified service of the State, who is dismissed and appeals his dismissal to the commission, and has his dismissal sustained by the commission, is eligible, subject to the discretion of the commission, to have his name placed on an appropriate register, or to be transferred to a comparable job in another department.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

23 Public Officers; School District Trustees—School district trustee loses his residence in the unincorporated area he was elected to represent when the area in which he lives is annexed to an incorporated city and he ceases to be qualified for the office.

CARSON CITY, April 18, 1963

MR. BYRON F. STETLER, *Superintendent of Public Instruction, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. STETLER: At the general election in 1960, a resident of East Ely was elected to the position of trustee of the White Pine County School District under the provisions of [NRS 386.170](#), subparagraph 1(e), which provides for the election of “One person who resides in the county *but resides neither at the county seat nor in any incorporated city within the county* * * * for a term of four years.” (Italics supplied.) At the time of his election the individual was qualified under the above statute in that his residence was not located in any incorporated city nor at the county seat. Subsequent to the time he was sworn into office, the section of East Ely in which he lived was annexed to the City of Ely by virtue of a petition signed by a majority of property holders in the area involved. The City of Ely is incorporated and is the county seat for White Pine County.

QUESTION

Can an individual, meeting the necessary residence requirements at the time he is elected to the position of school trustee under [NRS 386.170](#), subparagraph 1(e), continue to serve in this capacity after the area in which he resides is annexed to an incorporated city?

ANALYSIS

Eligibility to public office is of a continuing nature and must exist at the commencement of the term and during the occupancy of the office. The fact that the candidate may have been qualified at the time of his election is not sufficient to entitle him to hold office if, during the continuance of the incumbency, he ceases to be qualified. 42 Am. Jur., Public Officers, sec. 41, p. 912; Annot. 88 A.L.R. 833.

This office, in Opinion No. 123, dated January 6, 1960, held that this rule applies to school district trustees. It was therein stated that when the trustee ceases to reside in the designated area from which he was elected he is ineligible to retain the office and a vacancy is thereby created. The question we are now concerned with is whether a trustee elected from an unincorporated area loses his residence therein and is thereby disqualified to continue in office when the area in which he lives is annexed to an incorporated city. The person involved was eligible for the office of school district trustee at the commencement of the term for which he was elected. He did not reside in any incorporated area nor at the county seat at that time.

The Supreme Court of Nevada was confronted with a similar problem in *State ex rel. Wichman v. Gerbig*, [55 Nev. 46](#), 24 P.2d 313 (1933). This case involved the severance of a certain territory from one county and the annexation thereof to another county. The court therein held that “persons residing within the limits of territory detached from an old and attached to another county cease to be residents of the former and become residents of the latter.” See also *School District No. 116 v. Wolf*, 78 Kan. 805, 98 P.2d 237, 20 L.R.A. (N.S.) 358 (1908).

This conclusion is also undoubtedly true as to persons residing within the limits of a territory detached from an unincorporated area and attached to an incorporated area. They cease to be residents of the former and become residents of the latter. Although the person involved herein was removed from the unincorporated area, not by his own volition, but by the process of annexation, the result is the same as if he had moved into an incorporated area. The manner of accomplishment is different.

CONCLUSION

It is, therefore, the conclusion of this office that when the area wherein the school district trustee resided was annexed to the City of Ely he thereby became a resident of an incorporated area. Having lost his residence in the unincorporated area he was elected to represent, he ceased to be qualified for the office and, therefore, ineligible for the continuance in the office as trustee.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

24 County Clerks; Public Records—Applications for marriage licenses filed with county clerks are public records and available for inspection and copying under [NRS 239.010](#) and [122.040\(5\)](#).

CARSON CITY, April 23, 1963

MRS. URSULA MACHENRY, *County Clerk, Storey County, Virginia City, Nevada*

DEAR MRS. MACHENRY: You have requested this office to clarify this office’s interpretation of [NRS 122.040\(5\)](#) and [NRS 239.010](#). [NRS 239.010](#) provides:

State and county records open to inspection. All books and records of the state and county officers of this state shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken

therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

[NRS 122.040](#)(5), which refers to marriage licenses, reads as follows:

All records pertaining to such licenses are public records and open to inspection pursuant to the provisions of [NRS 239.010](#). Any county clerk who refuses to permit such inspection is guilty of a misdemeanor.

ANALYSIS

It would seem to this office that the language of [NRS 239.010](#) is so plain, and so indicative of the intent of the Legislature, that no question could arise as to its interpretation by any county official. The law does not say that “some” books and records of the county are available, for inspection during office hours by *any* person (whether a newspaperman or an ordinary citizen), but it states that “all” such books and records shall be made available. Not only must they be made available, but they may be copied.

[NRS 12.040](#)(5) makes marriage licenses, and all records pertaining thereto, public records and amenable to the provisions of [NRS 239.010](#), and a county clerk who fails to make such records available upon request is subject to prosecution for a misdemeanor. The language could not be plainer.

Marriage applications, which are kept in the files of the county clerks’ office become public records whether a cross index file is maintained separately or not, and a demand made to inspect those applications places upon the county clerk the legal burden of producing them.

This office is aware that persons make applications for marriage licenses in remote counties for the purpose of avoiding publicity or notoriety, and in many instances this is accomplished by filing in the less populated counties rather than in those which are centers of large population. Nevertheless, under the law, if demand is made to view these applications, then the duty devolves upon the county clerk to produce them.

This is not a new law. It was enacted as Chapter 149 of the 1911 Statutes of Nevada, and the act was entitled “an act empowering all persons to copy or make abstracts or memoranda of all books and records of state and county officers and to utilize the same to supply the general public with copies, abstracts, and memoranda and to otherwise make use thereof.”

Honest government is strengthened in a free country by the availability of public records. Fraud and deceit in public office is minimized, and a well informed public is able to ferret out and remove from office those who take advantage of a public trust to enrich themselves or others. This was the reasoning behind the legislation which has been cited above.

CONCLUSION

It is, therefore, the opinion of this office that applications for marriage licenses, kept by the county clerk as a part of the records of the county, are public records, and available for inspection and copying under the provisions of [NRS 239.010](#) and [NRS 122.040](#)(5) as hereinbefore set forth.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

25 Education; School Districts—Majority approval of all bills by school district board of trustees is required before payment. Payroll can be paid prior to approval by a majority of the board if the order for payment is signed by the president and clerk of the board.

CARSON CITY, April 23, 1963

HON. A. D. DEMETRAS, *District Attorney, White Pine County, Ely, Nevada*

QUESTION

DEAR MR. DEMETRAS: Can the president and clerk of a school district board of trustees sign orders for payment of bills and payrolls and submit them for payment without prior approval by a majority of the board?

ANALYSIS

In order to answer this question it is necessary to study the history of relevant statutes and the conditions existing at the time of passage of amendments thereto.

In 1956 the Nevada Legislature enacted laws designed to control payment of moneys belonging to school districts.

Chapter 32, Section 151, Statutes of 1956 read:

1. Subject to the direction of the board of trustees, the clerk of the board shall draw all orders for the payment of moneys belonging to the school district.
2. *When signed by the president and the clerk of the board of trustees, such orders shall be valid vouchers in the hands of the county auditor for him to issue warrants on the county treasurer to be paid out of the funds belonging to such school district. (Italics supplied.)*

Chapter 32, Section 152, Statutes of 1956 read:

Every order drawn by the clerk of the board of trustees of a school district shall be accompanied by an itemized statement of the purpose or purposes for which the order is issued. The statement shall be filed in the office of the county auditor and shall be subject to inspection by the superintendent of public instruction and the deputy superintendent of public instruction of the proper educational supervision district. Statements shall be kept on file until order destroyed by the state board of education.

Under these laws and until their amendment, a majority of the board of trustees of a school district did not have to approve bills and payrolls before payment. Subject to the direction of the board, all that was required was that orders for payment of school district moneys be signed by the president and the clerk of the board.

In 1959 these statutes were amended to read substantially as they do today and at this point in the opinion it is stressed that although an amendment changes an existing statute, it does not totally eliminate its existence. We must construe the amendments in light of the original act and try to determine what defect the Legislature intended to cure by the amendments. We must also look to the circumstances prevailing at the time the amendments were passed.

Chapter 32, Section 151, *supra*, was amended in 1959 by Chapter 222, at p. 262, Statutes of 1959. This statute, [NRS 387.310](#), now reads:

1. Subject to the direction of the board of trustees, the clerk of the board shall draw all orders for the payment of moneys belonging to the school district.

2. The orders shall be listed on cumulative voucher sheets and a copy presented to each of the members of the board of trustees present at the meeting and mailed to any absent member; and, when the orders have been approved by a majority of the board of trustees, and the cumulative voucher sheets have been signed by the president and the clerk of the board of trustees, or by a majority of the members of the board of trustees, such orders shall be valid vouchers in the hands of the county auditor for him to issue warrants on the county treasurer to be paid out of the funds belonging to such school district.

Chapter 32, Section 152, *supra*, was also amended in 1959 by Chapter 35, p. 27, Statutes of 1959. This statute, [NRS 378.315](#), now reads:

1. Every order drawn by the clerk of the board of trustees of a school district shall be accompanied by an itemized statement of the purpose or purposes for which the order is issued, and *a true copy of the itemized invoice drawn by the person, association, firm or corporation in whose favor the order is drawn*. The statement and a true copy of the invoice shall be filed in the office of the county auditor and shall be subject to inspection by the superintendent of public instruction. Statements and invoices shall be kept on file until ordered destroyed by the state board of education. (Italics supplied.)

I. Circumstances Prevailing at Time of Amendments.

Since an amendment changes the existing statute, the general rule of statutory interpretation that the surrounding circumstances are to be considered is particularly applicable to the interpretation of amendatory acts. The original act or section and conditions thereunder must be looked at. * * * The court will determine what defects existed in the original act, which defect the legislature intended to cure, and then construe the amendment so as to reduce or eliminate the defect intended to be remedied. (2 Sutherland, Statutory Construction, Sec. 1931 (3rd ed. 1943))

At the time the amendments were passed many conditions of payment existed, as now exist, concerning payrolls. There were and are many instances wherein a teacher may miss work on account of sickness and is not entitled to sick leave pay. Because of this, a deduction in the payroll generally has to be made after the board of trustees has met. There are other situations wherein a teacher may be entitled to additional compensation or a maintenance man is hired after the board has met. These circumstances prevailing, it is not reasonable to conclude that the Legislature intended the amendments to require the board to call special meetings to approve these payments.

In any event, for all practical purposes, there is a preexisting approval by the board of trustees for payment of the payroll. They are the people authorized by statute to hire all necessary employees. When they authorize employment or create a position they would necessarily have to authorize payment for this employment.

The problems concerning payment of the payroll are not present when we turn to the question of payment of bills. They can easily be checked and payment authorized by a majority of the board when they meet. Under the statute as originally enacted, however, this was not required. We conclude that it was this defect that the Legislature sought to cure by the amendments.

II. Construction of Amendments in Light of Original Act.

The provisions introduced by the amendatory act should be read together with the provisions of the original section that were re-enacted in the amendatory

act or left unchanged thereby, as if they had been originally enacted in one section. Effect is to be given to each part, and they are to be interpreted so that they do not conflict. (2 Sutherland, Statutory Construction, Sec. 1934 (3rd ed. 1943))

The true intent of the Legislature is found by an analysis of the 1959 amendments. Although [NRS 387.310](#) does not disclose this intent, it is manifest in the following statute. [NRS 387.315](#) was amended the same time as [NRS 3887.310](#). It was amended only to include the requirement that every order be accompanied by a true copy of an *itemized invoice* drawn by the person, association, firm or corporation in whose favor the order is drawn. It is obvious that this amendment was concerned only with the approval of bills for which invoices could be obtained and not payrolls. An invoice is defined as a list sent to a purchaser containing items and charges of merchandise. See Funk and Wagnall's New College Standard Dictionary. A teacher or other employee does not have to submit an invoice in order to get paid.

Provisions of the original sections concerning the necessity of signatures of the clerk and president of the board are repeated in the body of the amendment. This is a continuation of the original law. (2 Sutherland, Statutory Construction, Sec. 1933.) This requirement is still applicable to orders for the payment of bills and payrolls. However, the requirement that there must be approval of orders by a majority of the board of trustees was imposed by the amendment which concerned only the payment of bills.

Interpreting the amendments in light of the original act so that they do not conflict, we conclude that the Legislature intended to require a majority approval of all bills by the board of trustees when they passed the amendments. However, since there was no indication as to how payrolls were to be paid in the amendments, the procedure used under the original statutes survives.

CONCLUSION

All bills must be approved by a majority of the board of trustees of a school district before payment.

The payment of the payroll is subject to the direction of the board of trustees, but can be made prior to an approval by a majority of the board if the order for payment is signed by the president and clerk of the board.

Respectfully submitted

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

26 Motor Vehicle Department; Special Fuel Tax—[NRS 365](#), [366](#) interpreted. The special fuel tax delineated in [NRS Chapter 366](#), is not applicable to, or to be imposed upon, self-propelled motor vehicles on roads or highways connecting traveled highways completed or under construction, and materials pits, or self-propelled motor vehicles used exclusively in said pits.

CARSON CITY, May 1, 1963

LOUIS P. SPITZ, *Director, Department of Motor Vehicles, Carson City, Nevada*

DEAR MR. SPITZ: You have directed to this office a communication inquiring as to the applicability of the special fuel tax, as specified in highway contracts, on special fuel

use in self-propelled vehicles in materials pits and on access roads between the material pits on public land and the highways under construction.

ANALYSIS

It is first to be noted, that there is a distinct difference between the definition of a “highway” in the Special Fuel Tax Act ([NRS 366.030](#)) and the definition of “highway” under the Motor Vehicle Carriers Act ([NRS 706.110](#)).

[NRS 366.030](#) defines “highway” for the purposes of the Special Fuel Tax Act as “every way or place of whatever nature open to the use of the public for purposes of traffic, including highways under construction.”

It is evident that the Legislature, with the knowledge that motor vehicle fuel was used in self-propelled vehicles on the roads between the pits and the highways, and in the materials pits themselves, could have so enacted the law as to include these segments of traveled way. There is a legal expression which conveys the meaning that “expression of one thing, is the exclusion of another” (*Expressio unius est exclusio alterius.*) *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okla. 487, 40 P.2d 1097, 1100. In other words, when certain things are specified in a law, an intention to exclude all others from its operation may be inferred. *Little v. Town of Conway*, 171 S.C. 27, 170 S.E. 447, 448.

[NRS 706.110](#) is not applicable because it refers to motor carriers only.

The standard specifications of the Highway Department refer to Chapters 365 and 366 of the Nevada Revised Statutes, and so specify. They do not, therefore, refer to [NRS 706.110](#).

But even if [NRS 706.110](#) were applicable, we feel that the language therein expressed clearly, excludes the sections of road between the highway under construction and the pits. It would be a constrained construction to thus exclude the road between the construction and the pits, but tax the fuel used in motor-propelled vehicles in the pits.

The theory behind the imposition of the special fuel tax is that self-propelled motor vehicles using the public highways induce wear and tear on said highways which necessitate their repair or replacement. This is clearly not true of the roads connecting such traveled, public highways and the material pits, nor is it true in the pits themselves.

CONCLUSION

This office concludes that the Legislature intended to tax the fuel used in motor-propelled vehicles using the traveled highway, whether completed or under construction, but excluded the fuel tax on motor-propelled vehicles using the road between the highways under construction and the material pits, and by the legal doctrine hereinbefore enunciated, the motor-propelled vehicles used in the pits. The remedy is by amended legislation.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

27 Annual Leave—Terminating state employees are entitled to lump sum payment for accumulated annual leave. Accumulated leave of state employees transferred from one department to another is transferred to department acquiring employees’ services.

CARSON CITY, May 3, 1963

NEVADA REAL ESTATE COMMISSION, 120 South Third Street, Suite 14, Las Vegas, Nevada

Attention: M. C. Stewart, President.

STATEMENT OF FACTS

GENTLEMEN: The Nevada Real Estate Commission employs certain classified and unclassified employees. This commission, by virtue of the Reorganization Act passed by the last Legislature, will cease to exist as of midnight June 30, 1963. All of the present employees of the commission have accumulated annual leave and the following questions are submitted concerning the right of these employees to take their annual leave after June 30, 1963, or to receive compensation in lieu thereof.

QUESTIONS

1. If a classified employee is not rehired after June 30, 1963, will he be entitled to take his annual leave after that date?
2. If a classified employee is rehired after June 30, 1963, will he be entitled to take his annual leave after that date?
3. If a nonclassified employee is not rehired after June 30, 1963, will he be entitled to take his annual leave after that date?
4. If a nonclassified employee is rehired after June 30, 1963, will he be entitled to take his annual leave after that date?
5. In the event you answer "yes" to one or more of questions numbered 1 to 4, by what agency and means will he be paid (in each case where a question is answered "yes")?
6. In the event you answer "no" to one or more of questions numbered 1 to 4, may this commission, on June 30, 1963, pay said employee his salary in advance for the period covered by such annual leave (in each case where a question is answered "no")?

ANALYSIS

Classified or unclassified employees who are not immediately rehired after June 30, 1963, could not take their annual leave after that date. Their employment having been terminated, the right to take leave therefrom is also terminated. However, such employees would be entitled to compensation for their accumulated annual leave. This office, on several occasions, has ruled that terminating classified and unclassified state employees are entitled to lump sum payments for accumulated annual leave. See Attorney General Opinions No. 24, dated March 17, 1955; No. 2, dated January 28, 1959; No. 23, dated March 17, 1959; No. 41, dated April 22, 1959; No. 41, dated April 22, 1959; No. 54, dated May 18, 1959; No. 65, dated June 23, 1959; No. 219, dated May 22, 1961. (Elected public officials are not entitled to such a payment. [NRS 284.350](#), subsection 4.) The above cited opinions concerned many of the same problems we are now confronted with and in answering the questions posed these opinions are given considerable weight and consideration.

Before a state employee is entitled to the lump sum benefit, his employment must come to an end. See Attorney General Opinion No. 23, dated March 27, 1959. An employee who is merely transferred to other state employment or immediately rehired in another capacity would not be entitled to such a payment. The state employment in such a case would be continuing and the employee would be entitled to use the leave earned in the old position during the continuance of his new employment. Cf. Attorney General Opinion No. 65, dated June 23, 1959.

In addition to the aforementioned opinions, there is a rule promulgated by the Personnel Department specifically covering these problems. Section 8.02 of the Rules for State Personnel Administration reads, in part, as follows:

Upon separation from service, for any cause, an employee shall be entitled to a lump sum payment for any unused or accumulated annual leave, not to exceed thirty working days, as of the time of separation.

* * * * *

When an employee is permanently transferred from one department to another all of his vacation leave, accumulated to the maximum of thirty working days, shall be transferred to the department acquiring his services.

CONCLUSIONS

Classified and unclassified employees of the Nevada Real Estate Commission who are not transferred or immediately reemployed by the state in another department after June 30, 1963, are entitled to a lump sum payment for accumulated annual leave. This payment is made by the Real Estate Commission.

Any of these employees transferred to other state employment or immediately reemployed by the State are not entitled to a lump sum payment, but any accumulated leave would be transferred to the department acquiring their services.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

28 State Engineer—The salary of the State Engineer as set by Chapter 224 of the 1960 Statutes prevails in the absence of further legislation increasing the amount and providing an appropriation therefor.

CARSON CITY, May 7, 1963

MR. HOWARD E. BARRETT, *Budget Director, Carson City, Nevada*

DEAR MR. BARRETT: You have called to the attention of this office that in drafting S.B. No. 304, which was later passed by both houses of the 1963 Legislature and subsequently signed by the Governor and filed with the Secretary of State, that the drafter neglected to amend [NRS 532.060](#) which provides that the State Engineer shall receive an annual salary of \$12,100.

You further advise that it was the intention of the Ways and Means Committee of the Assembly and the Finance Committee of the Senate that [NRS 532.060](#) be amended so as to provide for an annual salary for the State Engineer of \$13,200. This proviso is not in the enrolled bill, which became Chapter 475 of the 1963 Statutes of Nevada.

Your question is whether it is possible under the circumstances outlined above to pay the State Engineer the \$13,200 intended by the legislative committees, or must he be paid the \$12,100 provided by [NRS 532.060](#).

ANALYSIS

S.B. No. 304, as reflected in the Senate Daily Journal for April 22, 1963, relating to the salaries of various appointive officers of state government, does not contain reference to the State Engineer.

Sutherland in his work on Statutory Construction (3rd Edition, Vol. 1, page 233) states, "The presumption of validity which attaches to enrolled bills in general protects

them whenever supported by concurring evidence in the legislative journal. Evidence procured from private memorandum of members or clerks is seldom admitted * * *. The parliamentary history of an act set forth in the legislative journals is the only evidence which courts generally recognize.”

Speaking of enrolled bills the Supreme Court of Tennessee in *State ex rel. Thompson v. Dixie Finance Company*, 278 S.W. 59, noted, “They are entitled to absolute verity and cannot ever be impeached on the ground of mistake or fraud. If there are errors, the House itself is the only tribunal authorized to correct them.”

In short, only the Legislature, by the enactment of further legislation, could correct the mistake of which your department complains. The reason behind this is legally sound. If enrolled bills could be changed upon the theory that a mistake had occurred in its enactment, it would lead to confusion and even to fraud, for evidence in the way of recollection could be introduced to prove that the intent of the Legislature was different than that proclaimed by the act which had become part of statutory law.

The State Engineer’s salary was set, as it now stands by the enactment of Chapter 224, Section 13, of the 1960 Statutes. Any change would have to be effected by legislation.

CONCLUSION

It is the conclusion of this office that to pay the State Engineer more than \$12,100 per year would be an unauthorized expenditure of public funds, the money for any increase not having been appropriated by the Legislature.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

29 Irrigation Districts; Assessment of State Lands—owned by the University of Nevada and located within the Washoe County Conservation District is subject to the district’s assessments if the land was originally included within the district pursuant to [NRS 539.733](#), or included as the result of private ownership prior to the time the University acquired title.

Carson City, May 10, 1963

Hon. William J. Raggio, District Attorney, Washoe County, Reno, Nevada

STATEMENT OF FACTS

Dear Mr. Raggio: The University of Nevada owns certain lands located within the Washoe County Conservation District. Most, if not all, of this land was acquired by the University after the district was formed. An annual assessment is levied on property within the district to pay off certain bonds sold to finance the construction of Boca Dam and the question arises as to whether this property of the University is subject to the assessment.

QUESTION

Is property located within the Washoe County Conservation District, but owned by the University of Nevada, subject to the annual assessment levied by the district?

ANALYSIS

I. Property Owned by the University at the Time the District Was Formed.

The Washoe County Conservation District is an irrigation district formed under the provisions of Chapter 64, 1919 Laws of Nevada. These laws, as amended, are now set forth in Chapter 539 of the Nevada Revised Statutes. [NRS 539.733](#), subsection 2, provides that “State lands, not under contract to purchase, shall not become a part of an irrigation district except by the consent of the state land register, who is authorized and required to consent thereto on behalf of the state upon there being filed in his office a certificate signed by the state engineer to the effect that such lands will be benefited by inclusion therein.”

Under this statute, state lands are included within an irrigation district if consent is given. If any property of the University was located within the district at the time the district was formed and consent was given pursuant to the above statute, such property would be subject to the assessments levied by the district. Subsection 3 of this statute recites that assessments become a charge against the lands. If consent was not given at the time the district was formed, such property did not become a part of the district and, therefore, is not subject to the assessment.

II. Property Acquired After the Formation of the District.

Property acquired by the University from private ownership after the formation of the district presents a somewhat different problem. This land was previously included within the district and subject to its assessment. [NRS 539.733](#), supra, seems to refer only to property owned by the State at the time the irrigation district is formed. It does not indicate that lands already included in an existing district cease to be a part of the district upon state acquisition. When the University acquired the property it had notice that such lands were within the district. It seems reasonable to conclude that consent to accept the property subject to the assessment would be implied when title was accepted with knowledge that such lands were theretofore within the district. It is our opinion that state acquisition of property does not automatically terminate the existence of such lands as a part of an irrigation district. If the converse was true, in a hypothetical situation, the University could acquire title to all lands within an irrigation district and effectively prevent the payment of bonds sold to finance improvements theretofore made by the district. This might present serious constitutional questions.

[NRS 361.055](#), providing that all lands and other property of the State are exempt from taxation, does not apply to special assessments. It might be argued that special assessments are taxes. However, there is a broad distinction between the two terms. Taxes, as the term is used in [NRS 361.055](#), are public burdens imposed generally on the inhabitants of the whole State without reference to peculiar benefits to particular individuals or property. Assessments have reference to impositions for improvements which are specially beneficial to particular individuals or property and which are imposed in proportion to the particular benefits supposed to be conferred. See 90 A.L.R. 1137.

The Supreme Court of Nevada has recognized this distinction. In *re Walker River Irr. Dist.*, [44 Nev. 321](#), 335, 195 P.327, 330 (1921). The court therein said: “There is a wide difference in law between a tax and an assessment. In the one case the taxes are assessed against the individual and become a charge on his property generally. In the other, the assessment, being for the benefits accruing to the specific property, becomes a charge only upon and against it, and liability for the charge is confined to the particular property benefited. Therefore, *an assessment or special assessment is not embraced within the meaning of the word ‘taxation,’* because the owner of the property assessed gets back the amount of his assessment in the benefits received by his property, and therefore does not bear the burden of a tax.” (Italics supplied.)

Under this decision, the statutory exemption from taxation in [NRS 361.055](#) does not include an exemption from assessments levied by the Washoe County Conservation District.

[NRS 541.250](#), which exempts state property from assessments of water conservancy districts, does not apply to the district involved. The Washoe County

Conservation District was created under the law that is now Chapter 539 of NRS. The Legislature did not see fit to provide such an exemption in Chapter 539.

CONCLUSION

Land owned by the University of Nevada and located within the Washoe County Conservation District is subject to the district's assessments if the land was originally included within the district pursuant to [NRS 539.733](#), or included as the result of private ownership prior to the time the University acquired title.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

30 State Printing Office; Interpretation of [NRS 344.080\(1\)](#)—State Printer may employ all necessary help to operate State Printing Office within funds appropriated by Legislature.

CARSON CITY, May 21, 1963

MR. JACK MCCARTHY, *State Printer, Carson City, Nevada*

DEAR MR. MCCARTHY: You state that in your budgetary request to the Legislature you requested \$7,087 for the salary of a "technical assistant."

The Legislature deleted this item, but your total appropriation from the Legislature provides sufficient funds to hire such technical assistant.

Your question is whether, in view of the Legislature deleting the appropriation for a technical assistant, you can still hire such an employee.

ANALYSIS

The Legislature is concerned with the expenditure of public funds. In deleting the line which provided for a technical assistant at \$7,087, they were concerned with the additional money needed for such employee. If, despite this deletion, you have sufficient money in your department's appropriations, your authority to hire such an assistant is provided for by [NRS 344.080\(1\)](#), which reads as follows:

1. The superintendent of state printing shall employ such compositors, machine operators, pressmen, and assistants as the exigency of the work from time to time requires, and he may at any time discharge such employees. At no time shall he employ more compositors, machine operators, pressmen, and assistants than the necessities of the state printing office may require.

CONCLUSION

It is, therefore, the opinion of this office that money being available in your appropriation to take care of a technical assistant despite the deletion of \$7,087 from your submitted budget, it is within the authority granted you by [NRS 344.080\(1\)](#).

The Legislature must leave to your discretion the number and type of employees needed to run the State Printing Office, such employment only restricted by the amount of money appropriated for the operation of your department.

Respectfully submitted,

31 Grand Jury; Mileage Expense—Mileage expense allowed grand jurors under [NRS 6.150](#) is to be computed from the juror's place of residence.

CARSON CITY, May 22, 1963

HON. A. D. DEMETRAS, *District Attorney, White Pine County, Ely, Nevada*

STATEMENT OF FACTS

DEAR MR. DEMETRAS: Two members of the grand jury serving in White Pine County have claimed certain mileage expenses which have been disallowed by the District Attorney of White Pine County.

[NRS 6.150](#), subsection 1, provides:

Each person summoned to attend as a grand or trial juror * * * shall receive * * * 15 cents a mile for each mile necessarily and actually traveled by the shortest and most practical route, one way only. Where the mileage does not exceed one mile, no allowance shall be made therefor.

Juror No. 1 resides in Ely within one mile of the county courthouse where all grand jury sessions are held. He works in McGill and occasionally travels directly from his place of employment to the courthouse in Ely to serve on this grand jury. He claims that he is entitled to be paid 15 cents per mile for his trips from McGill to the courthouse, a distance of approximately 15 miles, asserting that this is necessary travel under [NRS 6.150](#).

Juror No. 2 also lives within one mile of the courthouse, but occasionally travels directly from his ranch in Newark Valley to attend grand jury sessions. He claims this mileage, a distance of approximately 70 miles, as necessary travel.

QUESTION

Is the allowance for mileage as set forth in [NRS 6.150](#) to be computed from the juror's place of residence or from the location such juror happens to be at the time he or she sets out to attend grand jury sessions?

ANALYSIS

It appears to us, giving practical effect to the language used in [NRS 6.150](#), that the Legislature intended to provide mileage only from the juror's place of residence. Although the statute does not explicitly so state, it is our opinion that this is the only reasonable construction. As the District Attorney of White Pine County has indicated, any other construction may leave the door open to abuse. For example, one might assume a situation where a White Pine grand juror is in Reno or Las Vegas on business and would claim mileage expense back to Ely when called for grand jury service.

A similar situation arose in California involving a statute reading substantially the same as [NRS 6.150](#). The California Attorney General's office issued an opinion holding that the mileage to be paid a juror is to be computed only from the residence of the juror to the courthouse. 30 Cal. Atty. Gen. Ops. 100, 102 (1957).

We quote from that opinion as follows:

The relevant code sections involved all provide merely that the mileage is to be paid for each mile "actually" or "necessarily" traveled "in attending court, in

going only.” It is clear, therefore, that jurors may receive payment for only the distance they actually and necessarily travel in order to attend court. No specific limitation, however, is placed on the point from which the juror may commence travel to the court and still be paid his mileage. Nor has our research revealed any case law suggesting possible limitations in this regard. But we do not feel that these provisions relating to mileage expenses reasonably may be construed to authorize reimbursement for expenses beyond the reasonable costs of travel from the juror’s residence to the court to which he has been called to serve as a juror.
* * * Mileage and travel expenses should reasonably and properly be limited to travel between the juror’s residence and the court.

It is the opinion of this office that the conclusion reached in the above opinion is a correct one and that the mileage expense allowed under [NRS 6.150](#) should be limited to travel between the juror’s residence and the courthouse.

CONCLUSION

Mileage expense allowed grand jurors under [NRS 6.150](#) is to be computed from his or her place of residence and not from the location such juror happens to be at the time he or she sets out to attend grand jury sessions.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

32 County Commissioners—County commissioners, whether sitting as such, or sitting as a town board, must hold meetings at the county seat.

CARSON CITY, May 24, 1963

HON. GEORGE G. HOLDEN, *District Attorney, Lander County, Battle Mountain, Nevada*

DEAR MR. HOLDEN: You have proposed to this office the question as to whether the board of county commissioners may hold meetings, when sitting in the capacity of commissioners, or as a town board, in a place other than the county seat.

[NRS 244.085](#) reads as follows:

The meetings of the board of county commissioners shall be held at the county seats of their respective counties on the 5th day of each calendar month; provided:

1. That when such day falls upon a Sunday or legal holiday, the board shall meet upon the next succeeding judicial day.
2. That the first meeting of the board in odd-numbered years shall be held on the 1st Monday in January.

There seem to be no court decisions, nor opinions of the Attorneys General, which hold that the commissioners have authority to hold meetings at any place other than the county seat.

[NRS 269.025](#) is as follows:

1. The board of county commissioners of any county in this state having jurisdiction of the affairs of any town or city, as in this chapter provided, shall hold a regular meeting in the courthouse at the county seat at least once in each month, on a day previously fixed by the board, for the purpose of transacting the business provided for in this chapter, and shall continue in session from day to day until such business is completed.

2. The board of county commissioners may also hold special meetings upon a call of the chairman of the board, or a majority of the members thereof.

3. A majority of the board shall be necessary to constitute a quorum, and a vote of the majority of the whole board shall be necessary to carry any question.

It, therefore, is the opinion of this office that meetings of the county commissioners, whether sitting as such, or sitting as a town board, must be held at the county seat.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

33 Public Employees Retirement Act—Opinion discusses the provisions of Chapter 399, Statutes 1963, amending Chapter 286 of NRS, as regards: (a) Post-retirement allowance and (b) Increases in retirement benefits by reason of accredited service of more than 20 years.

Carson City, May 27, 1963

Mr. Kenneth Buck, *Executive Secretary, Public Employees Retirement Board, P.O. Box 637, Carson City, Nevada*

STATEMENT OF FACTS

Dear Mr. Buck: The Legislature of 1963 enacted Chapter 399 (A.B. No. 483), to become effective July 1, 1963, which act amends in many respects the Public Employee's Retirement Act (Chapter 286 of NRS), and establishes a post-retirement allowance, i.e., authority is granted for an increase from year to year of retirement allowances, not only to benefit those members to be retired in the future, but also to benefit those heretofore retired.

The provision respecting post-retirement allowances is the following:

A post-retirement allowance shall be paid from the public employees' retirement fund to each member receiving a disability allowance or service retirement allowance under the provisions of this chapter on June 30, 1963, and to each member who first becomes entitled to receive any such disability allowance or service retirement allowance on and after July 1, 1963, as follows: On the 1st day of July in each year following June 30, 1963, or the calendar year in which any monthly disability allowance or service retirement allowance was first paid, whichever last occurs, there shall be added to such monthly disability allowance or service retirement allowance and paid to the member monthly thereafter an amount equivalent to 1.5 percent of the amount of such monthly disability allowance or service retirement allowance as originally computed, approved and paid.

Originally, no increased service retirement allowance was made to those members for accredited service of more than 20 years. In this respect, Section 19 of Chapter 124, Statutes 1949, in part provided:

Upon retirement from the service of the state or one of its political subdivisions after *twenty or more years* of continuous service at retirement age, a member of the retirement system will receive a “monthly service retirement allowance” which will be 50 percent of the average monthly salary during the last five years of public employment payable during his lifetime. If the total years of service at retirement is ten years or more, but less than twenty, the retirement allowance shall be prorated on the basis of twenty years. * * * Notwithstanding the foregoing provisions, the monthly retirement allowance shall not exceed two hundred dollars (\$200). (Italics supplied.)

The Legislature of 1959 increased service retirement allowances to those members for accredited service of more than 20 years. The statute, however, did not have application to those members who had retired prior to January 1, 1959. Section 4, Chapter 497, Statutes 1959, in part provided:

That members with more than 20 years of continuous service shall receive an additional 1.5 percent of average salary for each year of service over 20 years to a maximum of 10 such additional years. Payments for such additional years shall be applicable only to allowance becoming effective on and after January 1, 1959. Fractions of such additional years shall be prorated on the basis of 1.5 percent for each full year.

The present law (Chapter 399, Statutes 1963, Section 10), provides in part the following:

286.550 (Monthly service retirement allowance.)

1. Upon retirement from the service of a participating employer after 20 years of continuous service at retirement age, an eligible employee will receive a monthly service retirement allowance, payable during his lifetime, which will be 50 percent of the average monthly salary for the 3 highest salaried consecutive years of his last 10 years of service; provided:

(a) That members with more than 20 years of continuous service shall receive an additional 1.5 percent of average salary for each year of service over 20 years to a maximum of 10 such additional years. Until the 1st day of the month following the effective date of this act, payments for such additional years shall be applicable only to allowances becoming effective on or after January 1, 1959. Thereafter, payments for such additional years shall be applicable in recalculating unmodified allowances for persons retired prior to January 1, 1959. Fractions for such additional years shall be prorated on the basis of 1.5 percent for each full year.

1. If the retirement office on July 1, 1963, by 1 1/2 percent of the allowance which they had been previously receiving monthly, and increases such allowance by the same amount as to such group, on each subsequent date of July 1, would such be a compliance with the law?

2. If the retirement office on July 1, 1964, increases the retirement allowance of all persons retired during the year beginning January 1, 1963, and ending December 31, 1963, by 1 1/2 percent of the allowance which they had been previously receiving monthly and increases such allowance by the same amount, as to such group, on each subsequent date of July 1, would such be a compliance with the law?

3. Keeping in mind that Chapter 399, Statutes of Nevada of 1963, will become effective on July 1, 1963, suppose Mr. John Doe, with an average salary of \$390 and 30 years of accredited service, retired on July 1, 1958, and has, therefore, heretofore been unable to receive any increased income by reason of the fact that he served more than 20 years, does this increased retirement allowance (65 percent of basic income of \$490 per month instead of 50 percent of such income) begin on July 1, 1963, or on August 1, 1963?

4. If the credit for years of service exceeding 20 years begins as of August 1, 1963, would the retirement office be authorized under the law to increase the previous allowance of \$195 per month (50 percent of \$390) by 1 1/2 percent of \$195 on the date of July 1, 1963, and thereafter on August 1, 1963, add 15 percent of the average salary of \$390?

ANALYSIS

Questions numbered 1 and 2 present the matter of construction and interpretation of that statutory provision quoted in respect to post-retirement allowance. Specifically a question is presented of whether the Legislature intended the post-retirement allowance to retired persons to be granted or allowed at irregular periods throughout the year and upon the anniversary of the date of retirement or intended that they be allowed on a definite date to each year, namely July 1. We have concluded that the latter was intended, and that it was intended with concern for administrative convenience that all persons formerly retired or that are retired in future years should receive this benefit on the date of July 1 only of each year. All that retired during the year 1963 would be ineligible for this benefit when conferred to persons earlier retired on the date, July 1, 1963. Those retired during the year 1963, as well as those retired prior to that year will be eligible to receive this benefit upon July 1, 1964. The amount to be added to those that are eligible to receive the increase on July 1, 1963, will be 1 1/2 percent of the allowance previously received by each, and as to this group the same amount of money will be added on July 1 of each subsequent year. The point intended here is that the allowance is not to be compounded. On July 1, 1964, another class will be eligible to receive this privilege, namely the group that retires during the calendar year 1963, and as to this class, the same rules formerly enunciated will apply. The same rules, of course, apply as to future years.

To reach this conclusion, we must give particular attention to a portion of the post-retirement provision formerly quoted, namely the following:

“On the 1st day of July in each year following *June 30, 1963*, or the calendar year in which any monthly disability allowance or service retirement allowance was first paid, *whichever last occurs*, there shall be added to such monthly disability allowance or service retirement allowance and paid to the member monthly thereafter” the sum of 1.5 percent of such original allowance. (Italics supplied.)

The statute must be read and understood as though the italicized portion were omitted for purposes of determining whether or not there are to be irregular dates, based upon anniversaries, in the crediting of post-retirement allowances. In doing this, we must also keep in mind that the portion quoted was intended to encompass those previously retired as well as those to be hereafter retired. That is, it was both retrospective as well as prospective. These portions may be omitted for this interpretation purpose with the explanation that the date is recited merely to delineate the date of beginning.

With a view to those persons who have heretofore been retired, and to those persons only, this section should be construed as though it read as follows:

On the 1st day of July in each year following June 30, 1963, there shall be added to such monthly disability allowance or service retirement allowance and paid to the member monthly thereafter an amount equivalent to 1.5 percent of the amount of such original allowance.

With a view to those persons who are to be retired after July 1, 1963, this section should be construed as though it read as follows:

On the 1st day of July in each year following the calendar year in which any monthly disability allowance or service retirement allowance was first paid, there shall be added to such monthly disability allowance or service retirement allowance and paid to the member monthly thereafter an amount equivalent to 1.5 percent of the amount of such original allowance.

From this construction, it follows that the accreditation for increased allowances is always on the date July 1. As to those retired during 1963, they do not receive an increase in monthly retirement allowance on July 1, 1963. All retired in 1962 or prior thereto do receive the increase on July 1, 1963. As to those retired in the future, the original retirement allowance must have been received during the calendar year preceding the calendar year in which the increase is allowed. Those retiring during 1963 will not receive the increase until July 1, 1964.

The language of this section is far from perfect in clarity, but the result of this construction is just and difficulties of administration are reduced to the minimum.

In considering the questions numbered 3 and 4, we must give special attention to a portion of the provisions of [NRS 286.550](#), subsection 1, (a), which reads as follows:

Until the 1st day of the month following the effective date of this act, payments for such additional years shall be applicable only to allowances becoming effective on or after January 1, 1959. Thereafter, payments for such additional years shall be applicable in recalculating unmodified allowances for persons retired prior to January 1, 1959.

Under the provisions of [NRS 218.530](#), Chapter 399, Statutes 1963, will become effective on July 1, 1963. The first day of the month following the effective date of this act will, therefore, be August 1, 1963. Prior to August 1, 1963, after the effective date of this act, allowances that became effective on or after January 1, 1959, may be increased. Allowances to retired persons that became effective prior to January 1, 1959, would, therefore, be credited on and after August 1, 1963. This is a credit of 1 1/2 percent per year (computed upon the average salary received), and being computed upon 10 years in the hypothetical case under consideration, the sum to be added on August 1, 1963, would be 15 percent of that average salary of \$390 per month.

CONCLUSIONS

1. Question No. 1 is answered in the affirmative.
2. Question No. 2 is answered in the affirmative.
3. In respect to Question No. 3, this increased retirement allowance begins on August 1, 1963.
4. In respect to Question No. 4, the retirement office is so authorized.

A final word of caution appears appropriate. The authorized annual increase in retirement allowance, for all retired persons (denominated "post-retirement allowance") is computed upon the original retirement allowance and not the average income at the time of retirement; whereas, the authorized increase designed to reach back and give credit for former years of work (in cases in which a retiree has been credited with more than 20 years of accredited service) is computed upon the average salary for the 3 consecutive

highest salary years of the last 10 years of service. In each case the computation allows for an increase of 1 1/2 percent, but is computed upon concepts that differ.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

34 School Districts; Authority of Board of Trustees—School district's board of trustees has no authority to hire independent counsel in order to reply to a grand jury report that is critical of certain members of the Board.

CARSON CITY, May 28, 1963

MR. MARSHALL DALE, CLERK, *White Pine County School Board of Trustees, P.O. Box 400, East Ely, Nevada*

STATEMENT OF FACTS

DEAR MR. DALE: The grand jury serving in White Pine County, after investigating the school system in that county, filed a report recommending that certain members of the Board of Trustees and other employees of the White Pine County School District resign their positions. The board members involved submit to this office the question as to whether it is permissible for the board to expend school district funds to engage in the services of independent counsel in replying to this report.

QUESTION

May a school district board of trustees expend school district funds to engage the services of independent counsel in replying to a grand jury report that is critical of certain members of the board?

ANALYSIS

It has been the policy of this office to furnish opinions to school boards only upon request of the district attorney of the county wherein the board is located. In this case, however, the district attorney is legal counsel for the grand jury the board wishes to answer, and, under such circumstances, our opinion is necessary without a request from the district attorney.

We have studied the report filed by the grand jury that was thoughtfully furnished us by a member of the board of trustees, however, we do not consider it necessary to go into the merits of the controversy and herein confine our discussion to the question as posed.

The board of trustees of a school district has the power to employ counsel for the purpose of protecting the public interest they are charged by law to protect. However, it is the opinion of this office, supported by the great weight of authority, that when the purpose for which counsel is sought to be hired does not directly concern the corporate rights and functions of the school district, no such authority exists. See 47 Am.Jur., Schools, Sec. 15 at p. 308; 75 A.L.R. at 1352; Ann. Cas. 1918A 503; L.R.A. 1917D 246.

The grand jury report in question involves the members of the school board in their individual capacities. Any right sought to be protected would be of a personal nature and would not be one the board is charged by law to protect. The expenditure of school district funds to hire private counsel in this case would be an expenditure solely for the

benefit of the individual board members. There is no authorization, express or implied, that would permit such an action by the board of trustees.

CONCLUSION

The board of trustees of a school district has no authority to expend school district funds in order to hire independent counsel for the purpose of replying to a grand jury report that is critical of certain members of the board.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

35 Elections—Liquor establishments are required to refrain from dispensing liquor during the voting hours of the election of June 11, 1963.

CARSON CITY, May 28, 1963

TO ALL COUNTY CLERKS, *State of Nevada*

STATEMENT OF FACTS

DEAR SIRs: The Legislature of 1963 enacted Chapter 486 (A. B. No. 520), approved April 3, 1963, under the provisions of which the Legislature provided for a statewide election to be conducted on June 11, 1963, upon the question of the proposed amendment of the Sales and Use Tax Act of 1955 in such a manner as to increase the tax thereunder from 2 percent to 3 percent, effective July 1, 1963, and other matters properly connected therewith.

QUESTION

Are bars and other alcoholic beverage establishments required to recognize June 11, 1963, as a day prohibiting the disposition of alcoholic beverages, within the meaning of Section 293.605 of NRS?

ANALYSIS

[NRS 293.605](#) provides:

293.605 (Alcoholic beverages not to be sold, furnished during city, state elections; exceptions.)

1. Any person who sells, gives away or furnishes or causes to be sold, given away or furnished within this state *during the hours* when the polls are open on any day upon which a general or primary election is held, or within the limits of any county or city on any day upon which any special or municipal election is held therein, any spirituous, malt or fermented liquors or wines is guilty of a gross misdemeanor, and shall be fined in a sum not less than \$100 nor more than \$1,000, or by imprisonment in the county jail not less than 1 nor more than 6 months, or by both such fine and imprisonment.

2. This section does not apply to:

(a) Any election at which the sole matter to be voted on relates to the creation or assumption of any public indebtedness to be evidenced by bonds or otherwise.

(b) A gratuitous serving of such beverages in private homes or places of residence by the residents thereof during any election. (*Italics supplied.*)

Section 9 of Chapter 486, Statutes of Nevada 1963, in part provides:

Sec. 9. 1. Notwithstanding the number of registered voters in any county, the polls shall be open at 8 a.m. and close at 6 p.m.

The matter to be voted on on June 11, 1963, is not “the creation or assumption of any public indebtedness,” and the exception therefore does not apply. The above statute ([NRS 293.605](#)) is therefore effective and operative as regards the closing of liquor establishments on June 11, 1963.

Section 9, Chapter 486, Statutes 1963, clearly delineates the hours of closing for liquor establishments.

CONCLUSION

The question is answered in the affirmative.

It is urged that this opinion be brought to the attention of the county commissioners of each county, at the regular meeting of June 5 in order that the boards may order such distribution of the information and conclusion hereof, as may be thought to be proper.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

36 Civil Defense; Power of Governor—The Governor, under conditions of dire emergency, so proclaimed by the Governor or the Legislature under provisions of Chapter 414, NRS, may waive the requirement that doctors not licensed to practice in Nevada are prohibited from medical practice in this State.

CARSON CITY, May 29, 1963

MR. CLAUDE U. SHIPLEY, *Director, Civil Defense Agency, Carson City, Nevada*

DEAR MR. SHIPLEY: You have advanced the question to this office as to whether the Governor of Nevada has the authority to waive the statutory regulations which prohibit foreign doctors, specifically Canadian and Mexican, from practicing their profession within the State of Nevada in case of a declaration of emergency by the Governor.

ANALYSIS

[NRS 414.070](#)(6) provides with respect to certain powers granted to the Governor in case of emergency: “To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.”

This office covered the broad general powers of the Governor under [NRS 414.070](#) in A.G.O. No. 336, dated December 12, 1957. A copy is enclosed.

There can be no question but that the Legislature intended to give the Governor the broadest possible powers consistent with constitutional government in a time of dire emergency.

The powers given to the Governor prior to an actual emergency are set forth in [NRS 414.060](#). But there can be no question, in view of the broad language of NR 414.070, that once the Governor has, by proclamation, declared an actual emergency to exist, or such step has been taken by the Legislature by resolution, extraordinary powers are conferred upon the Chief Executive of the State which are enforceable without regard to the limitations of any existing law.

The power would extend to allowing all available doctors to perform the services of their profession regardless of whether they were licensed to practice in this State. In case of the emergencies contemplated by the very words "civil defense" the medical and nursing facilities of this State could not meet the demands of those requiring medical attention.

It would be against all merciful and logical reasoning to hold that in such a case doctors without Nevada licenses would be unable to, or prevented from, performing the great service for which they have been professionally trained.

CONCLUSION

It is, therefore, the opinion of this office that the Governor in case of dire emergency, under the emergency powers granted to him under the Civil Defense Act, has the authority to waive the statutory regulations which prohibit foreign doctors, or doctors not licensed in Nevada, from practicing their profession in this State.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

37 Poll Taxes—Poll taxes are legally receivable by the county in which the taxpayer resides, unaffected by the fact that the office of the employer or place where the services are rendered may be in another county or other counties.

CARSON CITY, May 31, 1963

HON. WILLIAM P. BEKO, *District Attorney, County of Nye, Tonopah, Nevada*

STATEMENT OF FACTS

DEAR MR. BEKO: The Nevada Test Site is located in Nye County, Nevada. A number of firms are engaged in construction work at such test site. Their employees do work in both Nye and Clark Counties.

In their work for the Nevada Test Site certain residents of Nye County perform their work in Nye County, whereas others of such residents perform their work in Nye and Clark Counties. By the same token, certain of the employees of the Nevada Test Site who reside in Clark County perform their work in Nye County, and others of such residence work in both Nye and Clark Counties. This very mobile work force has thus created a problem as to which counties are entitled to collect the poll tax and from which workers.

Section 7 of Article II of the Nevada Constitution as originally adopted, provided the following:

Sec. 7. The Legislature shall provide by law for the payment of an annual poll tax of not less than two nor exceeding four dollars from each male person

resident in the State, between the ages of twenty-one and sixty years (uncivilized American Indians excepted), one half to be applied for State, and one half for county purposes; and the Legislature may, in its discretion, make such payment a condition to the right of voting. See Marsh, *Nevada Constitutional Debates and Proceedings*, p. 836.

Section 7 of Article II of the Nevada Constitution (amended 1910) presently provides:

Sec. 7. The Legislature shall provide by law for the payment of an annual poll tax, of not less than two nor more than four dollars, from each male resident in the state between the ages of twenty-one and sixty years (uncivilized American Indians excepted), to be expended for the maintenance and betterment of the public roads.

The constitutional debates show that the delegates had a conviction that the poll tax would be needed to help support the state and county governments, and show a difference of opinion as to whether the Legislature should be authorized to provide that the payment of the poll tax should be a prerequisite to the privilege of voting. See Marsh, *Nevada Constitutional Debates and Proceedings*, p. 111 et seq. The Constitution and statutes show the intent that this tax should be collected by a county officer, and by authorizing it to be tied to the voting privilege, the inference was clear that the poll tax collector would collect from the residents of his county only.

Chapter 363 of NRS is entitled "Poll Taxes." Section 363.010 of NRS provides:

363.010 ("Resident" defined.) For the purpose of this chapter, any person shall be deemed to be a resident of this state who shall reside in this state or who shall be employed therein upon any public or private works for a period exceeding 10 days.

[NRS 363.020](#) provides for an annual poll tax of \$3 from each male resident of the state, over 21 and under 60 years of age, uncivilized Indians excepted, for the use of the county and incorporated cities therein, and [NRS 363.030](#) provides that the county assessor shall be ex officio poll tax collector.

[NRS 363.100](#) provides for the collection of the poll tax from the employers, provides for wage deductions by employers, and provides for the filing of a statement under oath with the assessor, in respect to persons employed, such statement to contain the pertinent information.

[NRS 363.200](#) provides:

363.200 (Refusal to give information; false information; penalties.) If any person shall give the county assessor or his deputy a false name, or shall refuse to give his name, or if any person having men in his employ shall refuse to furnish the county assessor or his deputy, when requested, the *name and residence* of each man employed by him, if known, or if such person shall refuse to grant free access to the county assessor or his deputy to the building or place where such men are employed, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county jail for not less than 2 days nor more than 3 months, or by both fine and imprisonment. (Italics supplied.)

We understand that there is no disagreement with employers as to the duty to assist in the collection from all male employees under the provisions of Chapter 363 of NRS.

QUESTION

Upon what formula or rule may the poll tax moneys thus collected by employees, in respect to employees who perform their work in two or more counties, and who reside in two or more counties, be legally allocated between the county assessors, and what should be concerned county assessors require in this respect?

ANALYSIS

Although the constitutional convention debated the question of authorizing the exaction of a poll tax for state and county purposes, with a view to its collection by a county officer, and considered (and differed) the advisability of authorizing the Legislature to make the payment of the tax a prerequisite to the privilege of voting, the convention did not consider or show any concern about the division of the poll tax moneys between counties, based upon the place of employment or place of rendition of services.

However, by considering the advisability of authorizing legislation that would deny the franchise to those persons otherwise qualified who may have failed to pay the tax, in view of the contemplated registration laws for voting, based upon residence, it appears clear that the convention would have agreed, if the question had arisen, that the division of the poll tax moneys between counties would have depended upon the place of residence.

Although we have found no Supreme Court decision, nor have we found any Attorney General opinion which casts any light upon this question, we have concluded that place of residence of the poll taxpayer in Nevada, has from the earliest statutes been the controlling factor. Section 363.200 of NRS appears to clearly suggest that the place of residence in Nevada is still the controlling factor. We have found no constitutional provision or statute which suggests that the place of rendering the service in Nevada, or the office headquarters of the employer in Nevada, has any significance in the division of such tax moneys between counties. For these reasons we are of the opinion that place of residence in Nevada is the sole test. If the test involved questions of where the wages or other moneys were earned, the administration would be unduly complex and disagreements and controversies would be certain. But the sole question being one of place of Nevada residence, it would appear that the County Assessors of Nye and Clark Counties could agree upon the content of a statement of the employers, to be taken under oath, at regular periodic intervals, in respect to the place of residence of new employees, to be filed periodically (perhaps at the end of each 10-day period) with both of the county assessors, and that this would constitute a suitable manner of operation.

CONCLUSION

We conclude that the place of Nevada residence of the employee at the time he is employed is the sole and determining test of the distribution of poll tax moneys between counties in cases such as here involved in which the place of residence and location of employment (i.e., where the services are actually rendered) is in two or more counties. Assuming that this correctly states the legal principle involved, we believe that the county assessors, with the assistance of their legal counsel, will have little difficulty in devising a working plan for the distribution of the poll tax moneys to the county entitled thereto, with proper supporting records, by which each county assessor may show that he is fully and effectually performing the duties of his office, in this respect.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

38 Bond Trust Act—Deputies in the offices of county clerks, recorders, treasurers, and assessors may be bonded under the State Bond Trust Fund Act if they are requested to furnish a bond by the official by whom they are employed.

CARSON CITY, June 6, 1963

HON. GRANT L. ROBISON, *Superintendent of Banks, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ROBISON: The State Bond Trust Fund Act, Chapter 282 of the Nevada Revised Statutes, provides for the furnishing of surety for certain public officials, their deputies and other public employees. [NRS 282.240](#), subsection 1, as amended, reads as follows:

Every state, county and township official and his deputy, and officials of incorporated cities and irrigation districts and their deputies, in the State of Nevada, required by law in his or their official capacity to furnish a surety bond or bonds, and any employee of any county, township, incorporated city or irrigation district required by order of the board of county commissioners of any county or the governing board of any incorporated city or any irrigation district to furnish a surety bond or bonds, may apply to the state board of examiners for surety.

The question is presented as to whether deputies in the offices of county clerks, recorders, treasurers and assessors are eligible to be bonded under the act.

QUESTION

Are deputies in the offices of county clerks, recorders, treasurers, and assessors eligible to be bonded under the State Bond Trust Fund Act?

ANALYSIS

[NRS 282.240\(1\)](#), supra, specifies that deputies in the offices recited may be bonded under the State Bond Trust Fund Act if they are required by law in their official capacity to furnish a surety bond or bonds. The statutory directions relative to the bonding of such deputies read as follows:

“Bonds for the faithful performance of their official duties may be required of deputies” by county clerks ([NRS 246.030\(2\)](#)); county recorders ([NRS 247.040\(2\)](#)); county treasurers ([NRS 249.060\(1\)](#)); and county assessors ([NRS 250.060\(2\)](#)).

The language used in these statutes is plain and unambiguous. If the deputies are requested by the county official by whom they are employed to furnish a bond, they are required by law to do so. It is our opinion that these statutes clearly bring such deputies within the purview of Chapter 282 of NRS and they may be bonded under the State Bond Trust Fund Act.

CONCLUSION

Deputies in the offices of county clerks, recorders, treasurers, and assessors may be bonded under the State Bond Trust Fund Act if they are requested to furnish a bond by the official by whom they are employed.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

39 Patented Mining Claims; Assessment—A county assessor may not assess a patented mining claim by multiplying the minimum statutory assessment of \$500 by the number of owners of such claim.

CARSON CITY, June 7, 1963

MR. R. E. CAHILL, *Secretary, Nevada Tax Commission, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. CAHILL: A county assessor has recently started assessing patented mines under the provisions of [NRS 362.020](#) by multiplying the basic assessment by the number of owners.

QUESTION

May a county assessor make an assessment of patented mines where less than \$100 of development work has occurred by multiplying the minimum assessment of \$500 by the number of owners?

ANALYSIS

Article 10, Section 1 of the Nevada Constitution reads as follows:

The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500), except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds; * * *.

[NRS 362.020](#) reads as follows:

1. Each patented mine shall be assessed at not less than \$500, except where \$100 in development work has been actually performed upon such patented min during the federal mining assessment work period ending within the year for which the assessment is levied.
2. The tax assessment shall be in addition to the tax on the net proceeds of the mine.

I have found no indication in the constitutional debates that such a scheme of assessment was ever contemplated. I have found no Nevada case law on the subject; however, this is probably due to the obvious answer which must be given to your question. There is a strong argument that such a scheme is a violation of the Nevada Constitution, in that equal properties are treated differently merely on the basis of the number of owners. Whether a claim has one or a thousand owners, the method of assessment must be the same.

CONCLUSION

The manner and amount of assessment of a patented mine is unaffected by the number of persons who own the same.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By FRANCIS P. FINNEGAN, *Deputy Attorney General*

40 Nevada Tax Commission—The State of Nevada may not tax liquor sold to a Navy Commissioned Officers Mess.

CARSON CITY, June 7, 1963

MR. R. E. CAHILL, *Secretary, Nevada Tax Commission, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. CAHILL: The State of Nevada imposes an excise tax on liquors. The question has arisen as to whether such liquor excise tax may be collected from the Navy Officers Mess at the Naval Auxiliary Air Station at Fallon, Nevada.

ANALYSIS

Navy exchanges and messes have repeatedly been held to be federal instrumentalities entitled to all the immunities of the Department of the Navy. The leading case on this point is the decision by the Supreme Court of the United States in *Standard Oil Co. v. Johnson*, 316 U.S. 481. A more recent decision was made in *U.S. v. Holcombe*, 277 F.2d 143, in which the court stated, “* * * since Officer Messes, like post exchanges, are ‘integral parts’ of the armed services, it would follow that they are expressly included within the definition of ‘federal agency’ in the act.”

There are many other decisions upholding the federal instrumentality status of nonappropriated fund activities, but we do not believe they need be cited since Nevada authorities have long recognized them as instrumentalities, as indicated by paragraph 35-126.50 of the *Commerce Clearing House, Inc., Nevada Tax Reports*:

The Nevada Tax Commission does not collect an excise tax on beer sold in Post Exchanges located on military reservations, nor to any instrumentality of the military, which has been interpreted to mean Officers’ Clubs, N.C.O. Clubs and Post Exchanges or Ship’s Stores. Letter from Nevada Tax Commission, April 26, 1950.

Since federal instrumentalities are exempt from the legal incidence of state taxes (*Alabama v. King & Boozer*, 314 U.S. 1; *Kern-Limerick v. Scurlock*, 347 U.S. 110), it would seem that immunity would depend on whether the legal incidence of Nevada liquor taxes are on the vendor or vendee.

Under the law regarding liquor tax, importers, dealers, manufacturers and retailers must add the amount of the tax to the price of liquor and may not absorb the tax themselves. Since they are required to pass the tax on to purchasers, the “legal incidence” of the tax would be on the purchaser, and if the purchaser is a federal instrumentality, the federal immunity should apply. In *Federal Land Bank of St. Paul v. Bismark Lumber Co.*, 314 U.S. 95, the retailer was required under the state law to collect the tax from the purchaser, and the legal incidence was thus held to be imposed on the purchaser.

Assuming that it might be argued that Navy messes in their resale operations, are in the category of retailers and that all they need do is pass the tax on to service personnel purchasers, it is our contention that this is prohibited by the Buck Act (4 U.S.C. 107(a)) which provides:

(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

In *Maynard & Child, Inc. v. Shearer*, 290 S.W.2d 790 (Ky. 1956) the Officers Club at Fort Knox, Kentucky, was held to be an instrumentality of the United States within the meaning of this section. The analogy to the instant facts is clear.

CONCLUSION

The Navy Commissioned Officers Mess at the Naval Auxiliary Air Station, Fallon, Nevada, may not be required to pay the Nevada excise tax or liquor.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By FRANCIS P. FINNEGAN, *Deputy Attorney General*

41 Trade Fixtures—Trade fixtures are chattels that are annexed to the land of another by a tenant for the purpose of trade, business or manufacture, which legally retain their character as personal property and can be removed upon termination of the lease. Such status is determined by the application of general rules of law in each particular case. As between a condemnor and condemnee, such chattels are considered fixtures and part of the real property.

CARSON CITY, June 12, 1963

MR. W. O. WRIGHT, *State Highway Engineer, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. WRIGHT: The last session of the Nevada Legislature enacted S.B. No. 244 authorizing the Department of Highways to make limited payments to families and businesses for expenses of moving from rights-of-way. The federal government will participate in the reasonable and necessary expenses of moving personal property, exclusive of trade fixtures. Representatives of the Bureau of Public Roads advise that they will accept the opinion of the Nevada Attorney General as to what are “trade fixtures” and how their status as such is determined under Nevada law.

QUESTION

What are trade fixtures and how is their status determined under Nevada law?

ANALYSIS

The question you ask is a difficult one to answer with any degree of accuracy. Although we can define a trade fixture according to the general rules of law, it might be

presumptuous of us to set down a criterion of general and uniform application purporting to be a formula that could be applied to all property with which you may be concerned. While the general principles applicable to the question of trade fixtures are well settled, the courts have experienced much difficulty in applying them to variant fact situations, and, as a result, it may be said that what constitutes a “trade fixture” depends on the facts of the particular case. See 36A C.J.S., p. 690; 1 Thompson, Real Property, Sec. 196 (2nd Ed. 1939); 22 Am.Jur., Fixtures, Sec. 61; Treadway v. Sharon, [7 Nev. 37](#) 43 (1871).

We will, therefore, seek in this opinion to define trade fixtures and attempt to relate a broad idea as to how the status of a particular article would be determined as a trade fixture under general rules of law. However, when you are confronted with a particular article, the status of which is questionable, we suggest that you submit the question of status to this office for determination on an individual basis. We would then have the benefit of the facts involved in each particular case.

In answering your question, we should note the distinction between fixtures and trade fixtures. Fixtures are chattels that have become realty by reason of their actual or constructive annexation to the land. Trade fixtures, on the other hand, are chattels that are annexed to the land of another for the purpose of trade, business or manufacture, with the right to remove such chattels upon the termination of the lease. An article designated as a trade fixture and personal property would most likely be labeled a fixture and real property but for the application of the trade fixture doctrine.

The general rule of common law concerning fixtures on rented property is that whatever is once affixed to real property by a tenant becomes a part of it and cannot afterward be removed by the tenant. In modern times this rule has been modified in order to meet the wants and necessities of trade and commerce by the development of the trade fixture doctrine. Under this rule, fixtures placed on leased premises by a tenant for the purpose of trade or manufacture and not intended irrevocably to become a part of the realty may be removed by the tenant. As indicated, the purpose of the rule is the encouragement of trade and industry. See 36A C.J.S., Fixtures, Sec. 38.

In the instant case, the federal government will participate in the reasonable and necessary expenses of moving personal property, exclusive of trade fixtures. This exclusion of trade fixtures is merely a refusal to recognize the trade fixture doctrine. Although trade fixtures are recognized in law as personal property, such equipment, as far as the federal government is concerned, is real property.

A formula that can be used to a limited extent in determining whether a particular article is a trade fixture, could be summarized as follows:

1. There must be a landlord and a tenant or lessor and lessee relationship.
2. Fixtures are affixed on leased premises by a tenant for purposes of trade or manufacture.
3. The tenant must not have intended such fixtures to become a permanent part of the real estate.
4. The fixtures can be removed without material or permanent injury to the realty.

There may be instances when you will be concerned with property that would be a trade fixture if there was a landlord and tenant relationship, but is not considered as such because the owner of a particular business and realty is also the owner of the fixtures. In this case, you would determine whether the material is a fixture. The usual criteria of a fixture being:

1. Annexation to the realty, either actual or constructive.
2. Adaptation, application, or appropriation to the use or purpose to which the realty, to which it is connected, is put.
3. The intention to make the article a permanent assession to the freehold. Knight v. Potter, 32 P.2d 1014 (Ore. 1934).

The intention of the party making the annexation at the time of the annexation is the most important and ultimate element, and the first two factors are merely indicative of such intent.

The rules recited are set forth for whatever benefit they may be in assisting you in classifying the property with which you may be concerned. It is stressed, however, that the classification depends on the facts of each particular case. We, therefore, recommend, when confronted with a difficult problem in this regard, that you submit the facts to this office for a ruling as to status on an individual basis.

CONCLUSION

Trade fixtures are such articles as may be annexed to realty by a tenant to enable him to carry on the business in which he is engaged while occupying leased premises and which can be removed without material or permanent injury to the freehold. The status as trade fixtures is determined by the application of general rules of law to the facts of each particular case and is not easily established. It is, therefore, recommended that any questionable articles be submitted to this office for classification on an individual basis.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

42 California-Nevada Interstate Compact Commission—Nevada Commission of California-Nevada Interstate Compact Commission has authority to employ agency to inform public of problems encountered in compact negotiations.

CARSON CITY, June 18, 1963

MR. ELMO J. DERICCO, *State Engineer and Chairman of Nevada Commission of California-Nevada Interstate Compact Commission, Carson City, Nevada*

DEAR MR. DERICCO: You have inquired of this office whether the Nevada commission has the legal authority to expend compact funds for the purpose of employing an agency to inform and educate the public of the problems being encountered in compact negotiations.

ANALYSIS

If such authority does exist, it must be found in the act that established the compact commission and any amendments thereto. The Compact Commission Act is [NRS 538.270](#) to [538.410](#), inclusive. Section 538.360 reads as follows:

538.360 Employees. The commission may employ such agents, attorneys, engineers and other employees as it deems necessary to carry out the functions of [NRS 538.270](#) to [538.410](#), inclusive.

[NRS 538.410](#) is as follows:

538.410 General powers, duties of commission. The commission representing the State of Nevada on the joint commission shall have full authority:

1. To carry on negotiations for such compact or agreement.
2. To attend meetings of the joint commission whenever convened.
3. Generally to perform such duties as shall be required of the commissioners thereof in carrying out the purpose and intent of [NRS 538.270](#) to [538.410](#), inclusive.

The two sections of the act referred to, when read together, are sufficiently broad to embrace the type of employee indicated in your inquiry.

CONCLUSIONS

The Nevada Commission of the California-Nevada Interstate Compact Commission has authority to employ an agent or agency to inform the public of problems encountered in compact negotiations, subject, of course, to budgetary limitations.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By WILLIAM PAUL, *Deputy Attorney General*

43 Juvenile Courts—The district courts, sitting as a juvenile court, must secure the consent of the Superintendent of the Nevada Girls Training Center, in the case of female children, and the consent of the Superintendent of the Nevada Youth Training Center, in the case of male children, before committing them to private institutions.

CARSON CITY, June 19, 1963

MR. HARRY W. STUCK, *Superintendent, Nevada Girls Training Center, Caliente, Nevada*

DEAR MR. STUCK: You have submitted to this office an inquiry as to the interpretation to be placed on A.B. No. 354 which became Chapter 361 of the 1963 Statutes, and especially the amendment to [NRS 62.200](#).

ANALYSIS

The act amends certain provisions of the Juvenile Act, and [NRS 62.200\(1\)](#) provides as follows, in part:

- 62.200 1. If the court shall find the child is within the purview of this chapter, it shall so decree and may, by order duly entered, proceed as follows:
- (a) Place the child under supervision in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court shall determine.
 - (b) Commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children, or place him in a family home. In committing a child to a private institution or agency the court shall select one that is licensed by the state welfare department to care for such children, or, if such institution or agency is in another state, by the analogous department of that state. The court shall not commit a female child to a private institution without prior approval of the superintendent of the Nevada girls training center, and shall not commit a male child to a private institution without prior approval of the superintendent of the Nevada youth training center.
 - (c) Order such medical, psychiatric, psychologic or other care and treatment as the court may deem to be for the best interests of the child, except as herein otherwise provided.

It can readily be determined that the Legislature intended, under [NRS 62.200\(1a\)](#), to give the court full power in determining whether a child under its jurisdiction should

be placed in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court determines are for the welfare of the child.

But where the child is to be placed in a private institution or agency authorized to care for children, whether licensed in this State by the State Welfare Department or by an analogous department in another state, the Legislature evidently resolved that the power of the district judge should be curtailed to the extent that the consent of the Superintendent of the Nevada Girls Training Center should be obtained in placing female children in such private institutions, and the consent of the Superintendent of the Nevada Youth Training Center obtained in placing male children in such private institutions.

This is perhaps based on the fact that the payment for the care of the child in a public institution would have to be borne by the Nevada institutions above named, and on the further ground that the Legislature felt that the professional people assigned to the training centers are in a better position to determine whether the needs of the child would best be served by the program offered by a private institution or by the agencies created by the State for that purpose.

Whatever the reason, there can be no question that the Legislature has the authority to limit, within constitutional boundaries, the powers of the courts, and to define those powers. There is no such trespass on court authority in this law, in our opinion, as would threaten its constitutionality.

The Legislature envisioned no difficulty in the courts and the superintendents of the training centers working together for the best interests of the children committed to their care and discretion.

CONCLUSION

It is, therefore, the opinion of this office that the courts of this State, acting as juvenile courts, have no discretion in committing children coming under their jurisdiction to private institutions, but to confer with and gain the consent of the Superintendent of the Nevada Girls Training Center in the case of female children, and the consent of the Superintendent of the Nevada Youth Training Center in the case of male children.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

44 Examiners, Board of—The power and duty of the board of examiners to audit claims payable by the State, under Section 21, Article V of the Constitution, extends to the legislative and judicial as well as the executive branch of government. Ch. 271, Stats. 1963; [NRS 353.090](#) construed in light of Section 21, Article V of the Constitution.

CARSON CITY, June 19, 1963

MR. HOWARD E. BARRETT, *Director of the Budget, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BARRETT: Section 21 of Article V of the State Constitution provides:

Sec. 21. (Personnel of board of state prison commissioners and board of examiners.) The Governor, Secretary of State, and Attorney General shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners, with power to examine all

claims against the State (except salaries or compensation of officers fixed by law), and perform such other duties as may be prescribed by law. And no claim against the State (except salaries or compensation of Officers fixed by law) shall be passed upon by the Legislature without having been considered and acted upon by said "Board of Examiners."

The above provision remains unmodified from the date of the adoption of the Constitution.

The Legislature of 1949 enacted Chapter 299, known as the "State Budget Act," which as amended has become Sections 353.150 to 353.245 of NRS. This act created the office of Director of the Budget, and regulated the powers and functions of such officer. It provided among other things that the Director of the Budget should be ex officio to the clerk of the Board of Examiners. Modifications in powers and duties of certain other offices and departments were made to harmonize the duties of such offices with the duties accorded to the Director of the Budget.

The Legislature of 1951 enacted Chapter 304, creating the Statute Revision Commission. This statute as amended has become Chapter 220 of NRS.

The Legislature of 1951 enacted Chapter 333, creating a State Department of Purchasing, which as amended has become Chapter 333 of NRS.

The Legislature of 1953 enacted Chapter 351, by which it created the State Department of Personnel. This law with amendments has become Chapter 284 of NRS.

Thus in the order of their appearance in the state government, we have listed chronologically certain departments and agencies of the state government, whose operation, in the light of a statute of 1963, has been modified.

In A.G.O. No. 231 of July 12, 1961, the opinion was expressed that with the exception of the Director of the Statute Revision Commission (then being quasi-judicial in classification) all of the employees of the commission were exempt from the regulations of the personnel act.

In *State v. State Board of Examiners* (Nevada 1962), 376 P.2d 492 (the *Armstrong* case), it was held that the Legislative Counsel Bureau was within the purview of the personnel act and as such the Legislative Counsel had the authority to designate one chief deputy and one chief assistant ([NRS 284.140](#), sub. 3) to the unclassified service.

Chapter 271, Statutes of 1963 (A.B. No. 225) has purportedly removed the agencies, the officers and employees of the legislative and judicial departments of the state government from the provisions of the personnel act (Ch. 284 of NRS), the purchasing act (Ch. 333 of NRS), and the budget act (Secs. 353.150 to 353.245 of NRS).

The Board of Examiners over a period of years pursuant to the provisions of Chapter 353 of NRS, specifically [NRS 353.040](#), and Section 21, Article V of the Constitution, has made rules and regulations in respect to the filing and auditing of claims, and in respect to the regulation of facilities and instrumentalities in regard to which claims are filed, payable by the State. Now we are confronted with questions in respect to the extent, if at all, such rules have been nullified by the provisions of Chapter 271, Statutes of Nevada 1963.

QUESTION

Are rules and regulations that have heretofore or that may hereafter be promulgated by the Board of Examiners which have for their purpose the regulation of the manner of presenting claims, or the regulation of state-owned facilities upon which claims are based, when such facilities as to such claims are unregulated by law, which claims must, under the Constitution, be passed upon and allowed or disallowed by the Board of Examiners, valid and effectual?

ANALYSIS

Chapter 271, Statutes 1963, amends Chapter 353 of NRS (State Financial Administration) in such a manner as to show a legislative intent to confine the powers of the State Board of Examiners to the executive branch, except:

Agencies, bureaus, commissions and officers of the legislative department and the judicial department of the state government shall, at the request of the director, submit to him for his information in preparing the executive budget the budgets which they propose to submit to the legislature. (New material contained in Sec. 25, Ch. 271, Stats. 1963.)

We also call attention to the fact that [NRS 353.090](#) remains unmodified by the Statute of 1963, being in harmony with Section 21, Article V of the Constitution. [NRS 353.090](#) in part provides:

353.090 (Payment of claims when legislative appropriation has been made: Procedure.)

1. All claims against the state for services or advances, for payment of which an appropriation has been made by law and which have been authorized by law, but of which the amount has not been liquidated and fixed, may be presented to the state board of examiners by an account or petition. The form of the account or petition and the manner of its presentation shall be as prescribed by the rules of the board. * * *

It is clear that the Legislature in the above provision has not attempted to limit the powers of the Board of Examiners in the auditing of claims to the executive department, and equally clear that under the constitutional provision of the Legislature could not so limit the board.

In addition to the two exceptions that we have formerly mentioned, to the rule that the Board of Examiners, as well as the Director of the Budget, shall have no control over the legislative and judicial branches of the government, it is suggested that there are other situations, closely allied with the constitutional auditing duties, in which the power of the board must continue, despite the provisions of Chapter 271, Statutes of 1963, as, for example, the board has made rules and regulations concerning: (a) the usage of state telephones, (b) the use of motor vehicles of the motor pool, and (c) claims of persons holding unclassified positions, as, for example, the auditing of claims of the travel of district judges. It is pointed out that the rules and regulations in the particulars mentioned are upon matters not otherwise regulated by law and are necessary under the constitutional power of the Board of Examiners to approve or disapprove claims against the State.

There can be no question but that the rules and regulations promulgated by the Board of Examiners which pertain to the manner of presenting and the validity of claims against the State, by public officers of all departments of government, as well as those that pertain to the regulation of facilities upon which claims are based, in the absence of precise statutes thereon, must stand, and are not affected by the provisions of Chapter 271, Statutes 1963. Otherwise a void would exist and the legislative and judicial officers would be unregulated upon matters constitutionally within the province of the Board of Examiners.

It would be difficult, or perhaps impossible to single out individual instances of proper control by the Board of Examiners upon matters appertaining to the legislative and judicial branches. A proper test would appear to be that if the fiscal claim of the officer must under the Constitution be passed upon (allowed or disallowed) by the Board of Examiners, and if there are no controlling statutes in respect to the presentation of such claim or regulations of the instrumentalities upon which the claim arises, the rules and

regulations now existing or hereinafter promulgated thereon, by the Board of Examiners will control, in respect to all three of the departments of government.

CONCLUSION

The rules and regulations that heretofore have been or hereafter may be promulgated by the Board of Examiners which have for their purpose the regulation of the manner of presenting claims, or the regulation of state-owned facilities, upon which claims are based, when such facilities as to such claims are unregulated by law, which claims must, under the Constitution, be passed upon and allowed or disallowed by the Board of Examiners, are valid and effectual as to the legislative and judicial branches of government, as well as the executive.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

45 National Banks; Motor Vehicles—Motor vehicles, being personal property, cannot be assessed for taxation purposes against a national bank.

CARSON CITY, June 21, 1963

MR. LOUIS P. SPITZ, *Director, Department of Motor Vehicles, Carson City, Nevada*

DEAR MR. SPITZ: You have addressed a letter to this office under date of June 20, 1963, in which you allege that the First National Bank of Nevada has objected to being subjected to the privilege tax on automobiles under Chapter 425 of the 1963 Statutes of Nevada.

ANALYSIS

National banks are subject to state taxation only as Congress expressly permits (Swords v. Nutt, 11 F.2d 936; Miles City v. Caster Co., 246 P. 259).

The respective states would be wholly without power to levy any tax, either direct or indirect, upon national banks, their property, assets or franchise, were it not for the permissive legislation of Congress, and silence by Congress in this respect is a prohibition and constitutes a bar (Citizens Savings Bank v. Owensboro, 173 U.S. 636, 43 L.Ed. 840).

Our Supreme Court, in First National Bank of Winnemucca v. Kreig, 32 P. 641, [21 Nev. 404, stated, “* * *](#) that it is now well settled by the decisions of the supreme court of the United States, which in such matters is the final arbiter, that national banks are subject to state taxation upon their real estate and upon shares of stock in the bank owned by the stockholders,” citing Rosenblatt v. Johnston, 104 U.S. 462, 26 L.Ed. 832; and People v. Weaver, 100 U.S. 539, 25 L.Ed. 705.

In First National Bank & Trust Company v. Town of West Haven, 62 A.2d 671, it was held that personal property of national banks could not be directly assessed to them by a town for purposes of taxation.

OPINION

It is, therefore, the opinion of this office that the privilege tax on automobiles cannot be assessed against national banks, there having been no permissive legislation for such tax by the Congress of the United States.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

46 Mines; Hours of Employment—The maximum hours of employment of workers employed within or about the surface of open cut or open pit mines is limited to 8 hours in any 24 unless otherwise provided by statute.

CARSON CITY, June 25, 1963

MR. E. J. COMBS, *Labor Commissioner, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. COMBS: [NRS 608.200](#), [608.220](#) and 608.230 provide a maximum period of employment for certain persons who engage in work in or about underground, open pit and open cut mines. A dispute now exists between the White Pine Metal Trade Council and Kennecott Copper Company concerning the application of these laws to employees who work both outside and within open pit or open cut mines during one workday.

QUESTIONS

The following questions have been submitted to this office for our opinion:

1. In determining when an 8-hour shift begins in an open pit or open cut mine, under which statute, namely [NRS 608.200](#) or [NRS 608.220](#), is it determined where the 8-hour day starts and stops?
2. Does the section of the statute, namely [NRS 608.200](#) or [NRS 608.220](#), fix the hours of employment of employees whose regular place of employment is in one of two or more machine shops which are all located at Ruth but none are within the perimeter of the open pit, the closest being approximately 1,000 feet, and the farthest machine shop being approximately 2 miles from the perimeter?
3. If [NRS 608.220](#) applies to the hours worked in the Ruth Pit, would an employee who was regularly employed to work in a machine shop situated beyond the perimeter of the Ruth Pit, who had worked 4 hours in the machine shop on his regular shift and at this regular place of employment and completed his shift of 8 hours by working 4 hours in the pit, be prohibited from working a consecutive additional 2 hours in the pit?
4. If [NRS 608.220](#) applies to the hours worked in the Ruth Pit, would an employee who was regularly employed to work in a machine shop situated beyond the perimeter of the Ruth Pit, who had worked 4 hours in the machine shop on his regular shift and at his regular place of employment and completed his shift of 8 hours by working 4 hours in the pit, be prohibited from working a consecutive additional 2 hours in the machine shop?

ANALYSIS

The answers to these questions lie in a determination of legislative intent. We will attempt to discover this intent by an inquiry into the history of relevant statutes.

In 1903 the Nevada Legislature passed a bill regulating the hours of employment in underground mines. Chapter X, Statutes of 1903, p. 33, read as follows:

Sec. 1. The period of employment of workmen in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

In 1904 this statute was challenged as unconstitutional in *Ex parte Boyce*, [27 Nev. 299](#), 75 P. 1. The Nevada Supreme Court sustained the constitutionality of the law, but stated at page 330 that the statute did not apply to placer claims or *to men working in the open above the surface*. The reasons for this conclusion are stated at page 336 as follows:

But some pursuits are attended with peculiar hazards and perils, the injurious consequences from which may be largely prevented by precautionary means, and laws may be passed calculated to protect the classes of people engaged in such pursuits. It is not necessary to extend the protection to persons engaged in other pursuits not attended with similar dangers. To them the law would be inappropriate and idle. So, if underground mining is attended with dangers peculiar to it, laws adapted to the protection of such miners from such dangers should be confined to that class of mining, and should not include other employments not subject to them.

In 1905 *Ex parte Boyce* was sustained in *Ex parte Kair*, [28 Nev. 127](#), 80 P. 463. The question of whether workers in open pit or open cut mines came within the purview of the 1903 act was not decided in either of the aforementioned cases. In 1909 this situation was clarified by the Nevada Legislature by the enactment of a law which applied the 8-hour limitation to open cut and open pit mines.

Chapter 64.1909 Statutes of Nevada, p. 73, read as follows:

The period of employment of workmen in open pit or open cut mines shall not exceed eight (8) hours in any twenty-four (24), except in cases of emergency where life or property is in imminent danger.

Then in 1911, as if in answer to Justice Talbot's statement in *Ex parte Boyce* that the 1903 statute did not apply to men working *in the open above the surface*, the Legislature enacted Chapter 188, 1911 Statutes of Nevada. p. 373, which recited that "The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, topmen, and all workmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger."

In extending this protection to workers on the surface of underground mines, the Legislature, in light of *Ex parte Boyce*, must have determined that these pursuits were attended with dangers similar to those underground. This latter statute was codified in an entirely different section of the Nevada Compiled Laws than the acts of 1903 and 1909. It was cited as NCL, Sec. 2794, in the chapter dealing with employer and employee. The 1903 and 1909 acts were cited as NCL Secs. 10237 and 10241 in the chapter dealing with "Crimes Against Public Health." They are now all codified in the same chapter of NRS under the heading "Compensation, Wages and Hours." The 1903, 1909 and 1911 statutes are now cited as [NRS 608.200](#), [608.220](#) and 608.230, respectively.

We see, therefore, that after the 1911 enactment there were laws limiting the period of employment of workers in open pit, open cut and underground mines and surface workers above underground mine workings. This being the situation, the question arises as to whether a worker could have been employed around the surface of an open pit or open cut mine without any hours of employment limitation. Was an open pit or open cut mine an underground mine working within the purview of the 1911 law? The question was left undecided, but the 1903 statute relating to hours of employment in

underground mines was amended in 1927 (Ch. 105, 1927 Stats. of Nev., p. 186), and 1949 Stats. of Nev., 197) to bring open pit and open cut mines within the statutory definition of underground mine workings.

[NRS 608.200](#) now reads as follows:

(Underground mines, underground workings: 8-hour day; longer hours in emergency; penalty.)

1. The period of employment for all persons who are employed, occupied or engaged in work or labor of any kind or nature in underground mines or underground workings in search for or in extraction of minerals, whether base or precious, metallic or non-metallic, or who are engaged in such underground mines or underground workings, or who are employed, engaged or occupied in other underground workings of any kind or nature for the purpose of tunneling, making excavations or to accomplish any other purpose or design shall not exceed 8 hours within any 24 hours, and the 8 hours shall include the time employed, occupied or consumed from the time of entering the collar of the shaft or portal of the tunnel of any *underground mine* until returning to the surface from the underground mine, *or the time employed, occupied or consumed in leaving the surface* of any tunnel, *open cut or open pit workings for the point or place of work therein, and returning thereto from such place or point or work.* (Italics supplied.)

It will be noticed that the title of the statute makes it applicable to *underground mines* and *underground workings*. The text of the statute recites that the 8 hours shall include (but is not limited to) the time employed, occupied or consumed, from the time of entering the collar of the shaft or portal of any *underground mine* until returning to the surface from the *underground mine* or the time employed, occupied or consumed, in leaving the *surface* of any *open pit workings*.

The Legislature obviously classified open pit and open cut mines as underground workings. If there is any ambiguity in the text of the statute, it is resolved by the title which is to be considered in resolving such uncertainty. See 2 Sutherland, Statutory Construction, Sec. 4802 (3rd Ed. 1943). Although [NRS 608.220](#) seems to classify open pit and open cut mines in a different category from those mines not exposed to the light of day, it is our belief that [NRS 608.200](#) suggests a legislative intent to classify them the same. Where two statutes deal with the same subject they should be harmonized if at all possible. 2 Sutherland, Statutory Construction, Sec. 5204 (3rd Ed. 1943).

Although it may be argued that the Legislature merely meant to apply the collar-to-collar rule to open pit and open cut mines and did not mean to classify such mines as underground workings, we cannot speculate that such was the intent in the light of the plain words of the statute. If such were the case, then why didn't the Legislature amend [NRS 608.220](#) in 1949 rather than 608.200? Why would [NRS 608.200](#) refer to the time employed in leaving the surface of an open cut or open pit mine if such a mine was not considered underground?

It is, therefore, the opinion of this office that open pit and open cut mines are underground mine workings and that the number of hours of work of all workmen employed on or about the surface or surface workings of such mines shall not exceed 8 hours in any period of 24 hours, except as specified by the statutes.

There are other reasons why we have thus concluded.

First: There would not be a consistency of purpose in the legislation if the law is applicable only to workers employed on the surface above mines not exposed to the light of day and not those who work around open pit and open cut mines. All three statutes apply to the same class of persons and have the same purposes and objects; they are designed as a legislative protection of employees who work in or around such mines. They are all obviously calculated to protect the health of a certain class of men and we do

not believe that the Legislature only intended to protect some but not all of the same class.

Second: When the Legislature amended [NRS 608.200](#), and referred to open pit and open cut mines and underground mine workings, it must be assumed that they were aware of existing statutes and the act will therefore be interpreted in light of this assumption. 2 Sutherland, Statutory Construction, Sec. 5201 (3rd Ed. 1943).

Third: Statutes limiting the hours of employment should be liberally constructed to effect their objects and to protect the health of employees. This rule of construction applies even though criminal punishment is provided for violators. 3 American Law of Mining, Sec. 1913, at p. 727, and Sec. 1914 at p. 730 (1960 Ed.); 56 C.J.S., p. 98; Butte Miners' Union No. 1 v Anaconda Copper Min. Co., 118 P.2d 149 (Mont. 1941); People ex rel. S. J. Groves and Sons Co. v. Hamilton, 238 N.Y.S. 81.

Under our interpretation of the law no person can be employed inside or about the surface of an open pit or open cut mine more than 8 hours a day, subject to the exceptions listed in the statute. This being the case, Question No. 1 cannot be answered by a specific determination as to which of two statutes, namely [NRS 608.200](#) or 608.220 applies in determining where an 8-hour day starts and stops. If we granted this premise, we would be precluded from determining what we consider the true intent of this legislation. For some purposes, either may apply, but neither or both apply for all purposes. Both have to be read in pari materia with [NRS 608.230](#) in determining when an 8-hour day begins and ends under the present situation.

In answer to Question No. 2, [NRS 608.200](#) or 608.220 does not fix the hours of employment for employees in machine shops which are located from 1,000 feet to 2 miles from the perimeter of an open pit. This answer, however, does not complete the analysis. [NRS 608.230](#) should also be considered, and we have heretofore held that this statute limits the hours of employment of workers on or about the surface of an open pit or open cut mine to 8 hours per day. We conclude also that employees in the machine shops in question are working on or about the surface of open pit or open cut mines.

Questions Nos. 3 and 4 cannot be answered the way they are asked. These questions assume that only [NRS 608.220](#) applies to hours worked in the pits. We have pointed out that we believe this assumption to be erroneous. However, for the sake of clarification we conclude that a person cannot work more than 8 hours in 24 either in, about, or in and about, open pit or open cut mines.

The questions asked are not new ones. In 1920 this office was confronted with a similar question involving the 8-hour limitation as applied to workers in the smelters and mills in Ruth. At that time, in A.G.O. No. 188, dated December 23, 1920, this office held that it is not permissible to work an employee 8 hours within a plant used for reduction of ores and then an additional 2 hours outside the plant in unloading cars.

CONCLUSION

It is, therefore, the opinion of this office that the maximum hours of employment of workers employed within or about the surface of open cut or open pit mines is limited to 8 hours in any 24 hours, except as to those cases specifically enumerated in the statutes.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

47 Liquefied Petroleum Gas Board—The term “gas” as used in Section 2(b) of [NRS 704.020](#), as amended by Chapter 424, Statutes of Nevada 1963, is limited in meaning to natural gas and does not include liquefied petroleum gas.

Carson City, June 26, 1963

MR. GEORGE L. GOTTSCHALK, *Chairman, Nevada Liquefied Petroleum Gas Board, P.O. Box 338, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. GOTTSCHALK: Chapter 704 of NRS is entitled “Public Utility Regulation.” A portion of Chapter 590 of NRS, Sections 590.465 to 590.645, is entitled “Nevada Liquefied Petroleum Gas Act.” We are informed that none of the sections included within [NRS 590.465](#) to [590.645](#) have been directly amended by the legislative session of 1963. The question of whether or not any of these sections have been indirectly amended by the Legislature of 1963 will be presented herein.

Prior to 1963, it was the viewpoint of the Public Service Commission of the State of Nevada, that so long as liquefied petroleum gas was sold by the licensee in such a manner as to have no supply lines crossing streets or alleys, even though the licensee supplied a cluster of users from one supply tank, that such did not constitute the operation of a public utility of the State of Nevada, under the supervision of the Public Service Commission. Licensees were encouraged to so market LPG for safety and economy reasons.

Natural gas became available to the users of the Reno area, and in certain other northern Nevada locations, by the completion of a transmission line and gas released through the same on January 17, 1963.

The Legislature of 1963 enacted Chapter 424 (S.B. No. 258) which was effective upon approval on April 26, 1963. This chapter directly amends certain of the sections of Chapter 704 of NRS. It does not directly amend any of the sections of Chapter 590 of NRS.

Chapter 424, Statutes of Nevada 1963, inter alia amends [NRS 704.202](#), subsection 2(b), in such a manner as to now provide:

2. “Public utility” shall also embrace:

(a) * * *

(b) Any plant or equipment, or any part of a plant or equipment, within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, *gas, coal slurry*, light, power in any form or by any agency, water for business, manufacturing, agricultural or household use, or sewerage service, whether within the limits of municipalities, towns or villages, or elsewhere. (The italicized portion was added by Chapter 424, Statutes of Nevada 1963.)

QUESTION

Did the Legislature intend to include liquefied petroleum gas under the term “gas” as used in the amendment to [NRS 704.020](#), subsection 2(b)?

ANALYSIS

Nothing contained in the title to Chapter 424, Statutes of Nevada 1963, would indicate that the Legislature intended LPG dealers, when operating in the manner heretofore mentioned, to be included in the term “public utility.” The title provides:

An Act to amend chapter 704 of NRS, relating to regulation of public utilities, by adding new sections providing for an annual assessment on all public utilities, except motor vehicle carriers, based on gross operating revenues from

intrastate operations; prescribing methods of notice and collection of such assessment; prohibiting the levy of such assessment under certain circumstances; creating the public service commission regulator fund; providing for the sources, uses and disbursement of moneys in such fund; and bringing certain cooperative associations and nonprofit corporations within some of the laws governing public utilities; to amend NRS sections 704.020 and 704.330, which define “public utility” and relate to certificates of public convenience and necessity, by clarifying such definition and providing for elimination of duplications of service by public utilities; and providing other matters properly relating thereto.

Section 7 of Chapter 424, Statutes of 1963, provides that all suppliers described in the chapter, shall not be subject to any other jurisdiction, control and regulation than that of the Public Service Commission. The result of this would be the repeal of Sections 590.465 to 590.645 of NRS by implication, or in any event by very doubtful construction, with no controls being provided to protect the public against dangers as are presently afforded by those sections that would thus be regarded as having been repealed.

The repeal of statute by implication is not favored, it being the usual rule that if statutes may be construed to coexist, such will be the construction. We quote from Statutory Construction by Sutherland, Third Ed., Art. 2014:

The presumption against implied repeals is classically founded upon the doctrine that the legislature is presumed to envision the whole body of the law when it enacts new legislation, and, therefore, if a repeal of the prior law is intended to expressly designate the offending provisions rather than to leave the repeal to arise by necessary implication from the later enactment.

CONCLUSION

It is, therefore, our opinion that the term “gas” was placed in the statute with legislative intent to include only natural gas which had very recently been made available, and that the question must be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

48 Municipal Elections; Compensation of County Clerk—The full compensation a county clerk is to receive in carrying out the provisions of [NRS 293.570](#) to [293.580](#) dealing with municipal elections, is 15 cents for each separate, individual name copied by him onto the official register. He is not entitled to additional compensation for making duplicates or to pay for extra help.

CARSON CITY, June 26, 1963

MR. ROBERT R. GILL, *City Attorney, 280 Aultman Street, Ely, Nevada*

STATEMENT OF FACTS

DEAR MR. GILL: The Nevada Legislature has provided that it is not necessary to have a special registration of electors prior to a municipal election. [NRS 293.570\(2\)](#) recites that the county clerk, ex officio county registrar, shall prepare from the lists of voters of the last preceding general election, the official register containing the original

registration affidavits of all electors eligible to vote at the municipal election. The county clerk is also to prepare a checklist containing the names and addresses of all electors eligible to vote in each ward. The official register and the checklists are to be delivered to the city clerk not later than three days prior to the municipal election.

[NRS 293.583](#) provides the compensation to which a county clerk is entitled for rendering these services. A difference of opinion has arisen between the City Council of Ely and the White Pine County Clerk as to what this compensation should include.

The county clerk submitted an unsworn statement to the city clerk for payment of services rendered as follows:

City of Ely	
Statement of Account per NRS 293.583	
Boyd K. Smith, Registrar	
<i>List of Registered Voters</i>	
1 List—Newspaper	Names 1,696
1 List—Election Board	Names 1,696
1 List—City Clerk	Names <u>1,696</u>
5,088 Names @ .15 ea.	\$763.20
Extra Help—	
1 Day @ \$24.30 per day.....	24.30
1/2 Day @ \$13.18 per day	<u>6.59</u>
Total	\$794.09

QUESTION

What is the proper compensation to which a county clerk is entitled for services rendered under the provisions of [NRS 293.570](#) to [293.580](#)?

ANALYSIS

[NRS 293.583](#) Compensation of county registrar; payment from city general fund.

1. *As full compensation for all services rendered* under the provisions of [NRS 293.570](#) to [293.580](#), inclusive, the county registrar shall be entitled to receive the sum of 15 cents for *each name of an elector* copied by him, regardless of the number of times each name is copied.

2. His account shall be:

(a) A valid claim against the city.

(b) Made out so as to show clearly the number of names copied by him.

(c) Sworn to and filed with the city council or other governing body of the city.

3. His claim, together with all other just and reasonable demands of *other* persons for *books, advertising and supplies* necessarily incurred in carrying out the requirements of [NRS 293.570](#) to [293.580](#), inclusive, shall be audited and paid out of the general fund of the city. (Italics supplied.)

In this particular case, the claim is defective on its face because it is not sworn to. However, regardless of technical defects, it is our opinion that the county clerk is not entitled to the compensation he claims. He is not entitled to be reimbursed by the city for extra help he may have temporarily hired and paid in carrying out the provisions of the cited statutes. The statute very explicitly states that the 15 cents per name copied by him is to be the *full compensation for all services rendered*. This compensation is also for services rendered by temporary help. Section 3 of the above statute does not contemplate such payment.

The county clerk's claim that he should be allowed compensation at 15 cents per name stated on duplicate copies of the original list prepared by him should also be disallowed. The statute reads that he shall receive 15 cents *for each name* copied by him, regardless of the number of times each name is copied.

It is our opinion that the reference to each name means that the county clerk shall receive 15 cents for each separate, individual name originally copied and that he is not to be compensated for making duplicates of the original list. In this case, he should receive 15 cents for each of the 1,696 names.

CONCLUSION

The full compensation a county clerk is to receive in carrying out the provisions of [NRS 293.570](#) to [293.580](#), dealing with municipal elections, is 15 cents for each separate, individual name copied by him onto the official register. He is not entitled to additional compensation for making duplicates or to pay for extra help.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

49 City Officers, Compensation—The compensation of elected officers of any city shall not be increased during the term for which they are elected by an ordinance approved and passed during that particular term.

CARSON CITY, July 1, 1963

CLARENCE L. YOUNG, ESQ., *City Attorney, Lovelock, Nevada*

STATEMENT OF FACTS

DEAR MR. YOUNG: A new mayor was elected in the City of Lovelock at the regular city election held on May 7, 1963. In addition, three councilmen were re-elected without opposition. Prior to election, an ordinance was proposed that would increase the salaries of the mayor and councilmen. This ordinance was not approved and passed until May 8, 1963, 1 day after the election. A question now is presented concerning the legality of these salary increases.

QUESTION

Can an ordinance increasing the salary of a mayor and city councilmen be passed during the term for which such officers were elected?

ANALYSIS

[NRS 266.450](#) reads as follows:

All officers of any city shall receive such compensation as may be fixed by ordinance, but the compensation of any such officers shall not be increased or diminished to take effect during the time for which the officer was elected or appointed.

This office has heretofore held in a well reasoned opinion written by Deputy Attorney General D. W. Priest, dated September 25, 1962, and cited as number S-6, that

if a pay increase ordinance is approved and passed after the election or appointment of the persons involved, it clearly offends the language of the above statute. Although the ordinance in the instant case was introduced prior to the time the officers were elected, it was not approved and passed until after the election. The compensation of such officers was increased to take effect during the terms for which they were elected. This is contrary to the express terms of the aforementioned statute and, therefore, is invalid.

CONCLUSION

The compensation of elected officers of any city shall not be increased during the term for which they are elected by an ordinance approved and passed during that particular term.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

50 Minors—Under the provisions of [NRS Chapter 202](#) minors, when accompanied by responsible adults, may attend a show in the theatre-restaurant of a hotel, even though alcoholic beverages are dispensed, and despite the fact that no food is served.

CARSON CITY, July 11, 1963

HON. EDWARD G. MARSHALL, *District Attorney, Clark County, Las Vegas, Nevada*

QUESTION

DEAR MR. MARSHALL: According to a letter from you under date of June 27, 1963, you pose a problem that confronts all law enforcement agencies throughout Nevada, to wit: It is permissible to allow children under age, accompanied by responsible adults, to attend the midnight shows in hotels purveying entertainment, where drinks only are served, and the catering of food is canceled for that show?

ANALYSIS

In order to arrive at a conclusive answer it is necessary to cite [NRS 202.060](#), and to interpret the same. The section referred to reads as follows:

Any proprietor, keeper or manager of a saloon or resort where spirituous, malt or fermented liquors or wines are sold, who shall, knowingly, allow or permit any person under the age of 21 years to remain therein as guilty of a misdemeanor, and shall be punished by a fine of not less than \$25 no 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.

It will be noted that the section refers to saloons or resorts. A saloon does not in the ordinary sense of the term sell food. It dispenses alcoholic and other beverages exclusively. A resort is a place of frequent assembly, a haunt, according to Black's

Dictionary. It will be noted that [NRS 202.060](#) does not refer to either theatres or restaurants. The type of place with which we are concerned is a theatre-restaurant.

[NRS 202.060](#) cannot be construed with out referring to [NRS 202.020](#) and [NRS 202.050](#). [NRS 202.020](#) prevents the purchase of alcoholic beverages by minors, wherever sold, and constitutes a misdemeanor. Under [NRS 202.050](#) any person guilty of selling intoxicating beverages to minors is guilty of a misdemeanor. It can therefore readily be determined that even in a theatre-restaurant the purchase by a minor of intoxicating liquor or the sale to a minor of the same, would be illegal and would subject the guilty party to the penalties imposed by law.

[NRS 202.030](#) prevents minors loitering in places where alcoholic beverages are sold, but adds that this does not apply wherein spirituous, malt or fermented liquors or wines are served only in conjunction with regular meals and where dining tables ore booths are provided separate from the bar.

The statute provides that minors are prevented form loitering in places where alcoholic beverages are sold. Black's Law Dictionary defines "loiter" as "to stand around or move slowly about"; "to spend time idly"; "to lag behind." The Legislature clearly intended to differentiate between minors attending a place of recreation where a performance takes place and loafing or idling about a lounge bar where the principal office is selling drinks.

Under the statutes cited it would be perfectly permissible to allow the child to visit the theatre-restaurant at the dinner show at 8 p.m., or thereabouts, subject to the restrictions of [NRS 202.020](#) and [202.050](#), prohibiting the purchase by minors, or the sale to minors, of intoxicating liquors.

In your inquiry you point out that parents often attend the second show and that unable, or unwilling, to leave the minor children alone, they take them along. The parents pay a minimum charge at this show for all concerned, be they adults or minors. The tables are separate from the bars. The children may order nonalcoholic beverages (just as they might at the first, or diner, show), or take nothing.

The primary commodity of the theatre-restaurant is the performance and not the spirituous liquors sold during the show.

OPINION

It is the opinion of this office that the law as now written was not intended to prevent parents or responsible adults from taking minors to the second, or nondinner, show at theatre-restaurants. We do feel that minors, unaccompanied by adults, should, as a matter of policy, be denied admittance.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

51 Savings and Loan Associations—Federally chartered savings and loan associations operating under rules and regulations of the Home Owners Loan Board are exempt from regulation by the State of Nevada.

CARSON CITY, July 12, 1963

MR. HAROLD P. BRAMAN, *Commissioner, Department of Savings associations, Carson City, Nevada*

DEAR MR. BRAMAN: Under date of June 10, 1963, you addressed certain inquiries to this office regarding an interpretation of 673.430 (5), as amended by Chapter 259, Statutes 1963, which reads as follows:

5. At the time of filing its annual report, every foreign savings and loan association, company or corporation, doing business in this state, whether or not doing business by and through agents or representatives in this state, except federally chartered savings and loan associations having their home offices located within the State of Nevada, shall be required to obtain a license to do business within the State of Nevada. The license shall be issued by the commissioner in accordance with the provisions of [NRS 673.080](#) and shall be subject to the provisions of [NRS 673.260](#).

ANALYSIS

Federally chartered savings and loan associations receive their charter from the Home Loan Bank Board under Section 5 (a) of the Home Owners Loan Act of 1933, as amended, Section 1464 (a), Title 12, U.S.C.A.

It is conceded in all leading cases, some of which will hereafter be cited that these institutions are instrumentalities of the United States.

In *Fahey v. Mallonee*, 332 U.S. 245, 91 L.Ed. 2030, it is pointed out that "Congress expressly delegates the duty and authority to the Board to make policy, including the power to make rules and regulations for the organization, incorporation, examination, operation, supervision and regulations of such associations, which delegation of authority is Constitutional."

In *North Arlington National Bank v. Kearney Federal Savings and Loan Association*, 187 F.2d 564, the court state, "No provision is made for sharing the Board's delegated authority with state regulatory or supervisory agencies."

That federally chartered associations are not citizens of any state has been upheld by the Supreme Court of the United States. In *Elwert v. Pacific First Federal Savings and Loan Association*, 138 F.Supp. 395, it was stated, "Of course it is conceded by all that the citizenship of a corporation organized under an Act of Congress does not make the corporation a citizen of any state. The general rule undoubtedly is that the citizen of a federal corporation created to operate in one of those states is national only. Such a corporation has no state citizenship for jurisdictional purposes unless Congress so enacts."

See also *Bankers Trust Co. v. Texas & P. R. Co.*, 241 U.S. 295, 60 L.Ed. 1010, *Fisher and Van Gilder v. First trust Joint Stock Land Bank*, 231 N.W. 671, and *Federal Intermediate Credit Bank v. Mitchell*, 277 U.S. 213, 72 L.Ed. 864.

Ogden First Federal Savings and Loan Association, which you mention, was chartered under the Home Owners Loan Act of 1933, in 1937, receiving its charter May 21, 1937. At that time it had outstanding loans of Nevada, and particularly in Clark County, totaling thousands of dollars. Section 5 (c) of the federal act provides, "That any association which is converted from a state chartered institution may continue to make loans in the territory in which it made loans while operating under the state charter." This provision of law was incorporated into the association's charter of May 21, 1937. In due course the association submitted to the Federal Home Loan Bank Board proof of its lending in Clark County and White Pine County, Nevada, while operating as a state chartered association with principal offices in Utah, and said board confirmed the association's lending rights in these two counties of Nevada.

It is to be noted that at the time of the granting of its federal charter, and upon its accelerated program after the war, there were no savings and loan associations in that area.

It appears that any act passed by the Legislature which attempts to discriminate between federally chartered savings and loan associations would be unconstitutional.

Both derive their power from the same source; both are subject to the same supervision and regulation by the Home Loan Bank Board. Therefore, to provide, as is done in [NRS 673.430](#) (5), that state rules and regulations apply to federally chartered associations which do not have their home office in Nevada, but do not apply to federally chartered associations whose home offices are in Nevada, cannot, in our opinion, be legally sustained.

Savings and loan associations which are federally chartered are supervised, as one court has put it, from the cradle to the grave. By regulation and by provision of the act itself the board tells federal associations where they can lend, when they can lend, and how much they can lend.

Where Congress has passed statutes which initiate regulation of certain activities, where effective regulation must wait upon the issuance of rules by an administrative body, in the interval before the rules are established, the supreme Court of the United States has held that the police power of the state may be exercised. But when the federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the court has said that a state regulation in the field of the statute is invalid even though that particular phase of the subject has not been taken up by the federal agency. (*Amalgamated Association of St. Elec. Ry. And Motor Coach Employees v. Wisconsin Employment Relations Board*, 340 U.S. 303, 71 S.Ct. 359.)

Not only does the Act of Congress which authorized the creation, operation, and supervision of federal savings and loan associations by the Home Loan Bank Board embrace the entire field, but the comprehensive rules and regulations adopted by the board clearly meet the test of covering the subject matter of the statute. Congress has the power to protect the instrumentalities which it has created. It seems clear that Congress has pre-empted the field, making invalid state statutes attempted to be invoked against federal savings and loan associations.

CONCLUSION

It is, therefore, the opinion of this office that Nevada cannot interpose its sovereignty so as to interfere with federally chartered savings and loan associations operating under rules and regulations of the Home Owners Loan Board, and that any act of the Legislature attempting so to do is unconstitutional.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

52 Public Employees Retirement—Opinion deals with the right of a member to have his accumulated annual leave credited to his service record: (1) in cases in which he discontinues service prior to gaining any retirement rights or qualifications; (2) in cases in which he retires from service after gaining retirement rights and qualifications; (3) in cases in which he retires from the service of one participating employer to immediately begin service with another participating employer.

CARSON CITY, July 17, 1963

MR. KENNETH BUCK, *Executive Secretary, Public Employees Retirement Board, P.O. Box 637, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BUCK: An employee of the State of Nevada, a member of the retirement system, plans to enter into retirement status and discontinue his active service

for the State of Nevada as of July 31, 1963. On that date, this employee will have accumulated in the neighborhood of 30 days of annual leave. It is contemplated that the sum representing this accumulated annual leave will then be paid to him in a lump sum payment, if such payment at that time will, under the circumstances, be in conformity with the law.

[NRS 286.510](#) sets the effective date of retirement, which regulates the due date of the first pension check, as “the last day of the calendar month in which application for retirement shall be filed with the board or the *last day of compensation*, whichever is later.” (Italics supplied.)

In A.G.O. No. 88 of July 25, 1955, the Director of the Budget was advised that lump sum payment in lieu of accumulated annual leave is compensation, and being compensation is subject to retirement deduction as is regular compensation.

Lump sum payments in lieu of annual leave have never been allowed to an employee while continuing his employment with the participating public employer, and may be received only in connection with employment termination.

The Legislature of 1963, in Chapter 399, effective July 1, 1963, amended [NRS 286.410](#) in such a manner as to provide that the employee member shall make contribution upon his entire salary in all cases. Formerly, the contribution was upon the entire salary, with provision, however, that it should be limited to \$600 per month. The contribution rate as to both employer and employee was increased from 5 percent to 5 3/4 percent.

Chapter 399, Statutes 1963, also amended [NRS 286.540](#) in such a manner as to permit the computation for retirement compensation to be made upon the average of the 3 highest consecutive salary years of the last 10 years of service, rather than upon the average of the 5 highest consecutive salary years of the last 10 years of service.

Thus the Legislature of 1963, in the two manners mentioned, greatly enlarged the service retirement allowance to those members who might serve for 3 or more years following the date (July 1, 1963) of increased contributions to the fund.

Since service retirement allowance is based upon a percentage of that portion of salary upon which contributions have been made ([NRS 286.540](#), as amended), and since accumulated annual leave may, upon discontinuance of employment, be paid in cash, which sum is also subject to deduction for the public employee contribution, the last year of service, in such cases would at first glance appear to show and permit a computation upon a salary of 13 1/2 months, or thereabouts, rather than upon 12 months of service. If the computation for service retirement allowance were made upon such a term of months, the legislative intent would be frustrated and defeated and an erroneous and excessive service retirement allowance would be fixed. On the other hand, a contribution having been made upon accumulated annual leave for the item public employees retirement, it could hardly be contended that the member would not be entitled to such accreditation. The purpose of this opinion will, therefore, be to reconcile these discordant concepts in respect to three distinct types of employees.

QUESTIONS

1. What are the rights of a member of the system as regards the accreditation of his accumulated annual leave time in cases in which, prior to being qualified to receive a service retirement allowance, he discontinues his employment with a participating member, with no intent to become an employee of another participating member of the system?
2. What are the rights of a member of the system as regards the accreditation of his accumulated annual leave time who discontinues his employment with a participating member, not to become an employee of another participating member, who, at the time of such separation, is fully qualified, in both age and length of accredited service, to receive his service retirement allowance?

3. What are the rights of a member of the system as regards the accreditation of his accumulated annual leave time who discontinues his employment with a participating member, with intent to become, without delay, an employee of another participating member of the system?

ANALYSIS

We first consider question number 1.

Under the provisions of [NRS 286.400](#) and [286.430](#), as amended, a member of the system may, upon termination of his employment, withdraw the amount credited to his account and thus terminate his membership in the system. A contribution upon the item of accumulated annual leave would be available, together with other sums formerly credited to his account, to constitute his withdrawal sum. This situation should, therefore, fall in the general rule of deduction for this item as enunciated in A.G.O. No. 88 of July 25, 1955.

Question number 2.

Under the ruling formerly mentioned, lump sum payments in lieu of accumulated annual leave are compensation, for purposes of public employee retirement contributions, by both employer and employee. Since they are such, an employee who has made the contribution upon a period of 1 1/2 months (or any other number of days) of compensation received in lieu of annual leave, cannot be denied credit to his service record for such contribution. However, a member may not receive the cash equivalent of accumulated annual leave during the term of his employment. To take his accumulated annual leave in cash at the end of his active service terminates his employment. Neither may a member have computed in his behalf as the pay for 1 year, for the purpose of fixing his retirement allowance, the equivalent of 13 1/2 months of income, or any other period in excess of 12 months. The result is as to such an employee, and upon his separation from the service of a participating public employer, the payment for accumulated annual leave must be deferred, and the regular wage must be continued, with deductions for public employee retirement, and otherwise, until his accumulated annual leave is exhausted, for under [NRS 286.510](#) the "date of his retirement shall be the first day of the calendar month in which his application for retirement shall be filed with the board or the last day of compensation, whichever is later."

Question number 3.

In respect to question number 2, above, we have shown that upon completion of service to a participating political subdivision, a member cannot obtain credit for 13 1/2 months of service income (or any sum in excess of 1 year salary) in computation of his annual salary for purposes of fixing his retirement allowance. We have also shown that it would be inequitable to deduct from the sum representing accumulated annual leave, moneys for the public employee retirement contribution, and deny credit to the member of the number of days represented by the deduction. However, in the case of the member with accumulated annual leave, who resigns the employment of one participating employer (this does not include a transfer between departments of the state government), to begin at once the employment with another participating public employer, it is not possible for the member to continue his employment with the earlier employer to a date subsequent to the date that his employment will commence with the second employer. The result of these conflicts is that as to such member, the sum representing accumulated annual leave must be paid to the retiring member, without deduction for this item, and without the granting of any service credit to such member for the period represented by the accumulated annual leave. Such a member will immediately make contributions to the public employees retirement fund under the new employment, from another political subdivision, without a time loss, and the matter of concluding a longer period than 1 year in the computation of annual salary, for the determination of the amount of retirement benefits, will be avoided.

CONCLUSIONS

Question number 1.

The member will be required to make the regular contribution to the public employees retirement fund, as a deduction from the cash sum representing his accumulated annual leave. The remainder of his accumulated annual leave after such deduction, and other deductions provided by law, will be available to such member without delay as of the time that he discontinues his active service to such participating member.

Question number 2.

Such a member must remain an employee of his public employer to the time of expiration of his accumulated annual leave. From the regular employee salary will come the regular employee deductions, including the deduction for contributions to the public employees retirement fund. The accredited time will extend to the date of expiration of the employment.

Question number 3.

Such a member is entitled to his compensation equivalent for accumulated annual leave at once upon the termination of his service, without any deduction for a contribution to the public employees retirement fund, and with the record date of his termination of employment the same as the date of the discontinuance of his employment.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

53 Insurance, Commissioner of—The provisions for the regulation of the sales of securities, generally, under Chapter 318, Statutes 1963, do not modify the powers of the Insurance Commissioner accorded by Chapter 682 of NRS in the formation or financing of domestic insurance companies.

CARSON CITY, July 24, 1963

MR. PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. HAMMEL: Under the provisions of [NRS 682.070](#) to [682.150](#) the successive steps, under the administrative supervision of the Insurance Commissioner, are set out for the organization of domestic insurance companies. The supervision powers of the commissioner under these sections are very specific and penetrating directed to the end of the protection of the public interest, in two respects, viz: (1) that the public be protected in the purchase of stock in the formation of insurance companies, by regulations that make more likely the success of such companies when formed, and (2) that the public be protected in the functioning of such companies, both as to stock ownership and as to policy protection, after the release of organization jurisdiction by the commissioner, in its operation as an insurance company.

The legislature of 1963 enacted Chapter 318, which chapter provides generally for the regulation of the issuance and sale of securities in Nevada, intrastate.

QUESTION

Do the provisions of Chapter 318, Statutes 1963, in any respect amend or modify the powers and functions of the Insurance Commissioner of the State of Nevada accorded

by Chapter 682 of NRS, with reference to the formation and functioning of domestic insurance companies?

ANALYSIS

The provisions of Chapter 318, Statutes 1963, are very general in the regulation of the sale of securities, intrastate. No provisions therein have any direct or inferential reference to the formation or regulation of the sales of the securities of domestic insurance companies. Under Chapter 682 of NRS the power in respect to insurance companion is accorded to one whose experience, knowledge and concentration is upon insurance companies, and is a much more specific and detailed control than accorded to the administrator under the provisions of Chapter 318. If Chapter 318 were construed as repealing by implication (through necessary repugnance) the regulatory powers accorded to the commissioner under Chapter 682 of NRS, the result would be a relaxation of the controls over the formation of a domestic insurer, for the administrator would have fewer and less specific powers in this respect than those granted to the commissioner under Chapter 682 of NRS.

It could not be presumed that the Legislature intended any such unhappy result.

When statutes contain conflicting provisions they must be interpreted in such a manner as to be reconciled and to coexist if no strained construction or adverse result flow therefrom.

Another principle of statutory construction of conflicting statutes, that ordinarily the specific controls over the general, leads us to the same conclusion in this instance, namely that the powers of the Commissioner of Insurance as conferred in [NRS 682.070](#) to [682.150](#) are not abridged or modified by the provisions of Chapter 318, Statutes 1963.

CONCLUSION

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

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

54 Insurance, Group Act of 1963, Chapter 470—“Permanent and full-time” employment, under the act limiting the persons who are eligible to participate, has reference to the quality of the employment, and not the length of time that an individual employee has served.

CARSON CITY, July 29, 1963

MR. EARL NICHOLSON, *Chairman, Committee on Group Insurance, Department of Insurance, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. NICHOLSON: The Legislature of 1963 enacted Chapter 470, which provides for contributions by the State toward the premiums to be paid by individual officers and employees of the State who may elect to participate in group insurance coverage. The “Group Insurance Act of 1963” provides for and empowers a committee to act in the procurement of such insurance, and Section 6 of the act makes provision for eligibility of such employees to participate.

A difference of opinion has arisen among the members of the committee as to the initial persons entitled under the law to participate. Section 6, Chapter 470, Statutes 1963, provides:

Sec. 6. 1. Every state officer or employee who is employed on a permanent and full-time basis on July 1, 1963, shall be eligible immediately to participate in the state's group insurance program.

2. Every officer or employee of the state who commences his employment after July 1, 1963, shall be eligible to participate in such program upon the completion of 6 months of full-time employment.

One group of the committee contends that of those officers and employees employed by the State on or before July 1, 1963, on a permanent and full-time basis, only those, who on July 1, 1963, have served more than 6 months and have passed the probationary period, are eligible to be enrolled in the original group of insured persons. The argument would run that such persons originally ineligible, by reason of a lack of seniority in service, would individually become eligible for enrollment under such group coverage after 6 months of permanent and full time employment. It is proposed that the original group policy become effective on September 1, 1963.

The other group of the committee urges that all officers and employees of the State, who on July 1, 1963, were "employed on a permanent and full-time basis," are eligible immediately to participate in the State's group insurance program.

QUESTION

Are all officers and employees of the State, who were employed on or before July 1, 1963, on a permanent and full-time basis, eligible for immediate enrollment under the original group insurance program as authorized by Chapter 470, Statutes 1963?

ANALYSIS

Clearly the group insurance program is open to both officers and employees of the State. It is available to elected officers and unclassified employees, who do not work under a 6 months probation requirement, in addition to being available to classified employees.

The language "permanent and full-time basis," is significant and appears to have reference to the quality of the employment rather than to the length of individual service. The language "full-time basis" would clearly be so construed having reference to the type of position held. The descriptive word "permanent" also has reference to the type of position, and distinguishes it from temporary or seasonal and renders persons holding the latter type of position not eligible.

If this were not the meaning intended by the Legislature, the word "immediately" would serve no purpose other than to confuse. The word "immediately" has special significance when construed in light of the provisions of subsection 2.

This construction makes the administration of the group insurance program less burdensome than would be the case if all employees on July 1, 1963, would be required to be classified, in respect to the length of time that they have served in the present employment. Under this construction no classification will be necessary as to such employees, other than to determine that the position held was of a "permanent" and "full-time" nature.

Under this construction those officers and employees who are employed by the State on July 2, 1963, or any subsequent date, will be eligible for enrollment in the group insurance program, only after they have individually completed 6 months of full-time employment.

CONCLUSION

All officers and employees of the State, employed on or before July 1, 1963, on a permanent and full-time basis, by which we mean a permanent and full-time position, as distinguished from the length of time that the employee has held it, as eligible for immediate enrollment in the group insurance program authorized by Chapter 470, Statutes of 1963.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

55 The Public Service Commission has jurisdiction over airship carriers operating under contract with the federal government.

CARSON CITY, July 30, 1963

HON. J. G. ALLARD, *Chairman, Public Service Commission, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ALLARD: The Nevada Public Service Commission is of the opinion that Senate Bill No. 129, now Chapter 373, Statutes 1963, places airship contract carriers under the jurisdiction of the said commission, that this provision of said statute does not exempt contract carriers entering into a contract with the federal government for the transportation of government personnel or property and that no such exemption is being made in Chapter 704 NRS governing the regulation of public utilities.

QUESTION

Does the Public Service Commission of Nevada have jurisdiction over airship contract carriers operating under contract with the federal government?

ANALYSIS

[NRS 703.150](#) sets forth the duties of the Public Service Commission.

703.150 General duties of commission. The commission shall supervise and regulate the operation and maintenance of public utilities, as named and defined in chapter 705 of NRS, in conformity with the provisions of chapter 704 of NRS.

[NRS 704.020](#) (1)(d) prior to amendment defined in public utility:

(d) Radio or broadcasting instrumentalities and airship common carriers.

[NRS 704.020](#) has been amended by Chapter 373, Statutes 1963, so as to include airship contract carriers. This amended statute became effective on July 1, 1963.

[NRS 704.020](#) as amended by Chapter 373, Statutes 1963, defines a public utility:

(e) Radio or broadcasting instrumentalities except those subject to the jurisdiction of the Federal Communication Commission *and airship common and contract carriers.* (Italics supplied.)

The statutes as set forth above leave no doubt that the Public Service Commission, since the effective date of the amendment of [NRS 704.020](#) which is July 1,

1963, has the power and authority to supervise and regulate the operation and maintenance of airship common and contract carriers engaged in intrastate commerce.

The aircraft contract carrier involved herein is or will be operating under a contract with the federal government. To make a determination as to whether the Public Service Commission has jurisdiction over said aircraft contract carrier we must first ascertain whether said aircraft contract carrier is a private contractor or an instrumentality of the federal government. It is conceded that the State has no power to tax or regulate instrumentalities of the federal government. The question now to be determined is whether an aircraft carrier operating under contract with the federal government is entitled to the immunities afforded an instrumentality of the federal government.

In *ex parte marshal*, 77 So. 869, L.R.A. 1918C 944, it was held that a contract with commander of military camp to convey officers and soldiers to and from camp was not the grant of such a franchise as would exempt corporation from paying business license. In *Orchard v. Northwest Airlines*, 51 N.W.2d 645, it was held that a commercial airline providing services for or on behalf of the United States pursuant to a written contract did not solely by virtue of such contract become the agent of the United States so as to gain governmental immunity for its acts under the contract.

In *U.S. v. City of Detroit*, 355 U.S. 466 (1957), it was held that the government's constitutional immunity does not shield private parties from state taxes imposed on them merely because part or all of the financial burden of the taxes eventually falls on the government. The court went on to say that the tax here involved is not levied on the government or its property but on the private lessee who uses the property in a business conducted for profit.

In *American Airways v. Wallace*, 57 Fed.2d 877, affirmed 287 U.S. 565, it was held that a privilege tax was not invalid insofar as an airplane carrier of mails was concerned on ground that the statute did not impose a tax upon a governmental instrumentality or agency, nor was it a burden upon or regulation of a governmental agency.

It will be conceded that where a state has jurisdiction over an industry it has the power to regulate such industry. The contract carrier in question herein intends to operate aircraft between Las Vegas and the AEC site in Nevada, definitely an intrastate operation. The contract carrier is a private party and does *not* by virtue of its contract with the federal government become a federal instrumentality. It therefore follows that the Public Service Commission *has* jurisdiction over airship contract carriers operating under contract with the federal government.

CONCLUSION

It is the opinion of this office that the law as amended by Chapter 373, Statutes 1963, gives the Public Service Commission jurisdiction over airship contract carriers operating under a contract with the federal government in the State of Nevada.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By GABE HOFFENBERG, *Chief Deputy Attorney General*

56 Municipal Judges; [NRS 1.270](#) Interpreted—Judges appointed under the provisions of Chapter 377 of the 1963 Statutes of Nevada cannot be a partner of lawyers acting as counsel in any of the courts of this State. Opinions and decisions handed down prior to resignation or dissolution of partnership valid, on the theory judges were “de facto” judicial officers.

CARSON CITY, July 30, 1963

HON. WALTER J. RICHARDS, *Municipal Judge, Las Vegas, Nevada*

DEAR JUDGE RICHARDS: You have directed to this office an inquiry concerning the interpretation of [NRS 1.270](#) which reads as follows:

No judge or justice of the peace shall have a partner acting as attorney or counsel in any court of this state.

You point out that the Legislature, by the enactment of Chapter 377, Statutes 1963, which amended Section 28 of Chapter 132 of the 1911 Statutes, provided for more than one department in the Municipal Court of the City of Las Vegas.

Chapter 132 of the 1911 Statutes was amended by conferring coextensive and concurrent jurisdiction of judges presiding over the departments of the municipal court. The amendment provides that additional appointed judges shall have the same qualification required for the elected municipal judge, that is, a resident of the city for not less than 1 year and who shall be a qualified elector of said city.

QUESTIONS

You ask these questions:

1. Does [NRS 1.270](#) mean that the acting judges who have partners in the practice of law in the State of Nevada have to resign as municipal judge or dissolve their partnership?
2. Does [NRS 1.270](#) have any effect on the decisions already handed down by these additional, nonelective judges?
3. Can it be claimed that the court in which the acting judges presided did not have jurisdiction?

ANALYSIS

An analysis of question number 1 reveals that the Legislature did not make any exceptions to the provisions of [NRS 1.270](#) in the amendments passed at the last session of that body. The words "No judge" are all inclusive where municipal judges are concerned, be they elected or appointed. Therefore, "No judge * * * shall have a partner acting as attorney or counsel in any court of this state" can be resolved in only one way, pending amendatory legislation, to wit: a person appointed municipal judge in accordance with Chapter 377, Statutes 1963, if he has a partner acting as attorney or counsel in any of the courts of this State, must do one of two things—(1) dissolve the partnership, or (2) resign as municipal judge.

The judges who have acted and who have handed down decisions, though they have a partner acting as counsel in one or all of the courts of this State, have acted in good faith. They have, before taking office, met the requirements of qualification as to residence and voting privileges and have subscribed to an oath imposed by law. They have been "de facto" judges, and as such it is the opinion of this office that their opinions and decisions would stand.

For the reasons set forth in the preceding paragraph, we feel that the court itself had jurisdiction under the law as enacted by the Legislature.

OPINION

It is, therefore, the opinion of this office that question number 1 should be answered in the affirmative, and that questions numbers 2 and 3 should be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

57 Optometry, State Board of—Board has authority under [NRS 636](#) to authorize special examinations or re-examinations of failed subjects in optometry, upon due notice as provided by law.

CARSON CITY, July 31, 1963

DR. ROBERT E. ROBINSON, *Vice President, Nevada Board of Optometry, 919 East Charleston Boulevard, Las Vegas, Nevada*

DEAR DR. ROBINSON: You have requested of this office of certain sections of Chapter 636 of the Nevada Revised Statutes.

You are specifically interested in an interpretation of [NRS 636.125](#) and [636.170](#). [NRS 636.125](#) reads as follows:

Rules and regulations. The board shall have the power to make and promulgate rules and regulations, not inconsistent with the provisions of this chapter, governing its procedure, the examination and admission of applicants, the granting, refusal, revocation and suspension of licenses, and the practice of optometry.

[NRS 636.170](#) is as follows:

Annual and special examinations: Time and place. The board shall:

1. Conduct a regular annual examination, and may conduct a special examination when it deems that circumstances warrant such examination.
2. Fix and announce the time and place of any examination at least 30 days prior to the day when it is to be commenced.

Your specific question is whether the board has power to hold a special examination at times other than the designated yearly examination, and to designate what such examination shall consist of.

ANALYSIS

A careful reading of [NRS 636.125](#) reveals that the board shall have power to make and promulgate rules and regulations, not inconsistent with the provisions of Chapter 636 * * * governing the examination and admission of applicants, * * *.

This section must be construed in juxtaposition with [NRS 636.170](#). When the latter section is read it will be noted that *regular* annual examinations shall be conducted, but that the board may conduct special examinations when it deems the circumstances warrant such an examination. The special examination, like the regular annual examination, must be noticed 30 days in advance of the day when it is to be commenced.

It would not appear that any inconsistency exists between the two sections. It is apparent that the Legislature intended to give the board the widest latitude in determining by regular or special examinations those qualified to engage in the practice of optometry, and to determine whether circumstances warrant a special examination.

If a special examination is to be given in failed subjects ([NRS 636.195-636.200](#)), the applicant should file a request to be re-examined and pay the required fee. The

application may be made after the date of the examination is set, but must bear a date 2 weeks prior to the examination.

CONCLUSION

It is the opinion of this office that the Nevada State Board of Optometry has the authority under Chapter 636 of Nevada Revised Statutes to conduct special examinations or re-examinations in the practice of optometry, when said board deems that circumstances warrant such examinations, and when due notice is given as required by the statute.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

58 Public Service Commission of Nevada—Opinion reconciles statutes respecting the jurisdiction and duties of the Public Service Commission over water and sanitation districts in regard to: (a) certificates of public convenience and necessity, (b) power to levy assessment for the regulatory fund of commission. Chapters 297 and 424, Stats. 1963 construed.

CARSON CITY, August 1, 1963

HON. J. G. ALLARD, *Public Service Commission of Nevada, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ALLARD: Prior to the legislative amendments of 1963, water and sanitation districts were autonomous entities under the provisions of Chapter 311 of NRS. The creation of such districts was instituted by the filing of a petition in the district court of the county in which the district was proposed to exist. Upon the hearing the court being satisfied that the mandatory provisions of the statute ([NRS 311.040](#)) had been alleged and established, ordered an election, at which the electors voted for or against the creation of the district; also for five taxpaying electors of the district to constitute the original board of directors. Thereafter, assuming an affirmative majority for the creation of the district, the board organized, determined its policy as regards facilities and services to be provided and rates to be charged.

No certificate of public convenience and necessity was required or issued, neither were rates of service fixed by the Public Service Commission of Nevada. The district was in all of these matters self-governing under the provisions of Chapter 311 of NRS.

The Legislature of 1963 enacted Chapter 297 (effective July 1, 1963), under the provisions of which it extended the power and authority of the Public Service Commission of Nevada as regards “rates charged and services and facilities furnished” in regard to water and sanitation districts. This amendment to Chapter 311 of NRS, in Section 1, provides:

Each water and sanitation district shall be under the jurisdiction of the public service commission of Nevada in regard to rates charged and services and facilities furnished in the same manner as a public utility as defined in [NRS 704.020](#).

This chapter (Chapter 297, Statutes 1963) amended [NRS 311.130](#), in respect to the powers of the water and sanitation districts, in such a manner as to remove from the governing body of such districts a power formerly possessed, namely, the power to

determine the facilities to be employed and the charges to be made for its services. This chapter does clearly show a legislative intent to accord to the Public Service Commission of Nevada the power to regulate service and rates of such entities under Chapter 311 of NRS.

The Legislature of 1963 enacted Chapter 424 (effective April 26, 1963), under the provisions of which it amended Chapter 704 of NRS, entitled "Public Utility Regulation," in such a manner as to authorize the Public Service commission of Nevada to place an annual assessment (not to exceed 1 1/2 mills per dollar of gross annual revenue received) upon all receipts from intrastate operations of all Nevada public utilities with the exception of motor vehicle carriers.

This act provides the manner of placing such assessments upon utilities, limited the amount thereof, provided for the creation of a nonreverting, regulatory fund, and the manner in which the fund is authorized to be expended by the Public Service Commission of Nevada.

Under Section 7, Chapter 424, Statutes 1963, it is provided that such districts are "subject to the jurisdiction, control and regulation of the commission for the purposes of [NRS 704.330](#), [704.350](#) to 704.310, inclusive, 704.430 and sections 2 to 5, inclusive, of this act, * * *," but not otherwise.

The sections referred to ([NRS 704.330](#), and 704.350 to 704.410, inclusive), are sections requiring the granting of certificates of public convenience and necessity. Whereas, Sections 2 to 5, inclusive, of Chapter 424, Statutes 1963, are provisions regulating the assessment of and collection of an annual assessment on the gross operating revenues of utilities, as the so-called "regulatory fund," and in respect to the authorized expenditure of the same.

QUESTIONS

1. Are water and sanitation districts, which were formerly or may hereafter be organized under the provisions of chapter 311 of NRS, required to obtain from the Public Service Commission of Nevada a certificate of public convenience and necessity?

2. Are water and sanitation districts, over which the commission acquired a limited jurisdiction of July 1, 1963 (Chapter 297, Statutes 1963), to be subjected to a 1 1/2 mill levy upon the gross revenues of such district for the calendar year ending December 31, 1962?

ANALYSIS

[NRS 704.330](#) in part provides:

704.330 (Public utility to obtain certificate of public convenience or necessity; exceptions; terms and conditions)

1. Every public utility owning, controlling, operating or maintaining or having any contemplation of owning, controlling or operating any public utility shall, before beginning such operation or continuing operations or construction of any line, plant or system or any extension of a line, plant or system within the state, obtain from the commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction.

[NRS 704.340](#) provides:

704.340 (Municipalities not required to obtain certificates of public convenience) A municipality constructing, leasing, operating or maintaining any public utility shall not be required to obtain a certificate of public convenience.

As formerly mentioned, Section 7 of Chapter 424, Statutes 1963, does require that “every supplier of services described in this chapter” shall obtain a certificate of public convenience and necessity. We are of the opinion that this provision controls and that the language “municipality” as used in [NRS 704.340](#) must be construed to include only “cities” as this term is used according to usual language and understanding.

* * * * *

Water and sanitation districts are placed under the limited jurisdiction of the Public Service Commission of Nevada by the provisions of Chapter 297, Statutes 1963, which chapter became effective on July 1, 1963.

Assessments under the provisions of Chapter 424, Statutes 1963, are due to be paid on July 1 of each year and “Notice of the assessment and the amount thereof shall be given no later than June 1 of each year to each public utility assessed * * *.” Although the section provides that “failure to notify any such utility shall not invalidate the “assessment,” this provision would not warrant the levy (as to such utilities) for there was not only no notice given but also no assessment was made.

Statutes are presumed to be prospective only unless it clearly and strongly and imperatively appears from the act itself that the Legislature intended that it should be retrospective in its operation. *Progress v. District Court*, [53 Nev. 386](#), 2 P.2d 129.

It would appear therefore that an assessment would be made not later than June 1, 1964 (subsection 2 of Section 3, Chapter 424, Statutes 1963) in respect to water and sanitation districts (Chapter 297, Statutes 1963) as provided in Section 7, Chapter 424, Statutes 1963, and that an assessment would not be authorized for an earlier year.

Although Chapter 424, Statutes 1963 (authorizing the assessment), was effective on April 26, 1963, the commission could not properly make the assessment in respect to water and sanitation districts, which the statute provides shall be made not later than June 1 of each year, for the reason that the commission had no jurisdiction over water and sanitation districts (under Chapter 297, Statutes 1963), until July 1, 1963.

CONCLUSIONS

1. Water and sanitation districts formerly or that may hereafter be organized, are required to obtain from the Public Service Commission of Nevada, a certificate of public convenience and necessity.

2. The provisions of Chapter 424, Statutes 1963, authorizing the Public Service Commission of Nevada, to place an assessment upon utilities of not to exceed 1 1/2 mills on each dollar of gross operating revenue, of its intrastate operation during the preceding calendar year, are effective as to water and sanitation districts for the year ending December 31, 1963, and not earlier.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

59 Public Employees Retirement System—When a Nevada public employee receives accreditation for his public employment under Old Age and Survivors Insurance of the Social Security System, this service record remains after the public employer becomes a part of the state system, and prohibition against dual coverage prevents the accreditation of the service time formerly

accredited under OASI. Sections 286.360; 286.365; 286.450; 287.050; and 287.190 construed.

CARSON CITY, August 8, 1963

MR. KENNETH BUCK, *Executive Secretary, Public Employees Retirement Board, P.O. Box 637, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BUCK: The sequence of events recited herein is significant.

The 74th Congress of the United States enacted Chapter 531 (U.S. Statutes at Large, p. 620) which was approved on August 14, 1935, which act, with subsequently enacted amendments, is commonly known as the "Social Security Act."

The 43d Session of the Nevada Legislature enacted Chapter 181, approved on March 27, 1947, which created the Public Employees Retirement System and established a retirement system for public employees.

The 47th Session of the Nevada Legislature enacted Chapter 420, approved March 29, 1955 ([NRS 287.050](#) to [287.240](#)), which provided for the participation by employees of the State and its political subdivisions in the old age and survivors insurance, authorized by the provisions of the Social Security Act, in those cases in which the public employer was not covered by the state retirement system or where a group of employees were ineligible to participate in the state system by reason of the circumstances of their employment. Section 6 thereof ([NRS 287.190](#)) provided that persons eligible to participate in the Public Employees Retirement System established by the State, were specifically excluded from coverage under OASI.

Chapter 181, Statutes 1947, which is the original retirement act, prior to any amendment thereto, provided (Section 15, subsection 3) that: "Credit shall be granted a member of the system for all continuous service which he rendered to the state or to his employer prior to the time it commences to participate in the system." The provision remains a part of the law. See: Subsection 3 of [NRS 286.450](#).

A political entity which is eligible for inclusion in the state retirement system may elect through its employees not to participate in the system ([NRS 286.350](#)). Similarly, public employees, whose employment as to hours qualifies them for inclusion in the system, may have been excluded through failure to participate under regulations described in [NRS 286.360](#). Similarly, certain employees may have been excluded, e.g., the Nevada National Guard, because their classification as state employees for purposes of inclusion under the Public Employees' Retirement Act, has been doubtful. See: Chapter 161, Statutes 1960, [NRS 286.365](#). The means and formalities requisite of such employing entities, for full and complete integration into the system, is provided, however, by appropriate statutory provisions.

The department of the executive branch of the United States Government of Health, Education, and Welfare has advised that upon the integration of a local political entity under a state system of retirement, in which the employees were formerly covered by the Old Age and Survivors Insurance system of the Social Security Administration, that the record of coverage under federal law is not stricken from the federal records, and the individual may under proper circumstances utilize that service record later in the completion of retirement requirements under federal law. We are also advised that many states do not have such a provision prohibiting dual coverage and that "over three million State and local government employees have combined protection under social security and a State or local retirement system." We are informed that there is nothing contained in the federal law to prevent dual coverage in respect to a given period of service.

Under the provisions of Chapter 420, Statutes 1955, the Legislature authorized the civilian employees of the Nevada National Guard to be classed as employees of the State for purposes of coverage under OASI, and as previously stated, such employees were

authorized by the Legislature of 1960 (Ch. 161) to be enrolled under the provisions of the Nevada Public Employees Retirement System.

QUESTIONS

1. Assume that a political subdivision of the State of Nevada, the employees of which have been covered under OASI, renounces such coverage and applies for and is granted admittance to the state retirement system under [NRS 286.360](#)(1), shall the retirement system grant credit toward retirement for all service performed for the public employer prior to participation in the system as provided in [NRS 286.450](#)(3)?

2. If the answer to question number 1 is in the negative, may we grant service credit for all portions of time not accredited under OASI when the granting of such credit is consistent with provisions of the retirement act?

ANALYSIS

On the one hand, we have the provision that credit shall be granted for all former service ([NRS 286.450](#)(3), last amended by Chapter 399, Statutes 1963) which provision was part of the original law, (this provision does not recite, however, that credit is to be given if the same service is credited to another retirement system) and on the other hand, we have the provision ([NRS 287.190](#)) taken from a statute of 1955, that no service of a public employee shall be credited under OASI when the position would be eligible to participate in the Nevada State Public Employees Retirement System. The converse is not here stated, namely that no service of a public employee shall be credited to the state system when the same service, has previously been credited to the federal system under OASI.

However, the legislative intent in respect to avoiding dual coverage is clear as respects the integration into the state system of the civilian employees of the Nevada National Guard, under the provisions of [NRS 286.365](#), which provides:

286.365 (Eligibility of civilian employees of Nevada National Guard in system.)

1. Notwithstanding the provisions of any other section of this chapter, the Nevada National Guard shall be regarded as an employing agency of the State of Nevada for the purpose of membership of the civilian employees of the Nevada National Guard in the system.

2. Membership of such civilian employees of the Nevada National Guard in the system may be retroactive at the option of the individual employee upon payment of all employee contributions for prior service. Contributions for prior service may be paid as provided in [NRS 286.440](#).

3. No civilian employee of the Nevada National Guard shall be entitled to become or continue as a member of the system *if he has or obtains retirement coverage* for his position as such civilian employee under a retirement program administered by the United States Government, *to the end that no dual coverage shall result.*" (Italics supplied.)

In view of the fact that the original retirement statute of 1947 made provision for the accreditation of all public service time, including the time served before the public employer became a member of the system, and made this provision prior to the time that the Legislature provided (Chapter 420, Statutes 1955, [NRS 287.050](#) et seq.) for state and other public employees to be covered by OASI in certain cases, and in view of the further fact that the Legislature in 1947 did not specifically recite (and surely did not intend) that credit should be given for time that might formerly have been credited to another retirement system, it is our opinion that as regards public employees generally (apart from the provisions affecting civilian employees of the Nevada National Guard) that the Legislature did not intend that credit for service should be given under the state system,

when the same period of service had formerly been credited under OASI and did not intend that “dual coverage should result” in any case.

Clearly, the Legislature did not intend as regards the Nevada National Guard that there should be “dual coverage” in respect to the accreditation of service time under the state retirement system, in cases in which the credit had formerly been given (without the possibility of deletion) under OASI.

We find nothing in the statutes which would preclude or prevent the granting of service credit for all portions of time not accredited under OASI, when the granting of such credit, in a given case, is consistent with the provisions of the retirement act.

CONCLUSIONS

1. When a political subdivision of the State of Nevada, having been enrolled under OASI of the social security system, applies for and is granted admittance to the state retirement system, there can be no dual coverage of service under OASI having been entered, without possibility of deletion, the same service time cannot be accredited under the Public Employees Retirement System of the State of Nevada. Question number 1 is answered in the negative.

2. The retirement act (Ch. 286 of NRS) authorizes the accreditation of all public service, performed prior to the admittance of the public employer into the system, excepting and excluding only the public service which has been indelibly accredited under OASI. Question number 2, is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

60 Governor—Civil Rights—Governor of Nevada has no power under [NRS 233](#) to instruct regulatory commissions and licensing boards to revoke licenses, or take similar action, when discrimination is found in an area over which such commissions and boards exercise jurisdiction.

CARSON CITY, August 12, 1963

HON. GRANT SAWYER, *Governor of Nevada, Carson City, Nevada*

DEAR GOVERNOR SAWYER: Under date of August 1, 1963, you have requested this office to advise you as to the extent of your authority, under Chapter 233 of the Nevada Revised Statutes, to instruct state regulatory commissions and licensing boards to revoke licenses, or take similar action, when discrimination is found in areas over which they exercise jurisdiction.

ANALYSIS

The Governor, like other constitutional officers, has only those powers delegated to him under the Constitution, or assigned to him by legislative action.

Under Article V, Section 1, of the Constitution of Nevada, “The supreme executive power of this State shall be vested in a Chief Magistrate who shall be Governor of Nevada.”

This executive power is delineated by Sections 5 through 11 of Article V. of the Constitution.

Section 5 makes the Governor the Commander in Chief of the State military forces, except when they shall be called into the service of the United States.

Under Section 6 he may request information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices.

Section 7 imposes upon the Governor the responsibility of seeing that the laws are faithfully executed.

He has the power, under Section 8, to fill vacancies in public office pending an election.

Under Section 9 he may call special sessions of the Legislature.

He has the power, under Section 10, to recommend expedient legislation by his message to the Legislature.

In case of a disagreement between the two houses of the Legislature, he may designate the time of final adjournment under the provisions of Section 11.

The Governor has certain extraordinary powers granted to him by the Legislature through various statutes hereinafter referred to.

Under [NRS 6.135](#) the Governor may call upon a district judge to impanel a grand jury for the limited purpose of investigating state affairs and state offices and employees.

[NRS 179.210](#) through 179.300 deals with the power of the Governor to grant extradition.

Holidays may be proclaimed by the Governor under [NRS 233.130](#).

In case the public interest requires it, the Governor may close state banks and other financial institutions for definite periods of time, under [NRS 223.140](#), upon request of the State Board of Finance, save that banks may choose to remain open upon notice to the Governor and consent of the State Board of Finance.

The sale or lease of property belonging to the University of Nevada must be approved by the Governor under [NRS 396.430](#).

The Governor has the power to designate monumental landmarks under the authority of [NRS 407.120](#).

Under Chapter 414 of the Nevada Revised Statutes the broadest possible powers are given the Governor. In Attorney General's Opinion date December 13, 1957, we said of that act, "There can be no question but that the Legislature intended to give to the Governor the broadest possible powers consistent with constitutional government in a time of dire emergency." This is the Civil Defense Act.

The position of the Governor in the State is analogous to that of the President in the United States. The limitation of the President's power is clearly discussed in *Youngstown Steel and Tube Co. v. Sawyer*, 103 F.Supp.574, as affirmed 343 U.S. 579, 96 L.Ed. 1153. The language of the court is appropriate to this occasion, "The President can exercise no power which cannot be fairly or reasonably traced to some specific grant of power, or justly implied and included within such express grant as proper and necessary to its exercise; such specific grant must be either in the Federal Constitution or in an Act of Congress passed in pursuance thereof; and there is no undefined residuum of power which the President can exercise because it seems to him to be in the public interest."

The court further remarked, "The theory that the President not only has the right but the duty to do anything that the needs of the nation demand, unless such action is forbidden by the Constitution or Acts of Congress, is not in accord with our theory of government of laws rather than of men."

Our Supreme Court in the case of *State v. Dickerson*, [33 Nev. 540](#), in discussing the issuance of a writ of mandate to compel Governor Dickerson to accept North Carolina bonds, which he felt to be worthless, cite principles which are as applicable to our Civil Rights Act as they were to the legislative act requiring the acceptance of the North Carolina bonds. The court said, "If it be admitted that certain powers are vested in the governor by the constitution, which neither the legislature nor the courts can control, this act (the act accepting the gift of the bonds from N.C.) in no way relates to such powers,

and is not governed or limited by any provision of the constitution, unless it be section 7, article 5, which states that ‘he shall see that the laws are faithfully executed,’ and the one giving him the right to recommend to the legislature that this or any other act be repealed.”

The Legislature has passed an act now known as Chapter 233 NRS (Chapter 364, Statutes 1961), which is a mere declaration of public policy with regard to civil rights. It provides for a Commission on Equal Rights of Citizens, and provides that said commission shall receive and investigate complaints and initiate investigations into tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, national origin or ancestry, and provides that the commission may hold hearings, private or public, with regard thereto. The results of such findings are to be communicated to the Governor with the commission’s recommendations. The commission is further directed to make biennial reports to the Governor and the Legislative Counsel, with the direction to the latter that copies of such report shall be delivered to members of the Legislature.

As in the Dickerson case cited above, it can be seen that this act in no way relates to the constitutional powers of the Governor. Even under Section 7 of Article V, if the Governor studies the report of the commission and makes recommendations to the Legislature, he has fulfilled the duties imposed on him constitutionally.

None of the acts of the Legislature giving him extraordinary powers, as set forth at the outset of this opinion, touch upon his power to instruct state regulatory commissions and licensing bureaus to revoke licenses, or take similar action, when discrimination is found to exist in an area over which the commissions or boards exercise jurisdiction.

Granted that the legislative act leaves a great deal to be desired in the enforcement of civil rights, yet it is the Legislature’s determination and not the Governor’s. The Chief Executive may well feel that the Legislature has sired a law without teeth, but it would appear that he can only make recommendations to the Legislature as how to effect better public relations with all peoples by corrective legislation. To do otherwise would place him in the position of usurping the law-making power of the Legislature. As was said in the Dickerson case, “Although the opinions of the lieutenant and acting governor, coming from the highest executive officer of the state, are entitled to great respect, there is nothing under our system of government which places him on a pedestal above the laws enacted in accordance with the provisions of the constitution by the people’s representatives in the legislature assembled.”

The limitation of the Governor’s powers in instances such as the present one is further expressed by the court in the same opinion. They say, “The fact that with the best of motives, and on the highest moral grounds, he may disagree with the will of the legislature as expressed in the statute cannot justify his failure or refusal to perform an act clearly required by its terms.” Ipso facto the Governor could not take steps not expressly given him in [NRS 233 in](#) the absence of a constitutional directive, or amendatory legislation.

In *Wallace v. City of Reno*, [27 Nev. 71](#), the Nevada Supreme Court held that the people, and through them the Legislature, had supreme power in all matters of government, where not restricted by constitutional limitations. These principles are applicable to the Chief Executive, and he is as void of power as the courts to set aside or disobey statutes because he may deem them insufficient, unwise or inexpedient.

The Legislature has failed to enact legislation to adequately guarantee civil rights in Nevada. It is upon this body and not the Governor that the onus must fall. Until legislation is enacted to supplement [NRS 233](#), making discrimination, when proved, punishable by revocation of licenses, fine or imprisonment, bringing the Governor into the picture where he can insist that such penalties be invoked in accordance with his powers under Section 7, Article V, of the Constitution of Nevada, he can only enforce the weak and inefficient statute now on our books.

CONCLUSION

It is, therefore, the opinion of this office that the Governor of Nevada has no power under [NRS 233](#) to instruct regulatory commissions and licensing boards to revoke licenses, or take similar action, when discrimination is found in an area over which such commissions and boards exercise jurisdiction.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

61 County Hospitals—A general improvement district, formed under Title 25 of NRS, would not have authority to issue general obligation bonds, for the purpose of building and governing a hospital. Title 25 of NRS and Chapter 450 construed.

CARSON CITY, August 12, 1963

HON. JOSEPH O. MCDANIEL, *District Attorney, Elko County, Elko, Nevada*

STATEMENT OF FACTS

DEAR MR. MCDANIEL: The County of Elko has a county hospital located in the City of Elko, presumably built and operated in conformity with the provisions of Chapter 450 of NRS.

Certain citizens and officials of the city and community of Wells, desire to cause the building of a hospital to be located in the City of Wells. They have tentatively agreed upon the geographic outlines of an improvement district, proposed to be created, to be fully located in Elko County. It is proposed that such improvement district raise money through the sale of its general obligation bonds, in an amount of approximately \$250,000, the proceeds to be used for the building of the hospital.

QUESTION

May a general improvement district be created, under Title 25 of NRS, with authority to issue general obligation bonds, for the purpose of building and governing a hospital?

ANALYSIS

Title 25 of NRS is entitled "Public Organizations for Community Service." This title contains 10 chapters, numbered from Chapter 309 to 318 inclusive.

Local improvement districts, (Ch. 309 NRS) may be formed only for the (1) construction of power plants and distribution of electrical energy therefrom, or (2) construction of a sewer system, or (3) the construction or acquisition of a water supply for domestic purposes. [NRS 309.030](#).

Sewage, water, and garbage districts (Ch. 310 NRS) may be formed only for the establishment of sewage, water, or garbage service or facilities or some combination thereof. [NRS 310.030](#).

A district may be formed under Chapter 311 for the purposes only of water or sewer services, or a combination of such. [NRS 311.020](#) (3).

The sole economic good sought or authorized to be achieved under Chapter 312 of NRS is the creation and government of facilities for the distribution of electrical energy. [NRS 312.050](#).

Mosquito abatement districts (Ch. 313) are limited in function in accordance with the title, as are public cemetery districts (Ch. 314).

The law of housing authorities (Ch. 315) was a war measure, and is limited to the supplying of residential housing.

The creation and functioning of swimming pool districts (Ch. 316 NRS) and television maintenance districts (Ch. 317 NRS) is limited to the subject matters designated in the titles.

The law appertaining to general improvement districts would not be applicable to this proposal. Under [NRS 318.055\(2\)\(b\)](#), it is provided that the purpose for the creation of the purpose for the creation of the district as to be stated in the initiating ordinance, shall be any or all of those purposes authorized in [NRS 318.120](#) to [318.145](#). [NRS 318.120](#) is limited to street and alley improvements, and 318.125 is limited to curb, gutter, and sidewalk improvements; whereas 318.130 is limited to the same. [NRS 318.135](#) is limited to storm drainage improvements, 318.140 applies only to sanitary sewer improvements, and 318.145 provides for the maintenance and repair of such improvements.

All of such statutes, [NRS 318.120](#) to [318.145](#), constitute a grant of power to certain boards and governing bodies, and are a deprivation of powers and privileges in respect to the individuals residing within the affected areas, and must therefore be strictly construed, to include no more than Legislature clearly intended.

We therefore conclude that none of these Chapters of [NRS 309](#) to 318, inclusive, contained in Title 25 of NRS may be invoked as the authority for the creation of an improvement district, with power to issue general obligation bonds, the proceeds to be used in the construction of a general hospital in the City of Wells.

This conclusion is supported by the fact that earlier statutes provided comprehensively for the erection and government of county hospitals, including the incurring and redemption of a general obligation bonded indebtedness in the building of such. Chapter 169, Statutes 1929; Chapter 172, Statutes 1923; Chapter 450 of NRS. To construe any of the provisions of Title 25 of NRS in such a manner as to permit the within proposal would create confusion, uncertainty, and perhaps litigation.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

62 Hospitals—Use of county surplus building and maintenance reserve fund for the acquisition or purchase and erection of new or additional hospital facilities is unauthorized unless used by way of participation with the state and federal government under the Nevada Hospital Survey and construction Act.

CARSON CITY, August 19, 1963

HON. A. D. DEMETRAS, *District Attorney, White Pine County, Ely, Nevada*

STATEMENT OF FACTS

DEAR MR. DEMETRAS: The Board of Trustees of White Pine County Hospital desires to expend moneys in the county surplus building and maintenance reserve fund for the construction of a new hospital in White Pine County without adherence to the

Nevada Hospital Survey and Construction Act ([NRS 449.250](#) to [449.430](#)). The question presented is whether this is authorized under Nevada law.

QUESTION

May a county hospital board of trustees legally use money in the county surplus building and maintenance reserve fund for the construction of a new hospital without adherence to the Nevada Hospital Survey and Construction Act?

ANALYSIS

In 1959 this office issued an opinion concerning the legality of the White Pine County Commissioners' use of this building and maintenance fund for the erection or construction of a new hospital. A.G.O. No. 36, April 7, 1959. It was therein held that the intended application of moneys accumulated in this fund was not authorized; that the procedure for acquiring funds for the construction of new hospitals is clearly spelled out in Nevada law and that a bond election and bond issue is a condition precedent to any construction or improvement of a county public hospital. The reason for this requirement was said to be that the taxpaying public should have an opportunity to vote on the amount of the expenditure involved, which obligation must ultimately be borne by them. It was further stated that if a law as it exists has certain unfortunate consequences, or is otherwise objectionable, the proper remedy is to work for its repeal, amendment or modification.

In 1960 and 1961 the law was extended in this regard. Chapter 24, Statutes 1960, created in each county treasury a "County Hospital Construction Fund." This law reads as follows:

Section 1. Chapter 244 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Notwithstanding the provisions of [NRS 244.260](#) and [450.250](#), with the approval of the state board of finance, the board of county commissioners of any county may, by an order of such board, create in the county treasury a fund to be designated as the county hospital construction fund.
2. Moneys in the county hospital construction fund *shall be used only for county participation in the construction of a hospital pursuant to the provisions of the Nevada Hospital Survey and Construction Act * * ** (Italics supplied.)
3. The county hospital construction fund may be composed of:
 - (a) All or part of the moneys paid to the county under the provisions of (b) of subsection 2 of [NRS 463.320](#) (dealing with gaming licenses).
 - (b) The proceeds of any annual special tax levied by the board of county commissioners for such fund.

In 1961 there was added to subsection 3 of this statute the following provision:

All or part of the moneys accumulated by the county pursuant to the provisions of [NRS 244.260](#).

[NRS 244.260](#) is the statute creating the county building and maintenance reserve fund.

The 1961 amendment authorized the use of the county building and maintenance reserve fund, which theretofore could not be used for hospital construction, for the purpose of carrying out the provisions of Chapter 24, Statutes 1960, supra, now cited as [NRS 244.263](#). This was a limited authorization to use the building and maintenance reserve fund for construction of hospital facilities through the county hospital fund. However, the statute creating the county hospital construction fund is plain and unambiguous in specifying the purpose for which it may be used. Subsection 2, supra,

recites that “Moneys in the county hospital construction fund *shall be used only for county participation in the construction of a hospital pursuant to the provisions of the Nevada Hospital Survey and Construction Act.*” (Italics supplied.) [NRS 449.250 to 449.430](#). The Nevada Hospital Survey and Construction Act provides a way by which the State or any political subdivision thereof may apply for federal assistance in constructing hospital facilities. Each application under this act is to conform to federal and state requirements and is to be submitted in the manner and form prescribed by the state department. [NRS 449.360](#).

The nature and scope of the powers of the hospital board of trustees has been clearly and directly defined by the Legislature. Funds accumulated in the county surplus building and maintenance reserve fund may be diverted from such fund and used in connection with the construction of a new hospital in only one way, that is, through the county hospital construction fund and the Nevada Hospital Survey and Construction Act. The proposed application of these funds by the White Pine County Hospital Board of Trustees, without adherence to the Nevada Hospital Survey and Construction Act, is not authorized.

CONCLUSION

Use of county surplus building and maintenance reserve fund for the acquisition or purchase and erection of new or additional hospital facilities is unauthorized unless used by way of participation with the state and federal governments under the Nevada Hospital Survey and Construction Act.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

62 State Planning Board—Power of the board to accept grants from private or federal organizations.

CARSON CITY, August 20, 1963

MR. WILLIAM E. HANCOCK, *Manager, State Planning Board, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. HANCOCK: Reference is made to your letter of July 26, 1963, wherein you state that you have recently learned that the National Science Foundation, Washington, D.C., has a matching grant program wherein funds are made available to public institutions for the purpose of assisting in the construction of scientific buildings. You have discussed this program in some detail with Mr. Loyal Goff of the National Science Foundation who has advised that both the Social Science Building, University of Nevada, Reno Campus, and the Social Science Building, University of Nevada, Nevada Southern, could appropriately fall within their program.

Under this program, the University of Nevada, as an applicant, can obtain funds to assist in the construction of building space, building equipment, and furnishings.

Chapter 482, Statutes 1963, appropriated to the State Planning Board the sum of \$950,000 for the construction of a Social Science Building at Nevada Southern. Chapter 432, Statutes 1963, authorizes the 1965 State General Bond Obligation Commission to sell bonds in the amount of \$1,456,000 subsequent to January 1, 1965, for the construction of the Social Science Building in Reno, Nevada.

QUESTION

Can grants from private or federal organizations be used to supplement appropriations by the State of Nevada for building construction whereby the combination of such grants and state appropriations would result in the construction of a larger facility?

ANALYSIS

The Legislature has made provision for the acceptance of grants, property, etc., by both the University of Nevada and the State Planning Board on behalf of the State of Nevada.

[NRS 396.420](#) grants power to the Board of Regents to accept property, etc., in the name of the University of Nevada. This section provides:

396.420 Acceptance of property.

1. The board of regents shall have the power to accept and take in the name of the University of Nevada, by grant, gift, devise or bequest, any property for the use of the university, or of any college thereof, or of any professorship, chair or scholarship therein, or for the library, workshops, farms, students' loan fund, or any other purpose appropriate to the university.

2. *Such property shall be taken, received, held, managed, invested, and the proceeds thereof used, bestowed and applied by the board of regents for the purposes, provisions and conditions prescribed by the respective grant, gift, devise or bequest.*

3. Nothing in this chapter shall be deemed to prohibit the State of Nevada from accepting and taking by grant, gift, devise or bequest any property for the use and benefit of the University or Nevada. (Italics supplied.)

Under subsection (2) of 396.420, grants shall be used for the purposes, provisions, and conditions prescribed by the respective grant, etc. Under the provisions of [NRS 396.420](#), the National Science Foundation may designate the use of its grant and in this instance, since the Legislature has appropriated \$950,000 for the construction of a Social Science Building at Nevada Southern and has authorized the issue of State Obligation Bonds in the amount of \$1,456,000 subsequent to January 1965 for the construction of the Social Science Building in Reno, Nevada, the said national Science Foundation may designate that their grant shall be used for the construction and furnishing of a larger facility than that authorized by the Legislature.

It has been shown herein that the University of Nevada has the power by legislative act to accept a grant from the National Science Foundation, but how will the grant be administered since the construction of all state buildings is supervised by the State Planning Board?

The Legislature has provided that the State Planning Board may receive grants in the name of the State to carry on its work. [NRS 341.120](#) and [341.125](#) provide:

341.120 Board may accept grants, services. The board is empowered to receive and accept, in the name of the state, grants of money or services to enable the board to carry on its work under this chapter.

341.125 Board may contract with United States, agencies; authorized receipt, expenditure of federal grants, loans, funds. The board is authorized to contract in the name of the State of Nevada with the United States or any of its agencies or instrumentalities, and to receive and expend by grant, loan or otherwise funds which may be made available by the United States or any of its agencies or instrumentalities.

It is therefore concluded that the State Planning Board may receive grants on behalf of the State of Nevada and/or its agencies, including the University of Nevada, from either federal or private sources to aid in the construction of building space, building equipment and furnishings.

CONCLUSION

It is the opinion of this office that grants from private or federal organizations can be used to supplement appropriations by the State of Nevada for building construction whereby the combination of such grants and state appropriations would result in the construction of a larger facility.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By GABE HOFFENBERG, *Chief Deputy Attorney General*

64 Department of Health and Welfare, Welfare Division—Interpreting [NRS Chapter 422](#) as amended by Chapters 393 and 438 of the 1963 Statutes of Nevada.

CARSON CITY, August 22, 1963

MR. EDWIN E. SCHULZ, *Acting Welfare Administrator, Welfare Division, Department of Health and Welfare, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. SCHULZ: The Legislature of 1963 enacted Chapter 393, a comprehensive statute which created the Department of Health and Welfare, created the office of “Director” of the department and prescribed his duties. Chapter 393, Statutes 1963, was approved on April 19, 1963. The statute contains no provision for an effective date and, therefore, became effective on July 1, 1963. [NRS 218.530](#). It amends, among other chapters, Chapter 422 of NRS, which pertains to the Welfare Division of the Department of Health and Welfare.

The Legislature of 1963 also enacted Chapter 438, approved April 26, 1963, effective July 1, 1963, ostensibly for the purpose of “resolving conflicts in statutes resulting from the enactment of Chapter 393, Statutes of Nevada 1963.”

Both of these statutes being long and involved, and the Department of Health and Welfare being in the formative stages, it becomes necessary that the statutes be construed in order that the respective powers and duties and limitation of powers of the several involved officers may be clearly established.

QUESTIONS

1. What is the relation of the Director of the Department of Health and Welfare to the State Welfare Board, i.e., what are the respective powers and duties of each?
2. To whom is the Administrator of the Welfare Division responsible?
3. Organizationally, what is the line of authority from the Governor to the Administrator of the Welfare Division of the Department of Health and Welfare?

ANALYSIS

Under Chapter 393, Statutes 1963, the Legislature provided for a director of the newly created Department of Health and Welfare under the Governor's reorganization plan.

Under Section 4, the act provides that the director shall be appointed by, and responsible to, the Governor, and that his knowledge and abilities should include an ability to assess the operating efficiency of component agencies and to delegate authority and duties to responsible division heads, and to present written and oral findings to the Governor, the Legislature, and to other officials and agencies.

He has the power under Section 5 of the act to appoint a chief administrator of each of the divisions of his department. In the case of the Welfare Division, it is provided that the head of that division will be known as the State Welfare Administrator.

Section 5(2) of the act places upon the shoulders of the director, the burden of responsibility for the administration of the seven divisions under his jurisdiction.

Under Section 99 of the act, the Welfare Department is to be administered by the State Welfare Administrator and the Welfare Division, *subject to administrative supervision by the director*.

The *broad* powers of the administrator are clearly expressed in Sections 107 through 113 of the act. They follow:

The Administrator shall:

1. Serve as the executive officer of the welfare division.
2. Administer all activities and services of the welfare division in accordance with the policies, standards, rules and regulations established by the state welfare board, subject to administrative supervision by the director.
3. Be held responsible for the management of the welfare division.
4. To be responsible for and to supervise the fiscal affairs and responsibilities of the welfare division, subject to administrative supervision by the director.
5. To present the biennial budget to the Legislature.
6. To allocate, with the approval of the state welfare board, in the interest of efficiency and economy, the state's appropriation for administration of the separate programs for which the welfare division is responsible, subject to administrative supervision by the director.
7. To establish, consolidate and abolish sections within the welfare division.
8. To appoint the heads of the sections of the welfare division.
9. To employ such assistants and employees as may be necessary to the efficient operation of the welfare division in accordance with Chapter 284 NRS.
10. To set standards of service.
11. To coordinate the activities of the welfare division with other agencies.
12. To invoke legal, equitable or special procedures for the enforcement of his orders or the provisions of this Act.
13. To exercise any other powers necessary and proper for the standardization of state work, to expedite business, to assure fair consideration of applications for aid, and to promote the efficiency of the service.

These powers are delineated here for the purpose of indicating that while the director is the appointing power, and while he has supervisory powers, the active administration of the department rests with the administrator, so long as he capably performs his duties and remains in the good graces of the director.

The State Welfare Board under the act is the policy and rule-making body of the Welfare Division. But their function is not administrative.

Their power is set forth in Section 105 as follows: The prescription of rules and regulations for their own management and the formation of rules, regulations, and policies for administration of the programs for which the Welfare Division is responsible.

In only one place, [NRS 422.270\(3\)](#), Section 115 of the act, is the director given any rule-making power, and that is to make rules and regulations for the administration of Chapter 422 of NRS which shall be binding upon all recipients and local units. This would indicate that the rules and regulations contemplated are such further rules as would be necessary with regard to carrying into effect the rules, regulations, and policies of the Welfare Board, especially in the field of programming—as indicated by the fact that such rules are to be binding on recipients and local units of the Welfare Division. A logical approach to this problem will avoid any controversy between the board and the director.

Under the law the legislative or rule-making function is in the board, the administrative function is in the administrator, subject to review, comment and supervisory suggestions of the director. In view of the line of authority, this office contemplates no conflict in this area. The law imposes on the director the overall supervisory jurisdiction with full authority to see that the rules, regulations, and policies of the Welfare Board are properly administered.

Chapter 438, Statutes 1963, passed for the purpose of resolving inconsistencies in certain instances, was passed at the same session of the Legislature and becomes effective the same day. Thus, both are to be read together—and such act does not in any way change this opinion.

CONCLUSION

It is, therefore, the opinion of this office in answer to the three questions posed by your agency, (1) that the Director of Health and Welfare and the Welfare Board have separate and distinct functions—the board being a policy- and rule-making organization, while the director is the overall supervisor of the department with the right to enforce those rules and regulations established by the board; (2) that the Administrator of the Welfare Division is the administrator of such rules and regulations and directly responsible to the director; and (3) that the line of authority is from Governor to director to administrator.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

65 Water and Sanitation Districts; Bonds—Water and sanitation districts are only authorized to issue general obligation bonds for the purpose of acquiring or improving a domestic water system, but may issue revenue bonds for the purpose of acquiring or improving a sanitary sewer system.

CARSON CITY, September 3, 1963

HON. WILLIAM P. BEKO, *District Attorney, Nye County, Tonopah, Nevada*

STATEMENT OF FACTS

DEAR MR. BEKO: The Beatty Water and Sanitation District has been organized under the provisions of Chapter 311 of Nevada Revised Statutes. It is contemplated by the board of directors of this district to drill additional wells for a domestic water supply and to replace the distribution system throughout the town of Beatty. It is questionable whether a bond issue involving general obligation bonds would be marketable and the

board has expressed an intention to proceed with an issue involving both general obligation and revenue bonds.

QUESTION

Is a water and sanitation district formed under the provisions of Chapter 311 of NRS authorized to issue revenue bonds for the purpose of acquiring or improving a domestic water system or a sanitary sewer system?

ANALYSIS

It is generally held that there is no power to issue revenue bonds, unless by express provision of statute such power is granted. See *Garrett v. Swanton*, 5 Cal.2d 18, 53 P.2d 347; 10 So. Cal. L. Rev. at 338. In determining whether or not a water and sanitation district has the power to issue revenue bonds it is, therefore, necessary to find legislative authorization.

Prior to 1963, the power of boards of directors of water and sanitation districts to issue bonds was granted by [NRS 311.230](#), which read as follows:

To carry out the purposes of this chapter, the board is hereby authorized to issue *negotiable coupon bonds* of the district. Bonds shall bear interest at a rate not exceeding 6 percent per annum, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than 3 years and extending not more than 30 years from date * * *.

In 1963, the Nevada Legislature amended the foregoing statute by increasing the due date on such bonds from 30 years to 40 years. (Chapter 380, Statutes 1963, Sec. 1.) In addition, Chapter 311 of NRS, relating to water and sanitation districts, was amended by the addition of new sections relating to revenue bonds and their issuance for the acquisition or improvement of sanitary sewer system. Chapter 380, Statutes 1963, Section 3, recites:

A district created wholly or in part for *sanitary sewer purposes* may issue bonds * * * for the purpose of acquiring or improving a *sanitary sewer system*, and such bonds shall be made payable solely out of the net revenues derived from the operation of such system. (Italics supplied.)

It is seen, therefore, that such districts have express statutory authority to issue negotiable coupon bonds for all purposes of the district, and revenue bonds for the purpose of acquiring or improving a sanitary sewer system. This being the case, the only question remaining is whether or not the power to issue negotiable coupon bonds under [NRS 311.230](#) includes the power to issue revenue bonds for the purpose of acquiring or improving a domestic water system. We conclude that no such power exists for the following reasons:

1. The preamble of Chapter 380, Statutes 1963, reads, in part:

An Act to amend NRS section 311.230, relating to the power of water and sanitation districts to issue *general obligation bonds*, by increasing the due date of *general obligation bonds* of such districts from 30 to 40 years * * *. (Italics supplied.)

The preamble of a statute is a prefatory explanation of a statute and purports to explain in general terms the policy of its enactment. 2 Sutherland, *Statutory Construction*, Sec. 4804 (3d Ed. 1943). This being the case, it is obvious that the Legislature intended to

authorize only the issuance of general obligation bonds and not revenue bonds under [NRS 311.230](#).

2. Revenue bonds are not generally considered negotiable instruments and, therefore, would not come within the definition of a negotiable coupon bond.

Although issued in coupon-form, a revenue bond of a municipality manifestly is not negotiable without the aid of a statute because it is payable from a special fund. A recent statement by the Nebraska court in *State v. Boettcher*, 138 Neb. 22, 32, 291 N.W. 709, that a revenue bond is a negotiable obligation is squarely at odds with the N.I.L. Practically all of the later enabling statutes obviate the difficulty by expressly making revenue bonds negotiable. To that extent the legislatures have simply modified the N.I.L. 42 *Columbia L.Rev.* at 398.

The municipal revenue bond is payable from a special fund; in the absence of a statute, therefore, it is not negotiable. 22 *Cornell L. Quarterly* at 73. See also 1 *Jones, Bonds and Bond Securities*, Sec. 289 (4th Ed. 1935).

3. When the 1963 Legislature amended Chapter 311 of NRS to recite that revenue bonds could be issued for domestic water systems, a new right was created which was not authorized under the old law. Therefore, it is evident that the issuance of revenue bonds was not authorized under [NRS 311.230](#) relating to the issuance of negotiable coupon bonds, under the old law or the new.

Because it is defined as an act that changes an existing statute, the courts have declared that the mere fact that the legislature enacts an amendment indicates that it thereby intended to change the original act by creating a new right or withdrawing an existing one. Therefore, any material change in the language of the original act is presumed to indicate a change in legal rights. The legislature is presumed to know the prior construction of terms in the original act * * *. 2 *Sutherland, Statutory Construction*, Sec. 1930 (3d Ed. 1943).

CONCLUSION

Water and sanitation districts are only authorized to issue general obligation bonds for the purpose of acquiring or improving a domestic water system, but may issue revenue bonds for the purpose of acquiring or improving a sanitary sewer system.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

66 Motor Vehicles; Registration—Opening date for registration of motor vehicles for next succeeding calendar year is discretionary with Motor Vehicle Department. Closing date is December 31 of each preceding calendar year for which registration is required.

CARSON CITY, September 4, 1963

MR. RICHARD HERZ, *Chief, Registration Division, Department of Motor Vehicles, Carson City, Nevada*

DEAR MR. HERZ: You have requested an opinion as to the starting and ending date of registration for motor vehicles under Chapter 425, Statutes 1963, pointing out that registration has been changed from a fiscal to a calendar year.

ANALYSIS

Under Section 33 of Chapter 425, Statutes 1963, which amends [NRS 482.280](#), every vehicle registration expires at midnight on December 31 each year. The Motor Vehicle Department is mandatorily ordered to mail annually to each holder of a valid registration certificate an application form for renewal registration for the following year. Such forms shall be mailed by the department in sufficient time to allow all applicants to mail the applications to the department, and to receive new registration certificates and license plates, stickers, tabs, or other suitable devices by mail *prior to expiration of subsisting registration*. An applicant may, if he chooses, present the application to any agent or office of the department. Renewal is to take effect on January 1 of each year.

OPINION

It is, therefore, the opinion of this office that the date of opening registration for motor vehicles for the succeeding calendar year is left to the judgment of the Motor Vehicle Department, except that it must be sufficiently in advance of January 1 of each year to allow time for the mailing and receipt of applications for registration prior to that date.

The same is true with regard to the opening of branch offices for personal applications for registration.

Therefore, the opening date for registration of motor vehicles for the succeeding calendar year is discretionary with the Motor Vehicle Department, and the closing date is December 31 of the year preceding the calendar year for which registration is required.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

67 State Institutions; Religious Services—Holding of divine services at state institutions by various faiths, where attendance is not compulsory, does not violate Constitution of Nevada.

CARSON CITY, September 5, 1963

MR. HOWARD E. BARRETT, *Director of Administration, Carson City, Nevada*

DEAR MR. BARRETT: You have requested an opinion of this office as to the constitutionality of [NRS 209.050](#) which authorizes the payment for chaplain services at the Nevada State Prison. The answer will directly affect other state institutions where persons are, for one reason or another, involuntarily incarcerated. The request is made in view of Opinion S-16 of the Attorney General dated December 31, 1962.

ANALYSIS

At the time the opinion of the Attorney General was issued on December 31, 1962, the question involved a proposed contract between the Nevada Girls Training Center at Caliente and a Minister of the Gospel. The contract was objected to by the then Attorney General on the ground that the counseling and religious advice was, by reason of the one minister, sectarian in nature, and that the recipients were a “captive” audience,

with no freedom of religious choice. This, the Attorney General held, and rightly so, was contrary to Nevada's Constitution.

The prohibition of expenditure of public funds for sectarian purposes, as contained in Section 10 of Article XI of the Nevada Constitution, was primarily included for the purpose of preventing sectarian religious instruction in the public schools, as indicated by Section 9 of the same article which reads, "No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this Constitution."

Here again the founding fathers of our great State, following the example of the framers of the United States Constitution, foresaw in school children a captive audience for sectarian religion at an age when their minds would be receptive to tenets which violate the first article of our Constitution, which provides for free exercise and enjoyment of religious profession and worship, without discrimination or preference.

But the instant case is entirely different. It is proposed to allow the disciples of various faiths to afford the inmates of the Nevada State Prison, and other state institutions, religious services in accordance with their faith. No captive audience is impelled by coercion, or otherwise, to attend these services. The Catholic may, or may not, attend Catholic services; the Protestant may, or may not, attend Protestant services; and those of the Jewish faith may, or may not, attend the church of their religion. The free thinkers, the disbelievers, the agnostics, and the atheists, may seek solace within the realm of self-determination.

I cannot feel that those who drafted our Constitution intended to deprive those unfortunates incarcerated in state institutions of the right guaranteed them under Section 4 of Article I of that great instrument, to the "free exercise and enjoyment of religious profession and worship * * *." The imparting of the religion of their free choice to those removed from society could not be contrary to the constitutional guarantee of freedom to worship. To hold otherwise would be to place beyond the reach of those who need religion most, the faith and hope which is the very essence of rehabilitation.

Further, this office cannot hold that compliance with [NRS 209.050](#), which provides for the holding of divine service at the State Prison on each Sunday, and for the securing of one or more Ministers of the Gospel, at a total expenditure of \$520 per year, is unconstitutional.

OPINION

It is, therefore, the opinion of this office that the holding of divine services at state institutions by the various preceptors of religious faiths, and where attendance is not compulsory, does not violate any constitutional prohibition, and that compliance with [NRS 209.050](#) does not contravene the prohibition of Article XI, Section 10, of the Constitution of Nevada.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

68 Veterans; Veterans' Tax Exemption—A person who has all the qualifications required by statute to receive veterans' tax exemption is not precluded from securing such exemption by reason of serving a term in the Nevada State Prison at the time of application for such exemption.

CARSON CITY, September 6, 1963

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

DEAR MR. BLAISDELL: You have requested an opinion from this office on the following question:

If a person has all the qualifications to receive veterans' tax exemption, is this person eligible while serving a term in the Nevada State Prison?

ANALYSIS

The veteran's exemption statute, [NRS 361.090](#), does not distinguish between those veterans who have lost their citizenship by reason of conviction of a felony, and those who are citizens.

CONCLUSION

It is, therefore, the opinion of this office that a person who has all the qualifications required by statute to receive veterans' tax exemption is not precluded from securing such exemption by reason of serving a term in the Nevada State Prison at the time of application for such exemption.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

**69 Motor Vehicles; Licensing Requirements for Private Commercial Enterprises—
Trucks used to advance the purpose of any private commercial enterprise
must be licensed under Chapter 706 of NRS.**

CARSON CITY, September 10, 1963

MR. LOUIS P. SPITZ, *Director, Department of Motor Vehicles, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. SPITZ: Your inquiry of August 23, 1963, relates to the necessity of certain companies to carrier license their trucks in accordance with Chapter 706 of the Nevada Revised Statutes. You state that the trucks in question have been observed operating on public highways outside a 5-mile radius of a city or town.

The following examples are submitted for our determination:

1. Power company trucks used to haul wire and power poles to transmit electric power.
2. Gas company trucks hauling pipe used in gas mains.
3. Telephone company trucks hauling wire, electrical supplies and poles used in connection with telephone service.
4. Railroad company trucks hauling cement, sand, and lumber used in constructing bridges and tunnels for the railroad and materials used in the maintenance of the railroad.
5. Company trucks for carrying cutaway parts of machinery used for demonstration or inspection purposes.
6. A company truck carrying a boat used in racing but containing advertising, such as the club's name, on the side of the truck and on the boat.
7. A company truck carrying materials to repair a soft drink machine or an ice cream freezer that the company has lent to a retailer so that the retailer will sell that particular brand of soft drinks or ice cream.
8. A truck belonging to a California based television company bringing equipment into Las Vegas to televise boxing matches.

QUESTION

Are the trucks in the examples stated above required to be licensed under the private commercial carriers law?

ANALYSIS

[NRS 706.520](#) provides, in part, as follows:

* * * every person operating motor vehicles * * * as a private carrier, shall, before commencing the operation thereof and annually thereafter, secure from the department a license for each and every motor vehicle to be operated, and make payments therefor as provided in [NRS 706.010](#) to [706.700](#), inclusive.

[NRS 706.100](#) defines “private motor carrier of property” to mean:

* * * any person engaged in the transportation by motor vehicle of property sold, or to be sold, or used by him *in furtherance of any private commercial enterprise*. (Italics supplied.)

The determination of the application of licensing requirements imposed by Chapter 706 of NRS to the specific examples related depends upon the interpretation of the phrase “in furtherance of any private commercial enterprise” as read in [NRS 706.100](#). If the activities in which these trucks are used tend to further any private commercial enterprise, the companies are operating them as private commercial carriers, and, as such, are obligated to license them under Chapter 706.

“Furtherance” is defined as “advancement.” Funk and Wagnalls New College Standard Dictionary. The use of this common definition makes it quite obvious that any truck operation that tends to advance the purpose of the company would be within the purview of the aforementioned licensing requirements. It seems quite clear that all of the activities mentioned are done for the purpose of advancing a private commercial enterprise. Indeed, the declaration of legislative purpose of Chapter 706 as stated in [NRS 706.130](#) recites that it is declared to be the purpose and policy of the Legislature to confer upon the commission the power and authority to supervise for licensing purposes the *private motor carrying of property when used for private commercial enterprises*. (Italics supplied.) In all cases stated, the trucks are carrying property used for private commercial enterprises.

If any doubt remains, two other points are worthy of consideration. First, any ambiguity in the legislation has to be resolved against an exemption from the licensing requirements. Those who seek shelter under an exemption law must present a clear case, free from doubt, as such laws being in derogation of the general rule must be strictly construed against the person claiming the exemption and in favor of the public. See A.G.O. No. B-15, dated October 17, 1940. Second, is the cost of operating the trucks deducted as a business expense for tax purposes? If so, they must be considered as being used for the furtherance of the business.

CONCLUSION

Trucks used to advance the purpose of any private commercial enterprise must be licensed under Chapter 706 of NRS.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

70 State Planning Board; University of Nevada; State Fish and Game Commission—1. State boards or agencies deriving their income from sources other than funds appropriated by the Legislature are not subject to the provisions of Chapter 341 of the Nevada Revised Statutes, and consequently not subject to control of the State Planning Board. 2. Agencies which receive part of their funds from outside sources and partly from legislative appropriations are subject to the provisions of Chapter 341 NRS, and consequently to the control of the State Planning Board. 3. The Board of Regents of the University of Nevada is not within the purview of Chapter 341 NRS, even if the money for construction is appropriated by the Legislature, the delegation of powers to the State Planning Board being in derogation of powers conferred on the Board of Regents by the Constitution.

CARSON CITY, September 12, 1963

MR. WILLIAM E. HANCOCK, *Manager, State Planning Board, Carson City, Nevada*

DEAR MR. HANCOCK: You have addressed this office a communication in which you seek an answer to the following questions:

1. Does the State Planning board have complete authority and responsibility for University and State Fish and Game Commission projects specifically assigned to it by the Nevada State Legislature?
2. Does such assignment by the Nevada Legislature relieve elected boards such as the Board of Regents and the Nevada State Fish and Game Commission of their responsibilities in connection with the assigned project?

ANALYSIS

These questions involve two very important factors: (1) Is the agency or board one created by the Constitution, and (2) Are the projects to be financed wholly with funds other than those appropriated by the State?

[NRS 341.150](#)(1) provides that the State Planning Board shall furnish engineering and architectural services to all state departments, boards or commissions charged with the construction of any state building, *the money for which is appropriated by the Legislature*. All such boards or commissions are required and authorized to use such services. (Italics supplied.)

[NRS 341.150](#)(3a) provides that the board shall have final authority for approval as to architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping, and under (3d) authorizes supervision and inspection of construction or major repairs. *The cost and supervision and inspection shall be a charge against the appropriation or appropriations made by the Legislature for the building or buildings*. (Italics supplied.)

It becomes clear then that the State Planning Board does not have the same control over buildings constructed with funds not appropriated by the Legislature, unless the act authorizing the construction specifically designates the Planning Board as the director and supervisor of construction. When no state funds are involved, the validity of such control is doubtful.

It may wisely be determined that the Legislature felt, at the time the Planning Board was created, that agencies furnishing their own or donated funds for building construction should have the right to determine the nature and requirements of the building which was costing the State nothing, and which, by reason of the agency's experience, could best be designed in accordance with its wishes.

It can then be resolved that if the funds for the construction of buildings by the Fish and Game Commission come from sources other than legislative appropriation, that agency has a large measure of control over the construction and repair of the building erected with independent funds. True, they can request the aid and assistance of the State planning Board, which can accede to or refuse such request.

If a building is erected by an agency partly with appropriated funds and partly with its own funds, the jurisdiction of the Planning Board intervenes and they have the powers given them under Chapter 341 of the Nevada Revised Statutes.

This brings us down to a more important question—can the State Planning Board interfere with the aims and desires of the University of Nevada insofar as construction of buildings are concerned. It is to be remembered that the Board of Regents is a constitutionally empowered, governing board for the University. Their powers are practically autonomous. The Legislature has no authority to delegate to the Planning Board authority which falls within the powers of the constitutionally selected Board of Regents.

Our Supreme Court, in the now famous case of *King v. Board of Regents*, [65 Nev. 533](#), citing another case, stated, “So we find the people of the State, speaking through their Constitution, have invested the regents with the power of management of which no Legislature may deprive them. That is not saying that they are the rulers of an independent province, or beyond the lawmaking power of the Legislature. But it does mean that the whole executive power of the University, having been put in the regents by the people, no part of it can be exercised or put elsewhere by the Legislature.”

In *State ex rel. Black v. State Board of Education*, 196 P. 201, the court held that the Board of Regents, while functioning within the scope of its authority, is not subject to the control or supervision of any other branch, board or department of state government. This case was cited in *King* above.

In *Mapp v. Cook Construction Co.*, 105 P. 667, an Oklahoma case, cited by our Supreme Court, an Oklahoma statute attempted to create a board with authority to contract for and erect buildings for the Board of Regents for the State Agricultural and Mechanical College. The court said: “From the foregoing it will be seen that the conflict arises out of the question of whether or not the Legislature had the constitutional authority to pass the act just referred to * * * or whether the designation by the Constitution of * * * the board of regents of this college carried with it irrevocably, so far as the Legislature was concerned, the power and authority here sought to be exercised to contract and erect buildings for the State Agricultural and Mechanical College, and the auditing and direction of the disposition of all moneys appropriated therefor.” The court held the Legislature did not have such authority.

Our Supreme Court, near the conclusion of *King*, stated, “So here the right of the regents to control the University, in their constitutional, executive and administrative capacity, is exclusive of such right in any other department of government save only the right of the Legislature to prescribe duties and other well recognized legislative rights not here in question.”

In the constitutional debates giving rise to the provision for a Board of Regents, Mr. Crossman, a delegate from Lyon County, expressed the hope for independence of the Board of Regents, when he stated, “I want the Legislature simply to provide for the University, and then let it be under the control and management of the Board of Regents, as provided by law.”

The Supreme Court of Nevada, at the conclusion of *King*, summed up the gist of the whole opinion in these words: “From what we have said, it is clear that we are of the opinion that it was the intention of the framers of the Constitution to vest exclusive executive and administrative control of the University in a board of regents, to be elected by the people * * *.”

CONCLUSION

It is, therefore, the opinion of this office, (1) that state boards or agencies deriving their income from sources other than funds appropriated by the Legislature are not subject to the provisions of Chapter 341 of the Nevada Revised Statutes, and consequently not subject to control of the State Planning Board; (2) that agencies which receive part of their funds from outside sources and partly from legislative appropriations are subject to the provisions of Chapter 341 NRS, and consequently to the control of the State Planning Board; and (3) that the Board of Regents of the University of Nevada is not within the purview of Chapter 341 NRS, even if the money for construction is appropriated by the Legislature, the delegation of powers to the State Planning Board being in derogation of powers conferred on the Board of Regents by the Constitution.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

71 Motor Vehicles; Emergency Use by Sheriff or Law Enforcement Agency—Jeeps used by law enforcement officials in emergencies where regular vehicles cannot reach inaccessible areas are entitled to emergency permits and to the use of siren and red light.

CARSON CITY, September 12, 1963

MR. ROBERT F. STENOVICH, *Superintendent, Nevada Highway Patrol, Carson City, Nevada*

DEAR MR. STENOVICH: You have set forth the following facts in a letter addressed to this office under date of September 12, 1963:

The Clark County Sheriff's Office has had a jeep posse for many years, used in all types of emergencies such as plane crashes, the search and rescue of lost persons, and other assignments related to law enforcement work, where the area is not accessible to patrol cars. You state that the units are painted black and white and carry the decal of the sheriff's office and are equipped with radios on the sheriff's frequency.

Your question is whether it would be legal for these units to operate as emergency vehicles with a red light when actually engaged in the law enforcement work outlined in the preceding paragraph.

ANALYSIS

[NRS 484.255](#)(1) provides:

The department of motor vehicles may issue authorized emergency vehicle permits to other vehicles required to be operated primarily for the immediate preservation of life or property or for the apprehension of law violators. Such permits shall not be issued to vehicles when there are available comparable emergency type services provided by agencies referred to in [NRS 484.245](#).

Under [NRS 484.255](#)(2b) emergency permits may be issued to vehicles used by law enforcement agencies. The sheriff's jeep posse is an emergency standby unit of the sheriff's office in Clark County. It has proved of inestimable value in rescuing lost persons, and aiding in rescue operations in plane crashes, in inaccessible areas.

Approved emergency vehicles may be equipped with red light and siren ([NRS 484.245](#)).

OPINION

It is, therefore, the opinion of this office that the vehicles of the sheriff's jeep posse in Clark County may operate as emergency vehicles under the direction of bona fide law enforcement in cases of emergency, where access is unapproachable by regular motor vehicles, and that a red light may be used. This contemplates that the siren and red light will not be used when the emergency vehicles are not engaged in emergency law enforcement work.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

72 Social Security; State Board of Pharmacy Constitutes a Coverage Group for Social Security Purposes—The State Board of Pharmacy is an instrumentality of the State that is a juristic entity legally separate and distinct from the State and its employees are not by virtue of their relation to such juristic entity employees of the State. Under state law, such an instrumentality is classed as a political subdivision and as such no state impediment exists to constitute it a separate coverage group for OASI purposes.

CARSON CITY, September 23, 1963

MR. ARTHUR A. JOHNSON, JR., *District manager, Social Security Administration, P.O. Box 1009, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. JOHNSON: The Federal Social Security Act, Title 42 U.S.C.A., Section 418, extends the Old Age and Survivors Insurance program to employees of a political subdivision of a state if such political subdivision properly constitutes a coverage group within the meaning of the act.

The question now presented concerns the status of the Nevada State Board of Pharmacy under Nevada law as a political subdivision of the State in order to qualify its employees and members under social security. Social security will be referred to hereafter as OASI (Old Age and Survivors Insurance).

ANALYSIS

Section 418(a)(1) of all Federal Social Security Act provides that the Secretary of health, Education, and Welfare of the United States may enter into an agreement with any state for the purposes of extending OASI coverage to "services performed by individuals as extending OASI coverage to "services performed by individuals as employees of such state or *any political subdivision thereof.*" The Federal statute cited further provides, in Section 418(b)(2) thereof, that the term "*political subdivision*" includes an "*instrumentality*" of the state. The term "coverage group" is defined in Section 418(b)(5) of the Federal Social Security Act to include "employees of a political subdivision of the state other than those engaged in performing services in connection with a proprietary function." (Italics supplied.)

Regular employees of the State of Nevada are covered for retirement purposes under the State Public Employees' Retirement Act and as such are not entitled to coverage under OASI. Therefore, members and employees of the State Board of Pharmacy can be covered under OASI only if the board is considered a political subdivision of the State, thereby constituting a separate coverage group which would

enable it to enter into an agreement through the State Employment Security Department with the Secretary of Health, Education, and Welfare of the United States.

The primary determining point is whether the board is considered a political subdivision *under the state law* for OASI purposes.

In 1955 the Nevada Legislature passed an act enabling participation of employees of the State and its political subdivisions in OASI. The following statutes are pertinent:

[NRS 287.050](#):

*In order to extend to employees of the state and its political subdivisions * * * the basic protection accorded to others by the old-age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature * * * that such steps be taken as to provide such protection to employees of the state and its political subdivisions who are in positions which are not eligible to participate in the public employees retirement system * * * on as broad a basis as is permitted under the Social Security Act. (Italics supplied.)*

[NRS 287.100](#):

For the purposes of [NRS 287.050](#) to [287.240](#), inclusive, “*political subdivision*” includes an *instrumentality of a state, * * * 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.* (Italics supplied.)

[NRS 287.150](#):

The (employment security department) is hereby authorized on behalf of the state to maintain in full force and effect the agreement and modifications thereof entered into between the state and the Federal Security Administrator * * * and with the approval of the governor to enter into modifications thereof * * * for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute employment (as defined in [NRS 287.080](#) as follows: employment means and service performed by an employee in the employ of the *state or any political subdivision thereof* * * *). (Italics supplied.)

Under these statutes, coverage groups can properly be considered as (1) political subdivisions as the term is generally applied to certain territories organized for political advantage such as cities and counties, and (2) instrumentalities of the state or a political subdivision of the state, provided the instrumentality is “a juristic entity which is 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.” [NRS 287.100](#), *supra*.

The State Board of Pharmacy would not be considered a political subdivision under the commonly accepted definition of a political subdivision. However, under [NRS 287.100](#), it could be so considered for OASI purposes, if it is (1) an instrumentality of the State and (2) a juristic entity which is legally separate and distinct from the State, and (3) its employees are not by virtue of their relation to such juristic entity employees of the State.

The State Board of Pharmacy, under this criterion, would have to meet three prerequisites before it could be classed as a political subdivision of the State of OASI purposes.

I. Is it an instrumentality of the State?

An instrumentality is adequately defined and explained in the following case:

Unemployment Comp. Commission v. Wachovia Bank and Trust Co., 215 N.C. 491, 2 S.E.2d 592 (N.C. 1939)

At page 595:

Perhaps it is impossible to formulate a satisfactory definition of the term “instrumentalities of government” which would be applicable in all cases. At least it is unwise to undertake to do so. Each case must be determined as it arises. Generally speaking, however, it may be said that *any commission, bureau, corporation or other organization, public in nature, created and wholly owned by the government for the convenient prosecution of its governmental functions, existing at the will of its creator, is an instrumentality of government; that any state created corporation or association, privately owned, and organized and doing business primarily for profit, which is granted certain incidental duties or privileges by the Federal Government is not.*

At page 596:

In the border line cases in which it does not clearly appear that the agency is or is not an instrumentality of government important factors, among others, which must be considered in determining that such agency is an instrument of government are: (1) *It was created by the government;* (2) *it is wholly owned by the government;* (3) *it is not operated for profit;* (4) *it is primarily engaged in the performance of some essential governmental function* * * * While perhaps, no one of these factors is sufficient, and the presence of all is not required, to constitute any given agency an instrumentality of government, the presence or absence of either requires serious consideration. (Italics supplied.)

It is our opinion that the State Board of Pharmacy is an instrumentality under the above definition.

II. The second prerequisite the board must meet is its classification as a juristic entity which is separate and distinct from the State.

Arthur C. Miller, the then Regional Attorney for the U.S. Department of Health, Education, and Welfare, wrote a legal opinion on December 19, 1957, explaining what instrumentalities are juristic entities for OASI purposes. We quote as follows:

It is such units of government having existence as separate and distinct legal entities under state law, and employing individuals on their own behalf and in their own right to which in our opinion the term instrumentality refers. * * *

The evident purpose of including instrumentalities as political subdivisions seems to us to be, therefore, to differentiate under the terms of applicable state and local law between *organizational units of government which have a legal status as separate entities of government*, and those which are but integral units within the state government or which are part of a political subdivision of the state. *The employees of the former units (instrumentality of government) constitute, for old-age and survivors insurance purposes, a separate coverage group.* The latter kind of organizational units, however, would not be such instrumentalities, and their employees may be covered only as members of a larger coverage group consisting of employees of the state or of employees of a particular subdivision of the state * * *. (Italics supplied.)

It is the opinion of this office that the State Board of Pharmacy is a unit of government that has its existence separate and distinct from the State and is a legal entity under state law. They are employing individuals on their own behalf and in their own right. It is an organizational unit of government which has its legal status as a separate entity of the government under the explanation given by the regional attorney.

Under state law the board has the following powers:

1. To make such bylaws and regulations, including a code of ethics, not inconsistent with the laws of the State, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.
2. To regulate the practice of pharmacy.
3. To regulate the sale of poisons, drugs and medicines.
4. To examine and register as pharmacists applicants whom it shall deem qualified to be such.
5. to charge and collect necessary and reasonable fees for its services, other than those specifically set forth in this chapter.
6. To maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter.
7. To deposit its funds in banks or savings and loan associations in the State of Nevada. ([NRS 639.070](#), as amended by Chapter 117, Section 74, Statutes 1963.)

The board also has the authority to employ clerical personnel and such assistants, inspectors, investigators and other professional consultants as *it may deem proper* to investigate violations of the state law. It may employ its own attorney for any purpose *which the board may deem necessary*. The board fixes a compensation for the people it hires and it pays these people out of the funds which the board has deposited or can deposit in banks and savings and loan associations.

The examination of these rights and duties is of primary influence in arriving at our conclusion that the board is a juristic entity or an independent autonomous unit of the State. The income of the board is not derived from legislative appropriation, nor are its funds deposited with the State Treasury. The board is charged with the management and employment of necessary held, the receipt and disbursement of moneys in connection there with and other responsibilities incidental to constituting said board a juristic entity.

III. The third prerequisite the board must meet is the determination that its employees are not by virtue of their relation to the board employees of the State.

It is our opinion that the status of the board's employees is not such that an employer-employee relationship exists between them and the State under common law rules. Certain material common law incidents of the employer-employee relationship such as direct powers of supervision and control are not present. The board employs its own personnel, fixes their compensation and pays them out of its own funds with its own checks. The names of its employees do not appear on the regular payroll of the State. We conclude, therefore, that members and employees of the State Board of Pharmacy are employees of an instrumentality of the State which is a juristic entity separate and distinct from the State and that they are not by virtue of their relation to such juristic entity employees of the state. Rather they are employees of an independent autonomous unit of the State.

CONCLUSION

The State Board of Pharmacy is an instrumentality of the State that is a juristic entity legally separate and distinct from the State and its employees are not by virtue of their relation to such juristic entity employees of the State. Under state law, such an

instrumentality is classed as a political subdivision and as such no state impediment exists to constitute it a separate coverage group of OASI purposes.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

73 Secretary of State; Securities Act—A public offering of certificate of interest or participation in oil, gas, or mining titles, or leases, or fractional interests therein, unless there is registration under the Federal Securities Act of 1933, requires state registration and approval under Section 15, Chapter 318, Statutes of 1963.

CARSON CITY, September 23, 1963

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

Attention: Mr. George M. Spradling, Deputy Secretary of State

STATEMENT OF FACTS

DEAR MR. KOONTZ: The Legislature of 1963 enacted Chapter 318, regulating the sale of securities intrastate, which we shall hereafter refer to herein as the “Nevada Securities Act,” or “the act.”

The Nevada Securities Act defines “issuer” and provides that agents employed by issuers or broker-dealers in the sale of securities intrastate shall be registered. Section 13(2). The act also provides that “issuer” means any person who issues or proposes to issue any security except that with respect to:

1. * * *
2. Certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to by any “issuer.” Section 7.

Section 10 (1) defines “security” in such a manner as to include inter alia certificates of interest or participation in oil, gas, or mining titles or leases, with this language:

Sec. 10. 1. “Security” means * * *, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such title or lease, * * *.

It, therefore, appears that such certificates are securities within the provisions of the act, but that they do not have, in their sale, an “issuer” subject to the terms, provisions and burdens of the act.

Trans Western Land, Inc., a corporation organized and existing under the laws of the State of Nevada, acquires oil and gas leases from the United States and assigns them to “NOLCO, Inc.,” another corporation so organized. The latter corporation then offers such oil and gas leases, and fractional interests therein for sale, by advertising in newspapers, magazines, and otherwise. There is no representation that either corporation will drill a well. Sanguine and glowing representations are made as to the likelihood of

success and wealth acquisition by the purchase of such leases or interests therein. NOLCO, Inc., is not registered under the Securities Act of 1933; nor has it been exempted from such registration.

Under Section 15 of the act it is provided that it is unlawful for any person to sell any security by an intrastate offering unless he (it) has filed with the administrator of the act a statement of specified content approved by the administrator, and has paid a filing fee of \$500.

QUESTION

Under the circumstances stated and the plan of operation now being pursued by NOLCO, Inc., in the sale of its oil and gas leases, and fractional interests therein, is it legally required of NOLCO, Inc., that it register with the administrator of the act, pay its filing fee and otherwise comply with the provisions of said Section 15?

ANALYSIS

Section 15 of Chapter 318, provides:

Section 15. 1. It is unlawful for any person to offer to sell any security in this state by means of a public intrastate offering unless:

(a) He has filed a statement with the administrator concerning such security as described in section 16 of this act;

(b) He has paid a filing fee of \$500 therefor; and

(c) The administrator has approved such statement.

2. When a statement is withdrawn the administrator shall retain the filing fee.

3. As used in this section, "public intrastate offering" means every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value made solely within this state to 25 persons or more by means of any news media, including but not limited to newspapers, magazines, radio and television, or through the use of the United States mails, or by direct solicitation of an agent, except such offerings as are registered under the Securities Act of 1933 (15 U.S.C. Sect. 77a et seq.) or exempt from registration thereunder other than by reason of the intrastate character thereof.

Section 16 of the act specifies the content of the statement required to be filed with the administrator.

From the foregoing, it appears that "certificates of interest or participation in oil, gas or mining titles or leases" or fractional interests therein are securities, but that in their sale, there is no "issuer" who would be required under Section 12(2) to register an agent, if any, he employs in the sale or solicitation for sale of such securities.

However, under the provisions of Section 15, it clearly provides that in the sale of all securities intrastate by a "public intrastate offering," with certain exceptions not appearing in this case, that there must be the filing and approval of the required statement with the administrator and the payment of the statutory fee.

CONCLUSION

We conclude that Section 15 of the act is controlling in the present instance and that the question must be answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

74 Accountants; Professional Corporations Act—Under the rules promulgated by the State Board of Accountancy and present state law, certified public accountants or public accountants may not incorporate under the 1963 Professional Corporations Act.

CARSON CITY, September 26, 1963

MR. J. W. MCMULLEN, *President, State Board of Accountancy, P.O. Box 30, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. MCMULLEN: A question has been raised by licensed public accountants under the jurisdiction of the State Board of Accountancy as to whether it would be permissible for them, under present statutes and regulations, to incorporate their professional practices under the Professional Corporations Act enacted by the 1963 Nevada Legislature. Chapter 385, Statutes 1963.

QUESTION

Is it permissible for licensed certified public accountants or public accountants to incorporate under the Professional Corporations Act?

ANALYSIS

Prior to 1963 there was no express statutory prohibition of or authorization for, the formation of professional corporations. In 1961 this office rendered an opinion reciting the general rule that a corporation could not carry on the business of practicing a profession under the law as they then existed. The purpose for the rule as laid down by many state supreme courts is to avoid the possible deleterious effect of commercialization on professional standards. A.G.O. No. 245, dated September 1, 1961. It was further stated in that opinion that specific legislative authorization is needed if professional people are to do business under a corporate form.

In 1963 the Nevada Legislature passed a Professional Corporations Act authorizing the formation of professional corporations, but specifically regulating the membership and the scope of activity of such corporations. Chapter 385, Statutes 1963. However, Sec. 11 of the act provides that the act “does not bar the regulating board or any profession from taking any action otherwise within its power, *nor doe it affect the rules of ethics or practice of any profession.*” (Italics supplied.) The italicized proviso of the act is of primary influence in the determination of this problem, and, in our opinion, means that the regulating board of a particular profession may prohibit members of its profession from incorporating by the promulgation of a rule of practice forbidding such action.

The Nevada State Board of Accountancy has promulgated rules and regulations governing certified public accountants or public accountants. Article VII, Rule (m) provides as follows:

A certified public accountant or public accountant *shall not be an officer, director, stockholder, representative or agent of any state or territory of the United States or the District of Columbia.* (Italics supplied.)

This rule is valid under present state law and effectively precludes the formation of professional corporations by certified public accountants or public accountants.

There are other statutory restrictions dealing with accountants and corporations that have not been superseded by the 1963 Professional Corporations Act. “Where one

statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute. * * *” 2 Sutherland, Statutory Construction, Sec. 5204 (3d Ed. 1943). The act deals generally with all professions while the following deal specifically with accountants:

628.500 Unlawful use of titles, designations and abbreviations by corporations. No corporation shall:

1. Assume or use the title or designation “certified public accountant” or “public Accountant.”
2. Assume or use the title or designation “certified accountant,” “chartered accountant,” “enrolled accountant,” “licensed accountant,” “registered accountant” or any other title or designation likely to be confused with “certified public accountant” or “public accountant,” or any of the abbreviations “C.P.A.,” “P.A.,” “C.A.,” “E.A.,” “R.A.,” or “L.A.” or similar abbreviations likely to be confused with “C.P.A.”

628.530 Use of corporate name together with wording indicating corporation performs accounting services unlawful. No person shall sign or affix a corporate name, with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement.

CONCLUSION

It is our opinion, therefore, that under the rules promulgated by the State Board of Accountancy and present state law, certified public accountants or public accountants may not incorporate under the 1963 Professional Corporations Act.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

75 Nevada Girls Training Center—Use of words “adequate facilities available” in statutes governing commitments to Nevada Girls Training Center limited in meaning to physical facilities necessary in providing correctional education to juvenile delinquent girls of normal mentality.

CARSON CITY, October 10, 1963

MR. HARRY W. STUCK, *Superintendent, Nevada Girls Training Center, P.O. Box 427, Caliente, Nevada*

STATEMENT OF FACTS

DEAR MR. STUCK: Your letter of September 30, 1963, states that certain juvenile girls sent to Nevada Girls Training Center are mentally unsuitable for the correctional training program available at the institution. It further appears that some who are presently under commitment are entirely incapable of fitting into the program, and that the situation has created a problem to the extent of interfering with proper operation of

the same. Particular reference is made to [NRS 210.580\(1\)](#) which provides for the method of making commitments by courts and requiring the superintendent to fix the time of receiving the person committed unless there are no adequate facilities available. It has been pointed out that the center is precluded under present practice from screening those committed in advance of receiving them. This raises the question following.

QUESTION

Is the term “adequate facilities available,” as used in [NRS 210.580\(1\)](#), limited to physical facilities only, or does it include facilities for seriously disturbed children through treatment as well?

ANALYSIS

The Nevada Girls Training Center, located at Caliente, Lincoln County, Nevada, was established and is operated under the provisions of [NRS 210.410](#) to and including [NRS 210.530](#). These sections are a part of Chapter 210 of Nevada Revised Statutes, entitled “Juvenile Correctional Institutions.” This alone furnishes a key to the purpose and functions of the center. This, together with all the conditions and circumstances necessitating the establishment and operation of such institution, clearly indicate the legislative intent that the center is a place where incorrigible and other delinquent juvenile girls can be provided with correctional education. To accomplish this requires a program which cannot be reasonably nor practicably extended or applied to training or treatment of girls who are mentally incompetent or seriously disturbed. It must be presumed that under the processes of court commitments to the center, some girls who in reality are mentally subnormal or afflicted with a serious mental disturbance are adjudged under a broad classification as juvenile delinquents and ordered committed. However, the statutes applicable to the governing of the center afford remedies both before commitment and subsequent thereto.

The superintendent of the center, under the provisions of [NRS 210.580\(1\)](#), “shall fix the time at which such person shall be delivered, unless there are not adequate facilities available to provide the necessary care * * * *or, in the opinion of the superintendent, such person is not suitable for admission to the school* * * *.” (Italics supplied.) In cases where the person is found unsuitable, the court may, upon written request of the superintendent, order commitment to a school approved by the board outside the State or to a private institution within the State. To better effect this remedy the 1963 Legislature wisely amended this section of the statute by providing that such request by the superintendent may be made at any time either before or after commitment to the center.

The authority of the superintendent in this respect is further bolstered by [NRS 210.620\(1\)](#) which provides, “If any person committed to the school appears, either at the time of her commitment or after becoming an inmate, to be *an improper person* to be detained in the school * * * the superintendent may return such person to the committing court.” (Italics supplied.)

Still another remedy or relief is available in cases where it is desirable for any reason to examine the person in question for mental illness. Under [NRS 210.650](#), upon request of the superintendent, the person may be accepted by the Nevada State Hospital for examination and observation, and if found to be mentally ill or feeble-minded, may be returned to the court for discharge from the school and commitment to the Nevada State Hospital.

CONCLUSION

In our opinion, the remedies hereinabove outlined appear to be quite complete as to the disposition of those cases not meeting normal mental requirements to be benefited by the reform program of the school. The center was never intended as an institution for the care of mental incompetents, but rather for correcting mentally competent delinquent

girls under the training program now available. Other facilities are available for treatment or training of those to whom the program cannot be administered because of their mental incompetency. For these reasons the words “adequate facilities available,” as used in the statute, are limited to physical facilities to accommodate, train, teach and care for only those juvenile delinquent girls who have normal mentality.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

76 Nevada Industrial Insurance Act—Members of boards, commissions, councils, agencies, and bureaus, performing official services to the State without any continuing duties, authorities or responsibilities, are considered employees covered by industrial insurance.

CARSON CITY, October 15, 1963

MR. CLAUDE U. SHIPLEY, *Director, Civil Defense Agency, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. SHIPLEY: By act of the Nevada State Legislature at its 1953 session, the Nevada Civil Defense Act was created and remains unchanged as the law presently governing civil defense in the State. ([NRS 414.010](#)-414.160.) Pursuant to the provisions of [NRS 414.050](#) thereof, the Governor proceeded to appoint an advisory council of 15 members which has been kept at that number except during vacancies for brief periods. All members serve without compensation. For the most part, those appointed have been elective officials from throughout the State, including county commissioners, mayors of incorporated cities and school trustees, all being covered in those official capacities by industrial insurance. Others appointed have held no other public office while members of the council, as is the case of four members presently serving thereon. Since creation of the council it appears that it has met as a body only two or three times, but its individual members are frequently called upon by state defense officials in connection with various civil defense problems affecting the entire State or sections thereof. It appears further that the time spent by some of these members in the performance of this type of duty, although not continuous, has oftentimes been quite substantial, and in some cases has necessitated certain expenses to them for which they have not sought reimbursement.

Pursuant to authority provided under [NRS 414.130](#)(2) the state agency of civil defense has accepted certain benefits provided through federal civil defense, and in particular, contributions for personnel and administrative expenses. A claim for this type of expense presented by the bureau to the Federal Office of Civil Defense, Region 7, Santa Rosa, California, covering the period from April 1, 1962, to June 30, 1962, was suspended to the extent of \$252.40, this representing the amount claimed for Nevada industrial insurance expense covering the members of the advisory council. The reason given by the regional office of the suspension was “since council members are not paid CD staff members, personnel benefits are not allowable.” In an effort to justify this claim, the Director of the Nevada Civil Defense addressed a letter to the regional director under date of July 23, 1963, setting forth and discussing in a thorough and most comprehensive manner, the pertinent sections of the Nevada law and also the applicable rules and regulations prepared by the Federal Budget and Fiscal Office of Civil Defense, and entitled, “Guidance Material for Regional Auditors and Administrative Officers.” In its

reply letter of August 22, 1963, the regional office raises the question in substantially the form as hereinafter stated and which this office is asked to resolve.

QUESTION

Is the Nevada industrial insurance law, with reference to persons covered thereby, intended to cover members of other than active boards and commissions having continuing duties, authorities and responsibilities?

ANALYSIS

Chapter 616 of Nevada Revised Statutes sets forth what is termed the Nevada Industrial Insurance Act and was enacted by the Legislature at its 1947 session, replacing an earlier act passed in 1913. The present act, cited as [NRS 616.010-616.680](#), has been broadened to include all elective and appointive officials, as well as employees of the State, counties, cities and districts or boards of whatever nature. Among those persons regarded or classed as officials and employees of the State are the members of approximately 50 or more boards, commissions, councils, agencies, and bureaus, who serve without compensation but who are entitled to a per diem which in most cases is fixed at \$15 per day while actually performing duties for the State. None of the members of any of these boards perform continuous duties nor do they do necessity work only as a group. Meetings may be as often as once or twice per month for some or as infrequently as once a year for others, depending upon the urgency of the business to be transacted. Nevertheless, the Legislature has recognized that all of these uncompensated members of boards are subject to call at any time for the performance of such duties as may be required of them, and further, that many of them perform various duties aside from attending meetings or working in close association with the other members of the board as a whole. Perhaps with the thought in mind that the least the State can do for those who are called upon to devote valuable time and energy to and on behalf of the State, and even to chance personal injuries in the performance of their duties, is to extend to them the benefits of industrial insurance coverage, the Legislature enacted [NRS 616.079\(1\)](#), providing in part as follows:

Members of state departments, boards, commissions, agencies or bureaus who serve without compensation * * * while engaged in their designated duty as such members, shall be deemed for the purpose of this chapter, employees receiving a wage of \$250 per month, and in the event of injury while performing their designated duty, shall be entitled to the benefits of this chapter.

There can be no doubt as to the legislative intent in making the above quoted section a part of the State's industrial insurance law. It definitely and unequivocally includes members of boards, agencies, etc., who receive no compensation, with those compensated employees who are otherwise covered by the benefits of the act. And in order to accomplish this, an arbitrary salary figure has been provided as a basis for computing the benefits. We can find nothing in the act that remotely suggests a restriction or limitation on this class of employees, nor does the law impose any requirement as to continuous duties, authorities or responsibilities, or specify any particular hazards which must be encountered by members of boards in order to qualify them as employees. Had the Legislature intended any of these or other prerequisites, they would have been included in the act. In interpreting this or any other law, we cannot add something that the Legislature obviously omitted. The Nevada State Supreme Court has ruled that where language of a statute is susceptible of a sensible interpretation, it is not to be controlled by any extraneous considerations. *State v. Brodigan*, [37 Nev. 245](#).

The inclusion of this type of employee under the act gives consideration only to the particular employee's capacity as a member of a certain board and ignores the fact that he may be covered by industrial insurance in another official capacity. Such is the

case of several members of the civil defense advisory council as indicated in the statement of facts herein. This office doesn't feel that this situation presents any problem inasmuch as these employees are holding two separate and distinct positions. Under each, the employee falling into this category is not only entitled to the protection and benefits of industrial insurance, but it is mandatory under the act itself that such be given him. In our opinion, insurance coverage in one official or employee capacity does not duplicate coverage provided in another capacity, but merely supplements it. Insurance coverage to public officials or employees is not a monetary remuneration which is subject to income tax and, therefore, it can in no sense be classed as salary or wages. It is instead a protection which the State and its subdivisions provide its or their officials and employees.

This office is in complete accord with the views stated in the letter of July 23, 1963, by the Nevada Civil Defense Director, and we adopt and approve the interpretations therein given certain sections of the Nevada Revised Statutes bearing on the matters herein passed upon.

CONCLUSION

In view of the Nevada laws applicable thereto, it is the considered opinion of this office that it was the intent of the Legislature that state industrial insurance cover all members of boards, commissions, agencies, councils, and bureaus, even though they receive no compensation for their services or duties they perform and have no continuing duties, authorities or responsibilities.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

77 Public Employees Retirement Act—Retirement contributions, in respect to public school teacher's salary only, and not to include, (a) sums paid the teacher for "adult education" classes, (b) sums paid the teacher for nonprofessional services or labor, or (c) sums paid the teacher for conducting summer classes.

CARSON CITY, October 15, 1963

MR. BYRON F. STETLER, *Superintendent of Public Instruction, Carson City, Nevada*

Attention: Mr. Donald K. Perry, Asst. Superintendent for Administration

STATEMENT OF FACTS

DEAR MR. STETLER: Under the provisions of [NRS 286.450](#), as amended by Chapter 399, Statutes 1963, contributions are made by the public employer to the public employees' retirement fund upon the official salary of the public employee at the rate of 5 3/4 percent.

Under the provisions of [NRS 286.410](#), as amended by Chapter 399, Statutes 1963, a like sum is paid, calculated upon his official salary, by each public employee of a participating public employer.

The term "public schools" is defined by [NRS 388.010](#), as follows:

388.010 “Public schools” defined. Within the meaning of this Title of NRS, “public schools” includes all kindergartens and elementary schools, junior high schools and high schools *which receive their support through public taxation*, and whose textbooks, courses of study and other regulations are under the control of the state board of education. (Italics supplied.)

It therefore appears that a primary requisite for a school to be legally termed a “public school” is that it receive its support through public taxation. The meaning, of course, is state public taxation as distinguished from federal taxation.

The Legislature of 1947, Chapter 181, created the Public Employees’ Retirement Act, and by amendment (Chapter 124, Statutes 1949), school teachers’ retirement system under the Public Employees’ Retirement Act. This section ([NRS 286.380](#)) provides:

286.380 Procedure for integration of public school teachers’ retirement system.

1. Whenever it is proposed to integrate a previously existing system for public school teachers with the system provided for in this chapter, the procedure provided in this section shall be followed.

2. Whenever two-thirds of the teachers who are not qualified members under the previously existing system and who are legally employed in the state or who are present beneficiaries shall give their approval of the proposed contract of integration, the state board of education, as employer (for the purpose of integration and administration of this chapter) and without the necessity of further financial and actuarial investigation as provided in [NRS 286.370](#), shall execute a contract with the public employees’ retirement board. The state board of education and the public employees’ retirement board shall subscribe and execute the written text thereof for the purpose of providing a complete integration of the two systems. The contract shall provide:

(a) That all benefits conferred by the previously existing system shall be preserved to the members of the system after they become members of the system established by this chapter.

(b) That the members of the previously existing system and *all public school teachers legally employed as such* in the state or by the state department of education shall be required to pay contributions under the system established by this chapter for a period of 1 year before receiving any payments whatsoever from the system established by this chapter, but during the period of 1 year such members shall be eligible to receive benefits under the previously existing system.

(c) That all moneys paid in by the members of the previously existing system shall be restored to them, unless their benefits have already accrued and they are receiving retirement salaries under a previous system.

(d) That the state’s contribution to the public school teachers’ permanent fund existing or arising from tax levies shall be transferred and credited currently as a part of the employer’s contribution under the contract of integration, but the state board of education is authorized to pay necessary administrative expenses incurred in the integration and liquidation of the public school teachers’ retirement system out of the fund.

3. All certified teachers legally employed in the public schools of this state or by the state department of education, whether members of a previously integrated system or not, shall, upon integration of the two systems, become members of the system created by this chapter, and shall be entitled to all the benefits accruing under this chapter.

4. Upon the integration of the public school teachers’ retirement system with the system provided for in this chapter, and for the purpose of paying the

employers' contribution, there shall be appropriated by the legislature a sufficient amount from the general fund to cover the same for each biennium.

5. *The state board of education shall collect from the various school districts the employee's contributions and transmit the same along with the employer's contributions to the public employees' retirement board in the same manner as any other public employer.*

6. the officers of all school districts in the state and all other officers auditing or allowing claims respecting the public schools shall deduct and transmit the employee's contributions to the state board of education. (Italics supplied.)

In A.G.O. No. 52 of July 17, 1963, this office held that although lump sum payments in lieu of accumulated annual leave, are compensation, for purposes of public employee retirement contributions by both employer and employee (A.G.O. No. 88 of July 25, 1955), a member may not receive the cash equivalent of his accumulated annual leave during the term of his employment. Neither may a member have computed in his behalf as the pay for 1 year, for the purpose of fixing his retirement allowance, the equivalent of 13 1/2 months of income, or any other period in excess of 12 months.

Certain so-called "adult education" is conducted in certain of the public schools of Nevada, being conducted by teachers who are certified by the State Department of Education, for adults, pursuant to federal law, authorizing grants from the federal government. Such law also provides for contributions for the support of such instruction by way of tuition from the adult students. No part of the cost of such adult education is paid for (except perhaps the maintenance of the school plant) by public taxation.

Frequently, regularly certified teachers perform other work of a nonprofessional character, e.g., bus driving, janitorial work, or other maintenance work. For this service, the school district compensates such teachers in the payment of sums additional to the regular teacher contract provisions.

Frequently, regularly certified teachers, in addition to teaching a full school term, are employed to teach summer classes and are paid extra for such services. The moneys for such services are made available by tuition charged the students for such instruction and not from state apportioned school funds.

QUESTIONS

1. In discharging its legal obligation under the provisions of [NRS 286.380](#), subsection 5, shall the State Board of Education collect from a school district, and add a matching contribution thereon;

(a) for the regular salary of the teacher, and in addition sums paid in conducting "adult education" classes or courses of instruction?

(b) for the regular salary of such teacher, and in addition other compensation paid the teacher by the school board for nonprofessional services, such as bus driving, janitor work, or other maintenance work?

(c) for the regular salary of such teacher, and in addition other compensation paid for teaching summer classes, paid by reason of tuition charged such students?

ANALYSIS

Under the provisions of [NRS 286.450](#) and [286.380](#), a burden is placed upon the State Board of Education to collect a proper sum from each county school district, and after matching it with moneys appropriate by the State, pay the combined sum to the public employees' retirement board, in respect to each public school teacher. Here we are concerned with what is the correct sum to be required of county school boards, as to teachers employed and operating in the above designated manners.

As a corollary from the conclusions reached in A.G.O. No. 52 of July 17, 1963, not significant as to the questions there under consideration, but highly significant here, it could be said:

(a) that as to current crediting of service of public employees with the Public Employees' Retirement Board, there can be no crediting of a contribution without a crediting of time, and there can be no crediting of time without the payment of a contribution thereon, and

(b) that there can be no crediting of time of more than 12 months for any 12 months period.

It is also true that under the provisions of [NRS 388.010](#), a teacher could not receive an accreditation of either time or money for teaching work which is not for teaching work supported through public taxation.

It is also true that under the provisions of [NRS 286.380](#), subsection 2(b), that the Legislature intended that time credited for a teacher must be for "teachers legally employed as such."

It is apparent that teachers engaged in adult education and summer school teaching are not paid from funds derived by "public taxation" and that the teacher income derived from such service cannot be subject to deductions as for employment with the State of Nevada and its political subdivisions. When teachers, in addition to their professional duties also render service to the school district, in bus driving, janitorial work, etc., their additional compensation is derived from public funds, but not as school teachers, and the employer's contribution cannot be paid from funds appropriated for contributions on behalf of public school teachers.

CONCLUSION

For the foregoing reasons, questions 1(a), (b) and (c) are answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

78 Nevada Centennial Commission—No liability attaches to the Nevada Centennial Commission by reason of contracts, oral or written, entered into between city and/or county centennial committees and other persons, to which the Nevada Centennial Commission is not a party.

CARSON CITY, October 16, 1963

MR. THOMAS C. WILSON, *Chairman, Nevada Centennial Commission, P.O. Box 1011, Reno, Nevada*

DEAR MR. WILSON: You have directed to this office an inquiry as to whether the Nevada Centennial Commission, which is supported by donated funds paid into the State Treasury, and appropriated funds, is responsible for debts incurred by county centennial committees.

You advised, in helping us arrive at a solution, that the county committees have been set up by appointments in three ways: (1) by the Governor, (2) by your state committee, and (3) by county commissioners.

The county committees have been advised that their funds must be raised in the counties and that no state funds, or funds donated to the state commission, will be available to county centennial committees.

ANALYSIS

The Nevada Centennial Commission was created by Chapter 206, Statutes 1961. Under Section 3 it is provided that the commission may (b) assist counties and cities of the State in adopting a coordinated plan best suited to celebrate Nevada's admission to the Union, and (e) receive gifts of money only for the purposes stated in the act.

The commission, then, could use the money received to lend financial assistance to the counties or cities in the State in furtherance of their centennial plans, but the use of the money appropriated and received is discretionary with the commission. If a policy has been adopted, and if cities and counties have been put on notice that no state funds, either from gifts or appropriation, will be available to such cities and counties for local purposes, then no liability attaches to the commission by reason of contractual relationships entered into between city or county centennial committees and other persons. This fact should be relayed to the city and county centennial committees so that no contracts entered into by them are entered into in the name of the Nevada Centennial Commission.

CONCLUSION

It is, therefore, the conclusion and opinion of this office that no liability attaches to the Nevada Centennial Commission by reason of contracts, oral or written, entered into between city and/or county centennial committees and other persons, to which the Nevada Centennial Commission is not a party.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

79 Secretary of State—A local county ordinance respecting security sales, if constitutional, was repealed, or in any event suspended in operation, by the provisions of a comprehensive statute of state scope, covering the same subject matter, as of the effective date of the statute. Chapter 318, Statutes 1963, construed.

CARSON CITY, October 16, 1963

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

Attention: Mr. George M. Spradling, Deputy Secretary of State

STATEMENT OF FACTS

DEAR MR. KOONTZ: On October 22, 1962, the Board of County Commissioners of Clark County passed a county ordinance (Number 173), pursuant to the provisions of [NRS 244.335](#), ostensibly effective as to the unincorporated areas within said county, from and after October 31, 1962, purportedly to “fix, impose and collect a license tax for revenue and to regulate certain security dealers and salesmen, * * *.”

The body of the act, however, (Section 5) provides no fees except a license fee of only \$10 for each securities dealer or salesman, payable to the sheriff of the county, for which an elaborate investigation and filing of data with the sheriff was provided. It could

hardly be urged that the act was one for revenue. It clearly appears to have been one for regulation.

The Legislature of 1963 enacted Chapter 318, a more or less elaborate act for the regulation of the sale of securities within the State of Nevada, when conducted as an intrastate operation. This statute provides for the payment of substantial fees for licensing, but the purpose of the statute could hardly be said to be for revenue. The purpose is regulation, and to reduce the losses by the frauds that have recently been extensively perpetrated against unsuspecting and uninformed persons in the sale of securities intrastate. Chapter 318, Statutes 1963, became effective on July 1, 1963. Chapter 318 makes no mention of Clark County Ordinance No. 173, by repeal or otherwise.

QUESTION

Does Chapter 318, Statutes 1963, suspend or repeal Clark County Ordinance No. 173?

ANALYSIS

Article IV of the Constitution deals with the legislative department. Section 20, Article IV of the Constitution, contains a limitation upon the powers of the Legislature by providing that certain types of legislation (by enumeration) shall not be provided by local or special laws.

Section 21, Article IV of the Constitution, provides:

Sec. 21. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.

Apart from constitutionality of the said ordinance, however, we are convinced that if it were constitutional and became legally effective within the limited area on October 31, 1962, that it was either repealed or suspended in operation upon the effective date of Chapter 318, Statutes 1963, namely July 1, 1963.

As formerly stated, the major purpose of the ordinance, it appears almost the sole purpose, was to prevent or reduce fraud in securities transactions. There can be no doubt but that such was and is the purpose of Chapter 318. Although Chapter 318 contains no repealer clause, we are inclined to the belief that had Ordinance No. 173 been an enactment of the Legislature, it would have been specifically repealed. Failure to repeal was an oversight, not design on the part of the Legislature. No protective devices or provisions are contained in the ordinance not a part of the statute, except perhaps the active participation on the part of the Sheriff of Clark County. We envision that if this continued it would lead to great confusion and uncertainty, and would naturally lead to the misapprehension as to the nature, and scope of the state law. Clearly the ordinance would be limited in effectiveness by reason of the limited area.

That a general law of statewide application may repeal an ordinance of limited application as to area, is clear, and it will ordinarily be construed to have this effect when it is a complete revision of the subject matter. Acts of this nature will ordinarily be held to be irreconcilably inconsistent, where "the general act not only covers the whole subject matter of the special one, but is also intended to contain all the law on the subject, and to be exclusive, or to take the place of the special act, or is clearly intended to establish a mandatory and uniform rule or system for the whole state." 59 C.J. Art. 535, p. 934.

We are here dealing with rules of statutory construction, and repeal or suspension by implication, through the principles of repugnancy and incompatibility, there having been no specific repeal. We quote from 82 C.J.S. p. 513, as follows:

Thus in a proper case a general act may operate to repeal repugnant local or special laws, although it contains no express repealing clause, and should be construed as doing so where such a legislative intent is made plain by the terms and purposes of the general act, as where the general act is apparently designed to cover the whole of the subject with which it deals and is broad enough to include the matters covered by the prior special act, * * *.

A statute manifestly designed to deal with statewide problem regarding rendering uniformity in law governing administration of subject important, displays on its face intent to supersede local and special laws and repeal inconsistent special statutes. McDonald v. Justices of Superior Court, (Mass. 1938) 13 N.E.2d 16.

CONCLUSION

It, therefore, follows that Ordinance No. 173, enacted by the Board of County Commissioners of Clark County, if not repealed by Chapter 318, Statutes 1963, as of the date of July 1, 1963, was in any event suspended in operation, and has been inoperative from the effective date of the Nevada Securities Act. The question is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

80 Nevada Real Estate Commission; Investigative Powers of Agents—Investigators of commission employed as civil officers unauthorized, in view of Nevada Constitution, Art. 1, Sec. 18, to make investigation of escrow files of private companies or individuals without aid of proper legal process.

CARSON CITY, October 18, 1963

MR. GERALD J. MCBRIDE, *Administrator, Department of Commerce, Real Estate Division, Drawer C, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. MCBRIDE: The Nevada Real Estate Commission, consisting of five members appointed by the governor, was created under the provisions of [NRS 645.060](#). Certain definite authority is delegated to this body by various sections of the statutes and it is empowered to make its own regulations and rules for carrying out its general powers. In performing its duties toward preventing violations of real estate laws of the State and also for the purpose of assisting in the enforcement of such laws, the commission has, through its investigators, had occasion to inspect documents and papers held in escrow by various escrow and title companies throughout the State. Most companies have been quite cooperative in allowing such examinations for informational purposes, but have requested that they not be used for incriminating purposes except through due process of law. Other companies have maintained their files and documents as privileged, which has given rise to the question hereinafter stated.

QUESTION

Do investigators, employed as civil officers by the Real Estate Division of the Department of commerce have the power to inspect escrow files kept and maintained by

private persons or companies in the State of Nevada during normal working hours and without notice?

ANALYSIS

The answer to the question hereinabove propounded is not found in either statutory law or alone in court decisions, but rather in the basic law of the land. Perhaps no right of the individual in America is more fundamental than that of being secure against the invasion of privacy. Long before the colonists declared their independence from England, they had come to look upon this right as God-given and inalienable. Before the required number of states necessary for ratification of the adoption of the U.S. Constitution could be obtained, the people insisted that this right be assured them by constitutional guaranty. Included in the first 10 amendments to that Constitution, which are commonly called "The Bill of Rights," is the fourth Amendment, prohibiting violation of this cherished right and protecting the people against unreasonable searches and seizures. As time progressed, the people felt that a guarantee of the right in the Federal Constitution, which could apply only to their relations with the U.S. government, was not enough. As they formed new states, they insisted that a bill of rights patterned after that in the Federal Constitution be inserted in their state constitutions. The Nevada Constitution adopted in 1864, in its initial article sets forth a declaration of rights. Article 1, Sec. 18, thereof, carefully preserves the right of privacy in the following words:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

The courts have been ever ready to uphold the rights of citizens guaranteed them against illegal search and seizure under the provisions of both Federal and State Constitutions. No power rests in the Legislature to enact any laws which will supersede or diminish this right. Any powers or authority which the Nevada Legislature may confer upon any board, commission or other branch of our state government, cannot reach beyond or jeopardize this guaranteed right. This applies to all and any direct or implied powers granted the Nevada Real Estate Commission pursuant to [NRS 645.130](#), [645.190](#), [645.210](#), [645.215](#), [645.230](#), and [645.610](#), along with any other applicable statutes.

We feel that there can be no question but that the documents and papers held in escrow by an escrow or title company are "papers" to be protected against unauthorized search or seizure as is guaranteed in the above quoted section. And the prohibition there imposed likewise applies to investigations, examinations, or any other procedure whereby the contents of a private paper may become revealed. The contents of any such papers may be made available for investigative or informational purposes only by voluntary consent of the owner or pursuant to proper legal process.

CONCLUSION

It is the candid opinion of this office that investigators employed as civil officers or in any other capacity by the Nevada Real Estate Commission are prohibited by the Nevada Constitution, Art. 1, Sec. 18, from investigating escrow files as well as all other papers and documents kept and maintained by private companies or individuals, without the consent of the owners or the aid of legal process authorizing such investigation.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

81 Insurance—Under [NRS 686.010](#), as amended by Chapter 472, Statutes 1963, sums rebated by an insurer to a policyholder as “dividends,” when applied to the purchase of further paid-up insurance, are taxable.

CARSON CITY, November 5, 1963

MR. PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. HAMMEL: On March 2, 1948, this office issued A.G.O. No. 578, which was to the effect that it was doubtful that the then statute of Nevada (Sec. 3656.58 NCL 1931-1941 Supp.) could be construed as authorizing the collection by the commissioner of the 2 percent tax upon sums received by insurance companies in payment of a paid-up annuity contract. The view was expressed that the statute should be amended and that prior to amendment it should be construed by the commissioner as not authorizing such a tax in respect to sums paid in the purchase of annuity contracts. So far as we can learn, this opinion appears to have been misconstrued to be applicable to the situation hereinafter mentioned. The Legislature of 1961 (Ch. 362, p. 730) amended the statute in such a manner as to clearly include sums received upon annuity contracts within the purview of the law and subject to the tax. We have mentioned this at some length for apparently this opinion has been mistakenly applied to a situation in which it has no application.

[NRS 686.010](#), as amended in 1963, p. 1322, provides:

686.010 (Insurance, annuity companies to pay state tax.)

1. Every insurance or annuity company or association of whatever description, except fraternal or labor insurance companies, except fraternal or labor insurance companies, or societies operating through the means of a lodge system or systems, insuring only their own members and their families, including insurance on descendants of members, doing an insurance or annuity business in this state, shall annually pay to the commissioner a tax of 2 percent upon the total premium income, including membership fees, payments on annuities or policy writing fees, from all classes of business covering property or risks located in this state during the next preceding calendar year, less return premiums and premiums received for reinsurance on such property or risks.
2. Until January 1, 1964, the amounts of annual licenses paid by such companies or associations upon each class of business licensed annually shall be deducted from such tax on premiums if such tax exceeds in amount the licenses so paid.
3. On and after January 1, 1964, when by or pursuant to the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other material obligations, prohibitions or restrictions, are imposed upon Nevada insurers doing business, or which might seek to do business in, such other state or country, or upon agents of such insurers, which are in the aggregate in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon similar insurers of such other state or foreign country under the statutes of this state, so long as such laws continue in force or are so applied, the same obligations, prohibitions and restrictions of whatever kinds shall be imposed upon similar insurers of such other state or foreign country

doing business in Nevada. Any tax, license or other obligation imposed by any city, county or political subdivision of a state or foreign country on Nevada insurers or their agents shall be deemed imposed by such state or foreign country within the meaning of this paragraph. The provisions of this paragraph shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

4. For the purposes of this section the domicile of an alien insurer shall be the state in which is located its principal place of business in the United States.

5. All domestic insurance or annuity companies doing business in states in which such companies are not licensed and do not pay a premium tax shall pay the tax on such business to the State of Nevada.

Insurance companies, through their governing bodies, do frequently, upon reviewing the operations of the past year, authorized a payment to the policyholders of that which for lack of more accurate descriptive language they characterize a “dividend.” This so-called dividend is for the most part composed of premium charges which the governing body of the company may find retrospectively to have been excessive. It is also composed in part, we are advised, of money derived from the income from successful investments made by the company in the use of its investment funds.

As regards the manner of inducing the policyholder to permit such “dividends” to be reinvested with the company in the purchase of further paid-up insurance, policies are of two varieties, viz.: (1) one provision is to the effect that upon dividends being declared the company shall retain the same and certify to the policyholder that paid-up insurance has been effected in his behalf, and (2) another provision is to the effect that upon declaration of a dividend the policyholder may elect whether to take the same in cash or apply it in the purchase of further paid-up insurance.

In respect to the collection of the tax by the commissioner under the provisions of [NRS 686.010](#), it has been the consistent construction by the department that the language “return premiums” does not include “dividends” as heretofore defined.

QUESTION

Is a “dividend” when paid to a Nevada policyholder, and thereafter applied to the purchase of further paid-up insurance, or when so credited without actually being paid over to such policyholder, a taxable item under the provisions of [NRS 686.010](#), subsection 1?

ANALYSIS

It will be observed that [NRS 686.010](#) contains an enumeration of deductions that are to be taken from total premium income received by an insurer during a calendar year, namely “return premiums” and “premiums received from reinsurance.” It does not authorize a deduction for “dividends.” This enumeration is exclusive. The statute does not authorize a deduction of “dividends” from gross premium income. As a matter of statutory construction it must be presumed that if the Legislature had intended a deduction of “dividends” from gross premium income to obtain a sum upon which to compute the tax, it would have so provided. See *Cochrane v. National Life Insurance Company*, 77 Colo. 243, 235 P. 569 at 570. The doctrine *inclusio unius est exclusio alterius* applies, by which is meant “the inclusion of one is the exclusion of another.”

It is urged that taxation of dividends used to purchase paid-up additions constitutes in part dual taxation. There are two answers to this. First, if the “dividend” is not entirely a return of excess premium charges, but includes also sums made available to the company through profitable investments, it has never been taxed as to the portion that is derived from the latter item. Secondly, if the sum is available to the policyholder in cash, which he may in his discretion use in his own affairs or apply to the purchase of further paid-up insurance, how can such funds be distinguished from any other funds that

the individual may have available. If such “dividends” are taxable if available to the policyholder in cash, why should the sum not be taxable merely because the insurer has a contract provision which compels the purchase of further paid-up insurance?

The taxation statutes of the various states in this respect are of course variable in the extreme. If the taxation statutes specifically mention “dividends” as an exemption from the tax burden, as some states do, e.g., Pennsylvania, no serious problem exists. On the other hand, when the exempted items are enumerated, as here, which enumeration does not include “dividends,” the legislative intention is equally clear.

Under our statute, sums rebated to a policyholder during the continuance of the contract policy, as “dividends,” do not fall within the provisions of the statute as “return premiums” upon which a deduction from “total premium income” may be taken. See *Northwestern Mutual Life Insurance Company v. Roberts*, 177 Cal. 540, 171 P. 313.

In *New York Life Insurance Company v. Wright*, 31 G. App. 713, 122 S.E. 706, the court said that the tax is to be computed upon “All premium and gross receipts of insurance companies doing business in this state, which are subject to taxation * * * (to) include, as applied to life insurance companies, the actual maximum table rate of premium which the policyholder is under his contract of insurance, required to pay to his insurance company, and which obligation is discharged by the policyholder either by a payment in full to the company or by a partial payment thereon, supplemented by a credit made thereon by the company of any so called ‘dividend’ which has accrued to the policyholder.” Herein, a tax was properly exacted as to “dividends” when applied to the purchase of further paid-up insurance.

The principal cases cited by counsel, namely, *Prudential Life Insurance Company v. Green* (Iowa 1942), 2 N.W.2d 765, and *Prudential Life Insurance Company v. Kavanaugh* (Colo. 1952), 240 P.2d 508, may be distinguished by the language of the local statute, reasonably construed, as here.

Herein we have shown, first, that so-called “dividends” do not constitute one of the enumerated items to be deducted from the base upon which the tax is computed; secondly, that if the “dividend” is paid in cash to the policyholder and he elects to use it in buying additional paid-up insurance with the same or another company, such constitutes a separate transaction upon which the tax attaches under the provisions of [NRS 686.010](#); and thirdly, a distinction cannot properly be made in two imaginable cases, the one in which the policyholder elects to apply the “dividend” to further paid-up insurance, so electing after it is declared, or the other in which he so agrees in the purchase of the policy, prior to the declaration of the so-called “dividend.”

CONCLUSION

The question is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

82 Public Officers—A justice of the peace occupying office as an elective official is not prohibited under the law from holding office at the same time as police judge of an incorporated city within the township chartered under commission form of government.

CARSON CITY, October 23, 1963

HON. ROSCOE H. WILKES, *District Attorney, Lincoln County, Pioche, Nevada*

STATEMENT OF FACTS

DEAR MR. WILKES: The charter of Caliente, Nevada, granted pursuant to the commission form of government (Chapter 289, Statutes 1957), provides in Section 10(3) for a police judge who shall be appointed by the city council. Caliente Township which was regularly created by law has an elective justice of the peace. Both of these positions require only part-time service by the incumbents. Presently a vacancy exists in the office of police judge of the city due to the recent resignation of that official.

QUESTION

May a person serve as both justice of the peace, an elective office, and city judge of the incorporated City of Caliente, Nevada, an appointive office?

ANALYSIS

An almost identical question was recently passed upon in A.G.O. No. 3, released on February 5, 1963, from this office. The facts there presented were different, however, in that both the offices of justice of the peace and police judge in the city involved were elective positions. It was held in our opinion that a person elected to both offices is prohibited by law from holding both and must elect which one he wishes to retain. The law governing this situation, being [NRS 281.055](#), reads as follows:

1. Except as otherwise provided in subsection 2, no person may:
 - (a) File nomination papers for more than one salaried elective office at any election.
 - (b) Hold more than one salaried elective office at the same time.
2. The provisions of subsection 1 shall not be construed to prevent any person from filing nomination papers for or holding an elective office of any special district (other than a school district), such as an irrigation district, a local or general improvement district, a soil conservation district or a fire protection district, and at the same time filing nomination papers for or holding an elective office of the state, or any political subdivision or municipal corporation thereof.

The prohibition against one person holding two elective offices as set forth in subsection (b) thereof does not apply to persons seeking to hold one elective office and one appointive office. Since the office of justice of the peace of Caliente Township and police judge of the City of Caliente require only part-time attention by their respective incumbents, it appears that the same person could perform the duties of each with proper dispatch and efficiency. Disqualification from presiding in certain matters where a conflict of interest develops should be proper assurance that both offices will be administered judiciously and without favor or prejudice.

It has been observed that in several instances throughout the State one and the same person fills both the office of justice of the peace, to which he was elected by the township voters, and that of police judge of an incorporated city within the township, to which office he was appointed by the city's council. The duty lies with the county commissioners of the county in which the township is located and the city council of the city concerned to determine whether or not one person can administer the duties of both offices efficiently.

CONCLUSION

The answer to the question is "Yes."

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

83 Interim Warrants—Legislative authorization for the City of North Las Vegas to issue interim warrants is in addition and supplemental to any right it may have to apply for an emergency loan and, as such, the city does not have to comply with emergency loan procedures when issuing such warrants.

CARSON CITY, October 24, 1963

MR. WILLIAM S. BARKER, *City Attorney, City Hall, North Las Vegas, Nevada*

STATEMENT OF FACTS

DEAR MR. BARKER: The 1963 Nevada Legislature amended the act incorporating the City of North Las Vegas (Chapter 447, Statutes 1963, Sec. 43) and added a new chapter thereto designated as Chapter III. The primary purpose of the new chapter is to provide financing for extensive local improvements needed to keep pace with the large population and industrial growth within the city.

Subsection 68 of Section 43, *supra*, provides that the city council may issue “interim warrants” for the purpose of paying any contractor or otherwise defraying any costs of projects as the same become due from time to time until moneys are available therefor from the levy and collection of assessments and any issuance of bonds. The city now proposes to issue negotiable, interest-bearing interim warrants for the purpose of defraying the cost of a special improvement assessment district under the authority of the amendment above indicated. The question presented to this office is whether the city, in exercising the power granted it by the new chapter must comply with requirements of [NRS 354.410](#) to [354.460](#) dealing with the procedure for obtaining temporary emergency loans.

The statutes authorizing emergency loans contemplate a case of great necessity or emergency wherein the governing board of a political subdivision may, by unanimous vote, authorize such a loan. The intention to seek the loan is published and when the emergency resolution is adopted, a copy is sent to the Secretary of the Nevada Tax Commission. The Secretary of the Tax Commission then sends the resolution, together with his report, to the State Board of Finance for its approval. The resolution does not become effective until approved by the State Board of Finance. [NRS 354.420](#) and [354.430](#).

QUESTION

Must the City of North Las Vegas comply with emergency loan procedures and gain approval of the State Board of Finance before issuing interim warrants as authorized by Chapter 447, Statutes 1963, Sec. 43, subsection 68?

ANALYSIS

The power granted the City of North Las Vegas to issue interim warrants is in addition and supplemental to any authority it may have to apply for an emergency loan. This being the case, the city does not have to comply with the statutory procedures necessary for obtaining an emergency loan when issuing such warrants. The legislative intent in this regard is abundantly clear.

Section 46 of Chapter 447, Statutes 1963, recites:

1. Section 43 of this act, without reference to other statutes of the state, except as therein otherwise expressly provided, shall constitute full authority for the exercise of powers therein granted, including but not limited to the authorization and issuance of bonds thereunder.

* * * * *

4. *The provisions of no other law, either general, special or local, except as provided in Section 43, shall apply to the doing of the things therein authorized to be done, and no public body other than the city council of the city of North Las Vegas proceeding thereunder shall have authority or jurisdiction over the doing of any of the acts therein authorized to be done.*

5. *The powers conferred by section 43 of this act shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by section 43 of this act shall not affect the powers conferred by, any other law.* (Italics supplied.)

Section 43, subsection 2, recites:

The action and decision of the city council as to all matters passed upon by it in relation to any action, matter or thing there provided herein shall be final and conclusive in the absence of fraud.

Although there are other reasons that may be advanced in support of our conclusions, there is no need to cite them herein. Legislative intent is clear and unambiguous. The City of North Las Vegas may issue interim warrants in compliance with Chapter 447, Statutes 1963, Sec. 43, subsection 68, without following the emergency loan provisions of [NRS 354.410](#) to [354.460](#).

CONCLUSION

Legislative authorization for the City of North Las Vegas to issue interim warrants is in addition and supplemental to any right it may have to apply for an emergency loan and, as such, the city does not have to comply with emergency loan procedures when issuing such warrants.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

84 Real Estate Brokers—The Nevada Real Estate Advisory Commission may promulgate a rule forbidding a real estate broker from depositing funds, receive while acting in the capacity of a broker, in an escrow company owned or controlled in whole or in part by the broker.

CARSON CITY, October 24, 1963

MR. GERALD J. MCBRIDE, *Administrator, Real Estate Division, Department of Commerce, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. MCBRIDE: The Nevada Real Estate Advisory Commission has discovered certain situations wherein a real estate broker deposits funds, which come into his hands while acting in the capacity of a broker, in an escrow company owned or controlled by the broker. The fact that the escrow company is owned or controlled by the broker is not known to the buyer or seller he represents. The commission desires to promulgate a rule or regulation forbidding this practice.

QUESTION

May the Nevada Real Estate Advisory Commission promulgate a rule forbidding a real estate broker from depositing funds, received while acting in the capacity of a broker, in an escrow company owned or controlled, in whole or in part, by the broker?

ANALYSIS

The commission has the authority to do all things necessary and convenient for carrying into effect the provisions of Chapter 645 of NRS dealing with real estate brokers and salesmen. The commission is directed by the Legislature to promulgate reasonable rules and regulations for the administration of the chapter. [NRS 645.190](#). Vested with this authority the commission may promulgate the rule under consideration if the practices it seeks to forbid are contrary to the legislative dictates manifest in Chapter 645.

[NRS 645.310](#), subsection 4, directs “*Every real estate broker who does not immediately place all funds entrusted to him by his principal or other in a mutual escrow depository or in the hands of principals shall immediately deposit such moneys of whatever kind or nature belonging to others in a separate custodial or trust fund account maintained by the real estate broker with some bank or recognized depository until the transaction involved is consummated or terminated * * **” (Italics supplied.)

Under this statute a real estate broker can do one of three things with such funds. He may immediately place the money in (1) a mutual depository, or (2) in the hand so principals, or (3) in a separate custodial account maintained with some bank or recognized depository.

The practice under consideration is not in compliance with this law. An escrow owned or controlled by the broker is not a “mutual escrow.” Mutual is defined in Black’s Law Dictionary, at page 1172, as that which is common to both parties. An escrow owned or controlled by a broker of one of the parties to a transaction is not common to both parties. In fact it is doubtful that such a purported escrow is an escrow at all.

It is stated in 19 Am.Jur., Escrow, Sec. 14, that it is essential to an escrow that the instrument be delivered to a stranger or third person. The phrase “stranger or third person” means a person free from any personal or legal identity with the parties. In Sec. 15 it is stated that the deposits of instruments in escrow cannot be made with one who is the agent of either of the parties to the instrument, because, if the depository is the agent of the grantor, the instrument is retained by him; if he is the agent of the grantee, there is a delivery of the instrument.

[NRS 645.630](#) provides the grounds for the revocation or suspension of a real estate broker’s license. Subsection 4 provides that a license may be revoked if a broker acts for more than one party in a transaction without knowledge of all parties for whom he acts. In a broad sense, every depository in an escrow is the agent of both parties. For the purpose of making delivery upon the performance of the condition, he is no less the agent of the grantee than the agent of the grantor. 19 Am.Jur., Escrow, Sec. 13; *Vigli v. Davis*, 79 C.A.2d 237, 179 P.2d 586.

It is obvious that the practice under consideration is contrary to the provisions of Chapter 645 of NRS. The commission not only may promulgate a rule forbidding such action, but it is directed to do so by [NRS 645.190](#), which directs the commission to promulgate reasonable rules and regulations for the administration of the said chapter.

CONCLUSION

The Nevada Real Estate Advisory Commission may promulgate a rule forbidding a real estate broker from depositing funds, received while acting in the capacity of a broker, in an escrow company owned or controlled, in whole or in part, by the broker.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

85 Motor Vehicle Department—In the absence of legislative amendment, the driving under the influence of intoxicating liquors, is mandatory for a period of 2 years, and the granting of provisional licenses is not within the authority or power of the Motor Vehicle Department.

CARSON CITY, November 4, 1963

MR. LOUIS P. SPITZ, *Director, Department of Motor Vehicles, Carson City, Nevada*

DEAR MR. SPITZ: You have directed to this office an inquiry as to whether a person convicted for the second time of driving while under the influence of intoxicating liquor, may receive a restricted license to drive a motor vehicle.

ANALYSIS

Under [NRS 483.460](#), it is mandatory for the Motor Vehicle Department to revoke the license of any operator of a motor vehicle upon his or her second conviction of operating such vehicle while under the influence of intoxicating liquor.

Under [NRS 484.050\(3\)](#), it is mandatory that the guilty party shall have his or her license to operate a vehicle in this State revoked for a period of 2 years.

Nowhere in the statutes can we find any authority for the department to issue provisional licenses under the circumstances outlined.

While we realize that this operates as a hardship on those with offenses widely separated in time, and where a motor vehicle is needed to reach, and return from, a place of employment, yet the overall protection to the public from such a statute outweighs any other consideration.

CONCLUSION

It is, therefore, the opinion of this office, that in the absence of legislative amendment, the revocation of the operator's license of a person twice convicted of driving under the influence of intoxicating liquors, is mandatory for a period of 2 years, and that the granting of provisional licenses is not within the authority of power of the Motor Vehicle Department.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

86 Utilities; Highways—Chapter 167, Stats. 1963, providing for reimbursement by the State to utilities for the relocation of utility facilities located in or on certain highways, does not violate the Constitution of the State of Nevada.

CARSON CITY, November 7, 1963

MR. W. O. WRIGHT, *State Highway Engineer, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. WRIGHT: The 1963 Nevada Legislature passed an act to amend Chapter 408 of NRS, relating to state highways and roads, by adding a new section providing for reimbursement by the State to utilities for the relocation of utility facilities located in or on highways in the federal-aid primary or secondary systems or in the interstate system on the order of the State Highway Engineer. This act reads as follows:

Chapter 167, Statutes 1963:

Section 1. Chapter 408 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. For the purposes of this section:

(a) "Cost of relocation" means the entire amount paid by a utility properly attributable to the relocation of its facilities, including removal, reconstruction and replacement after deducting therefrom any increase in value of the new facility, and any salvage value derived from the old facility, and shall include the costs of all rights and interests in land and the costs of any other rights required to accomplish such relocation.

(b) "Utility" means any privately, publicly or cooperatively owned systems for supplying telegraph, telephone, electric power and light, gas, water, sewer and like service to the public or a segment of the public.

2. Whenever the engineer, after consulting with the utility concerned, determines that any utility facility which now is, or hereafter may be, located in, over, along or under any highway in the federal-aid primary or secondary systems or in the interstate system, including extensions thereof within urban areas, as such systems are defined in the Federal-Aid Highway Act and are accepted by and assented to by the State of Nevada, should be relocated, the utility owning or operating such utility facility shall relocate the same in accordance with the order of the engineer. The cost of any such relocation shall be ascertained and paid by the state as part of the cost of such federally aided project, provided the proportionate part of such cost shall be reimbursable from federal funds under a Federal-Aid Highway Act or any other Act of Congress under which the state shall be entitled to reimbursement for all or part of such cost.

3. This section shall not apply where a payment of relocation or removal costs by the state would be inconsistent with the terms of a permit issued by the engineer pursuant to [NRS 408.955](#).

Sec. 2. This act shall become effective upon passage and approval.

Section 123 (a) of Title 23 of the United States Code provides that when a state pays for the cost of the relocation of utility facilities necessitated by the construction of a project on federal-aid primary or secondary systems, or on the interstate system, federal funds may be used to reimburse the State for such costs in the same proportion as the federal funds are expended on the project. This section further provides that *federal funds shall not be used to reimburse the State when the payment to the utility violates a law of the State.*

Because of the limitation in Section 123(a) of Title 23 U.S.C. that the federal funds shall not be used to reimburse the State when the payment to the utility violates a law of the State, the federal government will not participate in the costs incurred under the authority of Chapter 167, Statutes 1963, *supra*, unless and until a court of competent jurisdiction or the Attorney General of the State of Nevada passes upon its

constitutionality. We are accordingly asked to render our opinion as to whether or not Chapter 167, Statutes 1963, violates the Constitution of this State.

QUESTION

Does Chapter 167, Statutes 1963, providing for reimbursement by the State to utilities for the relocation of utility facilities located in or on certain highways, violate the Constitution of the State of Nevada?

ANALYSIS

Initially, it is well to point out that similar legislation in other states has been found to be constitutional by five State Supreme Courts. *State v. City of Austin*, 331 S.W.2d 737 (Texas 1960); *Jones v. Burns*, 357 P.2d 22 (Montana 1960); *State Road Commission v. Utah Power and Light Co.*, 171 P.2d 353 (Utah 1960); *Northwestern Bell Telephone Co. v. Wentz*, 103 N.W.2d 245 (North Dakota 1960); *Opinion of the Justices*, 132 A.2d 613 (N.H. 1957); *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642 (Minnesota 1958). In addition, attorneys general in 15 states have issued opinions reaching similar conclusions. Authorities supporting the constitutionality of the act are substantial.

The provisions of the Nevada Constitution which appear to be involved in this problem are as follows:

- I. Article 9, Section 3, provides in part:
The state may contract public debts * * *.

The argument that may be advanced under this particular provision is that the expenditure of public funds for utility relocation is for the convenience and benefits of the utility and, therefore, is not a public debt which is authorized under Article 9, Section 3. One rule of law which we must keep in mind throughout this entire opinion is that the presumptions are always in favor of the rightful exercise of the lawmaking power, and a statute will be sustained if there be any reasonable doubt of its constitutionality. *State of Nevada ex rel. Augustus Ash v. William K. Parkinson*, [5 Nev. 15](#).

It is our conclusion that payments made by the State under the law we are considering would be for a public purpose. The reasoning upon which we base our conclusion is stated very well by the Minnesota Supreme Court in the case of *Minneapolis Gas Co. v. Zimmerman*, 253 Minn. 164, 91 N.W.2d 642. The court in passing upon similar legislation stated:

The realities of the situation are that the people of Minnesota would suffer economically if the state failed to take advantage of federal aid made available to the (privately and) municipally owned utilities of this state under the Federal-Aid Highway Act of 1956. The federal-aid program is to be financed out of federal funds, presumably resulting from federal taxes contributed in part by the people of this state. If the utilities located in the state must undertake relocation of their facilities without rights to reimbursement, their costs will be substantial and this in turn will be reflected in higher utility rates in Minnesota communities. Furthermore, to the extent that other states effectuate federal aid to their utilities and Minnesota does to, the people of Minnesota does not, the people of Minnesota will be paying federal taxes which will benefit the people of the other states but which will not benefit the people of Minnesota. The resulting economic benefit to the people of Minnesota from an authorization of these expenditures is a benefit to the community as a whole.

The Supreme Court of Texas, in *State v. City of Austin*, 331 S.W.2d 737 (1960), held that expenditures for reimbursement purposes serve a public purpose because the

public has an interest in receiving utility services. There is a public interest to be served by authorizing utility companies to use streets and highways to make such services available.

It is our conclusion that Article 9, Section 3, of the Nevada Constitution does not prohibit utility reimbursement payments as authorized by Chapter 167, Statutes 1963.

II. The next two relevant provisions of the Nevada Constitution can be disposed of for the purposes of this opinion by use of the same authorities and reasoning.

Article 8, Section 9, recites that the State shall not donate or loan money, or its credit * * *.

Article 9, Section 4, recites that the State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection or provide for the public defense.

The Constitution of the State of Illinois, Article IV, Section 20, embodies practically the same wording as the two provisions of the Nevada Constitution above cited. It reads:

The state shall never pay, assume or be responsible for debts or liabilities of, or in any manner give, loan or extend its credit to or in aid of any public or other corporation, or association or individual.

In construing this section of the Constitution, the Supreme Court of Illinois has repeatedly held that the constitutional provision prohibiting extension of credit or relief to any private individual does not prohibit appropriation of public funds to private corporations or individuals where money is spent for a public purpose. *Poole v. City of Kankakee*, 406 Ill. 521, 94 N.E.2d 416 (1950); *David v. Barrett*, 370 Ill. 478, 19 N.E.2d 356, 121 A.L.R. 1511; See also *State ex rel. Tattersall v. Yelle*, 52 Wash.2d 856, 329 P.2d 841 for a similar statement in regard to the Washington Constitution.

We have heretofore held in this opinion that the payments under consideration would be for a public purpose. It would seem that there could be little or no doubt of the service to the general public in the relocation of utility facilities when necessary as an incident to the construction on highways.

We, therefore, conclude that Chapter 167, Statutes 1963, does not violate Article 8, Section 9, or Article 9, Section 4, of the Nevada Constitution.

III. The only remaining provision of the Nevada Constitution that seems to be relevant to this inquiry is Article 9, Section 5, which provides as follows:

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

The question here presented is whether the proceeds as contemplated by Article 9, Section 5, can be used to reimburse utilities for relocation expenses when the provision specifically states that such funds shall be used exclusively for the construction, maintenance, and repair of the public highways of this state.

In construing the provision, it is proper to constantly keep in mind the objects sought to be accomplished by its adoption, and to give regard to the evils sought to be prevented or remedied. 16 C.J.S., Constitutional Law, Section 16. Indeed, it has been said that a constitutional limitation or prohibition usually extends no further on the reason on which it is founded. *In re Advisory Opinion to Governor*, 223, N.C. 845, 28 S.E.2d 567.

It is a matter of common knowledge that the objects sought to be accomplished by the adoption of the quoted provision was to prevent the diversion of the proceeds of taxation of motor vehicle transportation to purposes other than construction, maintenance,

and repair of the public highways of this State. The evil sought to be prevented was the loss of federal aid for highway construction by reason of the penalty provided in Section 126 (formerly Section 55) of Title 23, U.S.C.A., for such diversion.

The U.S. Congress obviously thought that the payment of the costs of relocation of utility facilities is a public purpose by the enactment of Title 23, U.S.C.A., Section 123, which provides that federal funds may be used to reimburse the State for the costs of utility relocation in the same proportion as federal funds are expended on the highway project itself. Congress recognized that relocation of utilities is a necessary part of highway construction. There is no reason that we should decide otherwise.

The costs of utility relocation is a cost of constructing highways within the meaning of the above constitutional provision. The term "construction" does not embrace merely the clearing and grading of road beds and paving of concrete, but includes everything appropriately connected with and necessarily incidental to the complete accomplishment of the general purpose for which the fund exists. See *State v. City of Austin*, 331 S.W.2d 737 (Texas 1960).

It is our opinion that Article 9, Section 5, of the Nevada Constitution, *supra*, does not prohibit the use of the proceeds therein stated for the payment of utility relocation reimbursement.

CONCLUSION

Chapter 167, Statutes 1963, providing for reimbursement by the State to utilities for the relocation of utility facilities located in or on certain highways, does not violate the Constitution of the State of Nevada.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

87 County Fire Protection Districts—County fire protection districts are required to notice for bids all contracts involving \$1,000 or more.

CARSON CITY, November 8, 1963

HON. JOHN CHRISLAW, *District Attorney, Douglas County, Minden, Nevada*

DEAR MR. CHRISLAW: You have requested of this office an opinion as to whether county fire protection districts have the authority and power to enter into contracts involving \$1,000 or more without noticing the same for bids.

ANALYSIS

Prior to the enactment of Chapter 208, Statutes 1963, there may have arisen some doubt as to the necessity for such notice. But the Legislature, by the enactment of the foregoing statute, amended Chapter 474 of NRS so as to place the control and management of county fire protection districts under the county commissioners.

[NRS 244.315](#) provides as follows:

1. Except as otherwise provided by law, in letting all contracts of any and every kind, character and description where the contract in the aggregate exceeds \$1,000, the county commissioners shall advertise such contract or contracts to be let for 3 consecutive weeks in some newspaper. The notice shall state:

- (a) The nature, character and object of the contract.
- (b) If plans and specifications are to constitute part of the contract, where the same may be seen.
- (c) The time and place when and where the bids shall be received and opened.

(d) Such other matters as may properly pertain to giving notice of bids.

2. In case the contract is for constructing any public building, then the advertisement shall be in that newspaper published in the county which is nearest the selected location for such building. If there is no newspaper published in the county, then the advertisement shall be by posting notices of the same in five of the most conspicuous and public places in the county for the same period of time.

3. No contract shall be let within 20 days after the date of the first publication of the advertisement. All contracts shall be let to the lowest responsible bidder, subject to the provisions of [NRS 244.310](#) to which this section is supplementary; but the provisions of this section shall not apply to contracts for the construction or repair of bridges, highways, streets or alleys where the same conflicts with other laws in relation to bridges, highways, streets or alleys.

CONCLUSION

It is the opinion of this office that the county commissioners handling the business of county fire protection districts should afford to such districts the same protection and safeguards as afforded all other county subdivisions coming under their control, and therefore, any contracts entered into by the commissioners for or on behalf of the county fire protection districts, where the amount involved is \$1,000 or more, should be noticed for bid and the procedure followed as set forth in [NRS 244.315](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

88 County Commissioners—Powers with respect to construction of a water system for unincorporated towns do not extend to obtaining loans or mortgaging property to meet cost of construction. Water Districts—Board of directors of water district formed pursuant to Chapter 311 of NRS authorized to borrow money on debenture secured by mortgage covering district property without approval of the voters.

CARSON CITY, November 12, 1963

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

STATEMENT OF FACTS

Dear Mr. Holden: In order to provide an adequate water supply, the town of Austin, Lander County, Nevada, has drilled a well which will furnish ample for the town's needs. It is proposed that the supply of water produced by the well be made available for public use through the town's already existing water system. This would require installation of connecting pipe and pumps at a cost estimated at \$60,000. An FHA loan in this amount, secured by a mortgage on the water facility when installed, is proposed for meeting this expense. Austin is a disincorporated town and as such is governed pursuant to the provisions of the "Unincorporated Towns Act," Chapter 269 NRS.

QUESTIONS

1. Does the disincorporated town of Austin, as a political entity, have an inherent right to provide the town with a water system under such circumstances?
2. In the event no such right exists, and the town forms a water district pursuant to Chapter 311 of NRS, and chooses to exercise the power described at [NRS 311.130\(5\)](#), does the town have authority to borrow money on open debenture against the water facility without a special election to authorize it as provided for in [NRS 311.240](#)?

ANALYSIS

Chapter 269 of Nevada Revised Statutes, being [NRS 269.010](#) to [269.385](#), applies (1) automatically as to the government of all cities of 600 or more population upon becoming disincorporated, and (2) to any other unincorporated towns electing to come under the provisions thereof upon petition by a majority of the voters of the town presented to the board of county commissioners of the county where the town is situated. Any town coming within the act under either of these plans is governed by the ordinances, rules and regulations passed and adopted by the county commissioners having jurisdiction over it. The powers and duties of the commissioners in this respect are clearly and specifically defined and limited by the act, and are not modified, enlarged or altered by any other sections of the statute.

Boards of county commissioners are created by the Legislature pursuant to Article IV, Section 26, Constitution of Nevada, and their powers are derived exclusively from legislative acts. There is no such thing as an inherent right or power vested in these boards with respect to their functions as the governing body of unincorporated towns, or at all. In defining their powers and duties in this respect the Legislature saw fit to clothe them with the power to establish and maintain a board of health, regulate traffic, provide for police and fire protection, and make certain public improvements as specified in [NRS 269.276](#). The latter are limited to “construction of sanitary, storm or other sewers, or laying pavement, constructing sidewalks, installing street lights or in any way maintaining streets and alleys.” All expenses for these purposes come from special assessment except such portion as the commissioners decide should be borne from the general fund of the town. In addition to these improvements, [NRS 269.265](#) et seq., provides for the construction of sewage systems in unincorporated towns upon approval of a bond issue by the voters.

Nothing expressly contained in the statutes pertaining to the powers of county commissioners in the governing of unincorporated towns authorizing the obtaining of a loan from the FHA or any other federal or state agency, or the mortgaging of town property as security for such. Nor can any such authority be found by reasonable implication. Beyond the powers which the Legislature has specifically authorized in this connection, or may hereafter authorize, or which may be reasonably implied therein, boards of county commissioners may not transcend. In an early Nevada decision it was held that it is too well established to admit question that county commissioners have only such powers as are expressly granted by the Legislature. *Waitz v. Ormsby County*, [1 Nev. 315](#). To the same effect is the later holding of the Nevada State Supreme Court in *First National Bank of San Francisco v. Nye County*, [38 Nev. 123](#), as well as others.

We come now to a determination of whether under Chapter 311 of NRS, providing for the formation of water and sanitation districts, the town has authority to borrow money on open debenture without complying with the provisions thereof requiring an election authorizing the contracting of an indebtedness against the district. First of all, any water district formed pursuant to the provisions of Chapter 311 of NRS, being [NRS 311.010](#) to [311.420](#), inclusive, is not formed by any action of the board of county commissioners of the county in which it lies. Nor does any such board have any authority over the operation or management of the district officers. Any water district so formed is declared by the act to be a governmental subdivision of the State of Nevada and a body corporate with all the powers of a public quasi-municipal corporation. It is

governed and controlled by an elective board of directors with specific powers granted by the Legislature under the provisions of [NRS 311.130](#), those pertinent to this question being as follows:

4. * * * to enter into contracts and agreements affecting the affairs of the district, including contracts with the United States of America and any of its agencies and instrumentalities. * * *

5. To borrow money and incur indebtedness and evidence the same by certificates, notes or debentures and to issue bonds, in accordance with the provisions of this chapter.

6. To acquire, dispose of and encumber real and personal property, water, water rights, water and sewer works and plants, and any interest therein, including leases and easements.

* * * * *

14. To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

From a careful study of the entire act we are of the opinion that it was the intent of the Legislature that boards of directors of water and sanitation districts established pursuant thereto exercise any and all of the hereinabove enumerated powers without an expression of the wishes of the voters. Any water district embracing the town of Austin is authorized under the act, through its duly elected board of directors, to obtain an FHA loan on debenture and to secure the same by mortgage on any water facility belonging to the district. [NRS 311.240](#) applies only when the directors seek to incur a bonded indebtedness for the district.

CONCLUSION

Question number 1 is answered in the negative.

Answering question number 2, unincorporated towns, by and through the county commissioners as their governing boards, have no authority over the affairs of water districts, but the board of directors thereof is empowered to borrow money from federal agencies on debenture and to secure payment of the same by a mortgage on property of the district.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

89 Municipal Corporations; Police Power; Gaming—Municipal corporations could not constitutionally assign regularly commissioned city police officers to gambling casinos as security guards or special officers, nor receive from gambling casinos the funds to pay their salaries.

CARSON CITY, November 12, 1963

HON. SIDNEY R. WHITMORE, *City Attorney, Las Vegas, Nevada*

DEAR MR. WHITMORE: You have propounded to this office a question as to whether a municipal corporation may appoint regularly commissioned police officers to act as security officers for gambling casinos, with the city to obtain funds for the payment of their salaries from the casinos.

ANALYSIS

In order to familiarize the general public, as well as city and county officials, with the background necessary to arrive at a determination in this matter, it is pointed out that in the course of the development of the gambling industry, especially in the Las Vegas area, it has been the policy at different time to allow deputy sheriffs to serve as security guards when off duty.

The present county policy is to deputize security guards so as to invest them with the powers of a deputy sheriff, but the casinos pay their salaries.

This policy is completely inconsistent with good government. No law enforcement officer should be placed in a position where there might be a conflict of interest arising by reason of being deputized by the sheriff to perform the functions of enforcing the law impartially, and yet receiving his compensation from the casino where he is employed, and where his continued employment depends upon whether he performs his duties to the satisfaction of the club owners. One would be naïve to believe that situations might not arise where the scales would be balanced in favor of the club as against public benefit.

The City of Las Vegas now commissions security guards in the gambling casinos in that city as special security officers, but without powers usually assigned to police officers, such as service of process, etc.

Article VIII, Section 1, of the Constitution of Nevada provides:

The Legislature shall pass no Special Act in any manner relating to corporate powers except for Municipal purposes * * *.

The question then arises, "Would the appointment of regularly commissioned policemen of a municipality to duties as security guards at gambling casinos within the city, with their salaries to be paid by the city from funds secured from the casinos, constitute a municipal purpose as envisioned by those who drafted the Constitution?" We think not.

The same conflict of interest, as pointed out in the case of deputy sheriffs acting as security guards in county gambling casinos, is at once apparent. If provision is made by city ordinance for such a program, it would, in the opinion of this office, run into the same constitutional barrier.

In the opinion of this office the security officers in all casinos should be independent contractors. The screening of these officers by the sheriff and police departments, because of their facilities for such a program, and even a training course, might be in the public interest. But to place on the law enforcement division of government the responsibility for the acts of such security guards is at once dangerous and incompatible with good government.

CONCLUSION

It is, therefore, the opinion of this office that the City of Las Vegas could not constitutionally assign regularly commissioned city police officers to gambling casinos as security guards or special officers, nor receive from gambling casinos the funds to pay their salaries.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

90 Nevada State Hospital Autopsies—The Superintendent of the Nevada State Hospital does not have the power to authorize autopsies on patients who die within that institution without known relatives.

CARSON CITY, November 15, 1963

MR. D. N. O'CALLAGHAN, *Director, Department of Health and Welfare, Carson City, Nevada*

DEAR MR. O'CALLAGHAN: You have requested this office to give you an official opinion on the following question:

Does the Superintendent of the Nevada State Hospital have power to authorize autopsies on patients who die within that institution and have no known relatives?

ANALYSIS

[NRS 451.010](#) provides as follows:

1. The right to dissect the dead body of a human being shall be limited to cases:
 - (a) Specially provided by statute or by the direction or will of the deceased.
 - (b) Where a coroner is authorized to hold an inquest upon the body, and then only s he may authorize dissection.
 - (c) Where the husband, wife or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized.
2. Every person who shall make, cause or procure to be made any dissection of the body of a human being, except as provided in subsection 1, shall be guilty of a gross misdemeanor.

We can then reach the conclusion that an autopsy could be authorized by the Superintendent of the State Hospital only if the deceased willed it, being, of course, of sound mind at the time, or if specially provided for by statute.

It is extremely doubtful if those committed to the State Hospital are of such sound mind preceding death as to lawfully authorize an autopsy to be performed after their decease. This then leaves us in the position of seeking some special authority granted to the Superintendent of the State Hospital to authorize autopsies, which authority would lie outside the provisions of [NRS 451.010](#).

The duties and powers of the Superintendent of the Nevada State Hospital are set forth in [NRS 433.120](#). While 13 separate powers and duties are set forth therein, none gives the superintendent the power to authorize autopsies contrary to the express statutory provisions set forth in [NRS 451.010](#).

[NRS 433.610](#) establishes the rules and regulations to be followed in the case of the death of a patient. None of its provisions authorizes the superintendent to order an autopsy on a patient after death.

There seems to be no statute involving autopsies, either independent of, or in pari materia with, [NRS Chapter 451](#). Therefore, it must govern until such time as the Legislature enacts a different statute governing the power of the Superintendent of the Nevada State Hospital to authorize autopsies, or amends [NRS 451 so](#) as to give him that power.

CONCLUSION

It is, therefore, the opinion of this office that the Superintendent of the Nevada State Hospital does not have the power to authorize autopsies on patients who die within that institution without known relatives.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

91 Unincorporated Towns—Boards of county commissioners as governing boards of unincorporated towns authorized under [NRS 169.155\(1\)](#) to exercise such additional powers as are necessarily incidental to the execution of their express powers, including enactment of an ordinance adopting Uniform Building Code. Publications of such ordinance before enactment must be in strict compliance with statute applicable thereto.

CARSON CITY, November 18, 1963

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

STATEMENT OF FACTS

DEAR MR. BLAISDELL: The now unincorporated Town of Hawthorne, Mineral County, Nevada, was an incorporated city from 1946 to 1956 at which time it was disincorporated and resumed the status of an unincorporated town which it has since remained. During the period of its corporate existence, it enacted a building ordinance wherein the Uniform Building Code was adopted by reference. The Mineral County Commissioners now propose to enact an ordinance for Hawthorne adopting the current Uniform Building Code, which has raised the following questions.

QUESTIONS

1. May an unincorporated town lawfully enact a building ordinance adopting a uniform building code?
2. If the answer to question number 1 is negative as a general rule then, if an incorporated city has regularly adopted a building code and is thereafter disincorporated, and in its unincorporated status desires to adopt a current building code, may it lawfully do so?
3. If the Board of Mineral County Commissioners is authorized to adopt a uniform building code for the Town of Hawthorne, is it required to publish the ordinance twice in its entirety, pursuant to [NRS 269.155](#)? Or may it publish by title only and adopt the building code pursuant to [NRS 244.100](#) et seq.?

ANALYSIS

Unincorporated towns in Nevada, including those resuming that status by disincorporation as well as those electing to become such upon the voters petition to the county commissioners of the county in which the town is situated, are governed by the provisions of Chapter 269 of NRS. The boards of county commissioners are there designated as the governing body of each unincorporated town within their respective counties. Their powers and duties in this connection are specifically enumerated but do not include that of enacting an ordinance for adoption of a uniform building code. The Nevada State Supreme Court has ruled many times that boards of county commissioners in the performance of their functions pertaining to the county, have only such powers as have been expressly granted to them by the Legislature. But the court has also recognized that these boards also have such additional powers as may be necessarily incidental for

the purpose of carrying their express powers into effect. *State ex rel. King v. Lothrop*, [55 Nev. 405](#). We believe that this holding is likewise applicable to the powers of county commissioners in connection with their functions as governing bodies of unincorporated towns.

Further authority for exercising these additional or implied powers is found in [NRS 269.155\(1\)](#), authorizing county commissioners to enact ordinances for carrying their express powers into effect, and to “do and perform all other acts and things necessary for the execution of the powers and jurisdiction conferred by this chapter.” And in [NRS 269.155\(3\)](#) is the provision that ordinances enacted by incorporated cities shall carry over after their disincorporation for governing them as unincorporated towns, “until changed or repealed by the board.” These sections, in our opinion, definitely clothe county commissioners with certain implied powers necessarily incidental to their express powers, and we believe that such was the legislative intent. No rule of thumb can be laid down for guidance in this respect, but each situation requires separate consideration as the implied powers within the contemplation of the statute must be exercised only with greatest caution and within the restrictions there indicated.

Since Hawthorne, as an incorporated city, had by ordinance adopted the Uniform Building Code which continues in force and effect in its unincorporated town government, the county commissioners are empowered under paragraph (3) of the above section, as we interpret it, to alter, amend, modify, or repeal the ordinance altogether, or replace it with another wherein a building code is adopted which fits the needs and conditions of the town. Any change of the present ordinance which will more effectively carry into effect the board’s express powers, especially that of providing health and fire protection to the town’s residents, is therefore authorized.

Any ordinance enacted by the county commissioners of any county which is intended for the governing of any unincorporated town in their county, must be passed pursuant to [NRS 269.155\(2\)](#). That section specifically provides that “no * * * ordinance shall be in force or effect until published for two publications one week apart.” A careful search of the statutes convinces us that this requirement is not only mandatory but that the section is exclusive for this purpose. The method of publication provided for in [NRS 244.100](#) is applicable to county ordinances only and may not be used for ordinances pertaining to unincorporated towns. Where directed by statute, county ordinances, resolutions, orders generally, or in particular cases must be published in compliance with the statutory mandate. 20 C.J.S. 871. It is realized that publication of a lengthy building code as required by the above section would entail considerable expense and in many cases work a financial hardship on the town, but only the Legislature can afford any alleviation from its severity for such cases.

CONCLUSION

It is the opinion of this office that any unincorporated town within the State is lawfully empowered, through its governing body, to enact an ordinance adopting the Uniform Building Code, and that the power to do so likewise exists as to any town which may previously have had incorporated status during which time it regularly adopted a building code, and which has since disincorporated. In order to enact such ordinance, strict compliance must be had with [NRS 269.155\(2\)](#), requiring two publications of the proposed ordinance in its entirety, the provisions of [NRS 244.100](#) requiring publication of an ordinance by title only being inapplicable.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

92 Administration, Department of—Minimum Security Prison Bonds probably cannot and Marlette Lake Bonds definitely cannot be refunded. Chapter 357, Statutes 1961, and Chapter 462, Statutes 1963, construed.

CARSON CITY, November 20, 1963

MR. HOWARD E. BARRETT, *Director, Department of Administration, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BARRETT: You have called to our attention that of recent date the General Obligation Bond Commission of the State has been successful in obtaining a purchaser for a bond issue of \$2,150,000 at an interest rate of 2.59 percent per annum, which is substantially less than the rate contracted in the Marlette Lake Bonds (3 percent per annum) or the Minimum Security Prison Bonds (3.75 percent and 4 percent per annum).

The Legislature of 1963 enacted Chapter 281, which provides for refunding (refinancing) of certain bond issues, by local political subdivisions.

QUESTION

Is the State authorized under the provisions of Chapter 281, Statutes 1963, or any other statute to refund either of the bond issues heretofore mentioned?

ANALYSIS

Section 2 of Chapter 281, Statutes 1963, in part, provides:

Sec. 2. 1. Any county, incorporated city, unincorporated town, school district or quasi-municipal district (including without limitation, cities organized under the provisions of special legislative acts or special charters, and all districts governed by Title 25 of NRS), may issue bonds under this act for the purpose of:
* * *

Title 25 of NRS includes 10 local districts. It does not include the State of Nevada.

The doctrine of *inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of another) applies and the enumeration of entities in Section 2, subsection 1, of Chapter 281, Statutes 1963, is exclusive. The privilege does not run to the State of Nevada.

As to whether or not any other law now existing would permit the refunding (refinancing) of these obligations enumerated, the question of constitutional protections of the obligations of contracts is presented. In other words, the State cannot pay the individual bonds prior to maturity, and cannot substitute bonds earning a reduced rate of interest for those now outstanding, in the absence of consent of the bond holder, unless the contracts themselves provide for such change of contractual obligation, at the option of the debtor. The possibility of consent of the bond holders to voluntarily accept a contract more favorable to the State of Nevada and less favorable to themselves than is contained in the bonds presently issued may be disregarded.

What rights then or privileges in this respect, if any, have been retained by the State by the contract provisions of the bonds?

The General Obligation Minimum Security Prison Bonds were authorized by Chapter 357, Statutes 1961. We do not have before us a copy of the bonds. However, the statute provided that a resolution by the commission authorized to issue the bonds might

provide for redemption prior to maturity. (Section 3, subsection 3.) If the commission entered into such a resolution, which resolution is printed in the bonds, and if the Legislature would authorize the issuance of refunding bonds for this purpose, and if refunding bonds could be sold at a lower interest rate, it would be possible to call the bonds, and redeem the same, and pay the indebtedness thereon by funds obtained by such refunding process, with a saving resulting. These things appear to be extremely unlikely.

The General Obligation Marlette Lake Bonds were authorized by the provisions of Chapter 462, Statutes 1963. The statute provides, Sec. 4, subsection 3(g) that the bonds shall “not be subject to redemption prior to their respective maturities.” Such provision is controlling. The contract as expressed in the bonds, pursuant to the statute, precludes and prevents refunding or prior redemption.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

93 Real Estate Advisory Commission; Hearings—The Nevada Real Estate Advisory Commission, while conducting an adjudicatory hearing, has the authority to order the exclusion of prospective witnesses. The request for exclusion may be made by the subject of the hearing and when made it is mandatory that the order be invoked. The order would apply to a regular employee of the division of Real Estate who has been active in the conduct of the prehearing investigation. It may, however, be stipulated that a witness who has testified will not be recalled for further testimony and this witness may remain in the hearing.

CARSON CITY, November 21, 1963

MR. GERALD J. MCBRIDE, *Administrator, Real Estate Division, Department of commerce, Las Vegas, Nevada*

STATEMENT OF FACTS

DEAR MR. MCBRIDE: The Nevada Real Estate Advisory Commission has been confronted with several procedural problems concerning the conduct of hearings by the commission held pursuant to Chapter 645 of NRS. [NRS 645.440](#) provides for a hearing after a denial of an application for a real estate broker's license. [NRS 645.680](#) and [645.690](#) provide for a hearing on a complaint by the commission to revoke or suspend such a license. All of the questions presented concern the authority of the commission to exclude witnesses while conducting the hearings.

QUESTIONS

1. Does the Nevada Real Estate Advisory Commission, while conducting hearings pursuant to either [NRS 645.440](#) or [645.690](#), have the right to order the exclusion of prospective witnesses at the request of either the Division of Real Estate or the applicant (or licensee, as the case may be)?
2. If the commission has such right, is it discretionary or mandatory that the order be invoked upon a request being made?

3. In the event such an order may be and is made by the commission does it apply to a regular employee of the Division of Real Estate who has been active in the conduct of the investigation of the matters which are the subject of the hearing?

4. If the answer to question 3 is yes, would the order be applicable to such an employee if he were the first witness to be called at the hearing and the division stipulated that he would not be recalled subsequent to the receipt of other testimony?

ANALYSIS

A factor of prime importance in answering these questions is that the hearings authorized by the above cited statutes are adjudicatory in nature and concern adjudicative facts. They are held for the purpose of determining the fitness of an individual to be licensed as a real estate broker.

An adjudicatory action cannot be validly taken, whether judicial or administrative, except upon hearing wherein each party shall have the opportunity to know the claims asserted against him, to hear the evidence, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment of the United States Constitution. In other words, the rights protected in an adjudicatory hearing are similar to those guarded in a court of law. We must consider the question of administrative exclusion of witnesses and Nevada law on the subject with regard to these rights.

Nevada has enacted a law known as the "open meeting law." Chapter 241 of NRS. [NRS 241.020](#) provides that "all meetings of public agencies, commissions * * * shall be open and public, and all persons shall be permitted to attend any meeting of these bodies."

[NRS 241.030](#) provides that "The legislative body (we are of the opinion that the Real Estate Advisory Commission is such a legislative body) *may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.*" (Italics supplied.)

There is no doubt that [NRS 241.030](#), supra, authorizes the commission to exclude witnesses from hearings. However, since we are considering the propriety of the exclusion in light of the adjudicative or trial nature of the hearing, we have to be concerned with procedural due process. We arrive at our conclusions by applying case law dealing with the exclusion of witnesses from court trials.

In *Rainsberger v. State*, [76 Nev. 158](#), 161, Mr. Justice McNamee discussed [NRS 48.250](#), which provides the exclusionary rule in civil cases. That statute recites that "If either party require it, the judge may exclude from the courtroom any witness of the adverse party. * * *" Justice McNamee concluded that this statute makes it mandatory upon trial courts in civil actions to exclude witnesses when the rule is invoked.

In using the analogy of an adjudicative hearing to a trial, we believe procedural due process would be served best by following the opinion in *Rainsberger v. State*, supra. The commission has the right to order exclusion of any or all witnesses from a hearing. However, the same right should be accorded the applicant or licensee subject of the hearing. When such a request is made to the commission, we are of the opinion that it is mandatory that the order be invoked granting the exclusion.

If such an order is made, it would apply to a regular employee of the Real Estate Division of the State Department of Commerce who has been active in the conduct of the prehearing investigation. If he is to be a witness it makes no difference by whom he is employed. The plain and unambiguous terms of the statute authorize the exclusion of any or all witnesses.

It is a general rule that when an order to exclude witnesses is invoked, it continues for each witness after he has left the stand. VI Wigmore, *Evidence*, Sec. 1840, p. 360 (3d Ed. 1940). However, we do not believe that this rule would apply to a witness who has already testified and it is stipulated that he will give no further testimony. The reason for the exclusion no longer exists and we are of the opinion that in this situation, the reason

for the law ceasing, the law itself ceases. We would like to point out that we do not believe this is good practice. Such a stipulation would preclude this witness from giving testimony in rebuttal. It is frequently necessary to recall a witness in consequence of a later witness' testimony.

CONCLUSION

The Nevada Real Estate Advisory Commission, while conducting an adjudicatory hearing, has the authority to order the exclusion of prospective witnesses. The request for exclusion may be made by the subject of the hearing and when made it is mandatory that the order be invoked. The order would apply to a regular employee of the Division of Real Estate who has been active in the conduct of the prehearing investigation. It may, however, be stipulated that a witness who has testified will not be recalled for further testimony and this witness may remain in the hearing.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

94 Administration, Department of—The acquisition of the Marlette Lake Water System was for a governmental purpose. However, the operation will be both governmental and proprietary. For reasons enumerated, it is advisable that insurance be provided to cover possible tort liability.

CARSON CITY, November 26, 1963

MR. HOWARD E. BARRETT, *Director, Department of Administration, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BARRETT: The State of Nevada purchased the Marlette Lake Water System, pursuant to the provisions of Chapter 462, Statutes 1963, and delivered in payment therefor its general obligation bonds in the principal amount of \$1,650,000 on August 27, 1963.

QUESTION

Is the operation of the Marlette Lake Water System by the State of Nevada a proprietary or governmental function, within the meaning of the pertinent law respecting sovereign immunity from tort liability?

ANALYSIS

The Legislature of 1963 in Chapter 462 recited the offer made by Marlette Lake Company, described the property that would be involved in the proposed purchase, and recited its conclusion to purchase with the following language of justification:

Sec. 2. After considered judgment and consideration of the provisions of and the authority contained in the second paragraph of section 3 of Article IX of the constitution of the State of Nevada, the legislature finds and declares that the acceptance by the State of Nevada of the offer of Marlette Lake Company to sell the property described in section 1 to the state is both expedient and advisable *for the natural resources of the State of Nevada and for the purposes of obtaining and*

continuing the benefits thereof now and in future years for the state and its citizens. (Italics supplied.)

In *Marlette Lake Company v. Sawyer*, (Nevada July 3, 1963) 383 P.2d 369, the Supreme Court said:

The legislative determination (Stats. Nev. 1963, Ch. 462, Sec. 2) that it is expedient and advisable for the state to purchase the Marlette properties in order to protect and preserve natural resources, is one properly within its province to make * * * and is not here questioned.

The concurring opinion of Justice Badt (upon different reasons) clearly points out that the water system of Marlette Lake Company was needed by the State in the protection of the lands and grounds owned by the State.

We, therefore, have a finding by the Legislature, concurred in by the Supreme Court that the purchase of Marlette Lake Company properties was necessary “for the protection and preservation of the natural resources of the State” and to obtain the benefits thereof for “its citizens.”

CONCLUSION

At the time of acquisition, it, therefore, appears that the purpose of acquiring was for a governmental purpose. However, the question of its operation is one more narrow. It will be necessary for the State in the operation to continue to sell water to Virginia City and to Carson City, as well as provide the capital grounds and buildings with water. This part of the operation will have the appearance of proprietorship. Even more, the activities of proprietorship may increase by the sale of water to other urban communities or for agricultural purposes, for we are told water is potentially available in several times the present consumption.

It is also true that the tendency is to retreat from the doctrine of sovereign immunity, either by the Courts unaided by legislation (*Muskoff v. Corning Hospital District*, 55 Cal.2d 211, 359 P.2d 457) or by legislative mandate. For example, the Nevada Legislature accepted tort liability (as a surety for a time) under the Bond Trust Fund Act. Chapter 467, Statutes 1959.

In light of these considerations, it is our recommendation that the State now obtain such insurance as might be required to properly protect it in the Marlette Lake water operation, from liability founded in tort, to the same extent as if we had answered this question in a manner to indicate that the Marlette Lake operation now is of a proprietary nature.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

95 Taxation; Free Port Law—Personal property in transit while stored in Nevada warehouse, entitled to tax exemption only if assigned an out-of-state destination at time of transportation or within a reasonable time afterwards. Reproductions of any personal property in transit while in Nevada warehouse, intended for distribution without the State, not tax exempt under statute.

CARSON CITY, November 26, 1963

MR. JAKE OAKES, *Assistant Director, Department of Economic Development, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. OAKES: An out-of-state engaged in the business of storing movie film negatives is interested in taking advantage of the Free Port Law of this State by arranging for the storage of such film in Nevada warehouses. Consideration is being given to making prints from the stored film negatives for distribution to points outside the State.

QUESTIONS

1. Under the Free Port Law, can this firm store the film here tax free if it is not to be distributed within the State?
2. If prints are made from these negatives at a Nevada location to be distributed outside the State, will they also be tax exempt under the Free Port Law?

ANALYSIS

Nevada's Free Port Law, which exempts personal property in transit from taxation, was enacted in 1949 and, as amended, is contained in [NRS 361.160](#) to [361.185](#), inclusive. The definition of "personal property in transit" given in [NRS 361.160\(1\)](#), and which was, in substantially the same language, incorporated in and made a part of the Constitution of Nevada by the voters in 1960 (Art. X, Sec. 1), is personal property, goods, wares and merchandise:

- (a) which is moving in interstate commerce through or over the territory of Nevada; or
- (b) which was consigned to a warehouse, public or private, within the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterwards.

It is paragraph (b) of this definition with which we are here concerned. The essential requirement to bring goods in transit within this definition is that they must have an out-of-state destination. See A.G.O. No. 775, July 12, 1949; A.G.O. No. 189, November 9, 1961. Although the destination may be determined "afterwards" or following the shipment in to the State, it may not be delayed indefinitely. The word "afterwards," according to the lexicographers, indicates a sequence subsequent in point of time, but with certainty. An out-of-state destination for goods shipped into the State for storage must be specified within a reasonable time after their transportation. Otherwise, the situs of such goods becomes fixed and subject to taxes like other personal property not in transit. A careful reading of the statute convinces us that this was the legislative intent, even though the goods for which tax exemption is claimed are not to be distributed within the State.

With respect to personal property in transit, it is further provided in [NRS 361.160\(1\)\(b\)](#) that:

* * * Such property shall not be deprived of exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged, or because the property is being held for customers outside the State of Nevada.

The acts here permitted in connection with the treatment or handling of goods in transit while in a Nevada warehouse, do not include others not specifically enumerated. Under the well-known and often applied rule of "Expressio Unius Est Exclusio Alterius,"

acts permitted by a statute being affirmatively designated, there is an inference that all omissions were intended by the Legislature. Sutherland Statutory Construction, Vol. 3, Sec. 4915; Ex Parte Arascada, [44 Nev. 30](#). All enumerated acts being excluded, it follows that any acts performed in the treatment or handling of such goods which are not within the scope or meaning of the acts permitted are unauthorized. The act of making prints from film negatives is not specifically enumerated in the permitted acts nor can we find that it was the intent of the Legislature to include it by inference. Printing from negatives is a reproduction of the original and a creation of something additional. While it is, in a sense, a processing, it is even more. It is a duplication which can be made any number of times, and is, in effect, like the reproduction of something additional from moulds, patterns or dies. It would be equivalent to manufacturing, and would permit the consignor or owner to ship out of the State for marketing, more than was originally shipped in for storage. We do not believe that the processing which is permitted in the act can legally or equitably be extended that far. The rule which we believe applies with respect to processing of personal property after shipment into the State is well stated in 51 Am.Jur. 470, Sec. 455, (also in standard Oil Co. v. Combs, 96 Ind. 179), is as follows:

Property brought from another state for the purpose of subjecting the same to a manufacturing process in such state, preparatory to its being shipped to markets or customers without the state, is not deemed in transit so as to prevent acquisition by it of a taxable situs in the state where the manufacturing takes place.

Although the act contains a mandate that it shall be liberally construed, we do not believe that it was the legislative intent that recognized rules of interpretation and ordinary meanings of words be disregarded, or that the definition of the term "property in transit" be extended beyond what is specifically state therein.

CONCLUSION

Based upon the foregoing, it is the opinion of this office that, under the Nevada Free Port Law, movie film shipped from outside the State and stored in a Nevada warehouse does not fall within the statutory definition of "personal property in transit" so as to escape taxation within this State, unless an out-of-state destination is assigned for said film at the time of its transportation into the State or within a reasonable time afterwards. And any prints made from the film negatives while stored within the State, even though they be thereafter distributed outside the State, are not tax exempt. Both questions are answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

96 State Employment; Residence Requirements—The State Personnel Chief and/or the Personal Advisory Commission cannot adopt a rule establishing residence in Nevada as a condition for certification of eligible for classified positions even though their qualifications are equal with those of nonresidents.

CARSON CITY, December 3, 1963

MR. IRVIN GARTNER, *Chief, State Personnel Division, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. GARTNER: An applicant for a classified position in the State's employment has been allowed to take the competitive examination for the position. The information we have received indicates that this individual received one of the top three grades in the examination, but was informed by the State Personnel Division that because he has not been a resident of Nevada for a period of 6 months, he has been placed below residents who had *any* passing grade. The applicant has objected to this classification and the State Personnel Chief now is concerned with the possibility of adopting a rule establishing residence in Nevada as a condition for certification of eligibles for classified positions, and more particularly, in cases where their qualifications are equal.

QUESTION

Is it legal for the State Personnel Chief and the Personnel Advisory Commission to adopt rules establishing residence in Nevada as a condition for certification of eligibles for classified positions, and more particularly, in cases where their qualifications are equal?

ANALYSIS

On December 17, 1962, this office issued an opinion to the State Personnel Chief on a problem that is not dissimilar from the instant question. A.G.O. No. S-14. At that time, attention was called to [NRS 281.060](#) which provides in part as follows:

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 officer of the State of Nevada, any political subdivision of the State, or by any person acting under or for such officer in any department or office of the State of Nevada, or political subdivision of the State.

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. (Italics supplied.)

The relevant part of the above referenced opinion reads as follows:

* * * It will be noted that the preference to Nevada residents is not absolute; only when the "qualifications of the applicants are equal," is there any basis for any such preference. Obviously, if the rating on an examination as attained by a non-resident applicant *is in any degree at all higher than the rating attained by a resident* on the same examination * * *, then the nonresident is presumptively better qualified, and any allowance of preference because of residence is not only no longer mandatory, but would, in fact, be improper.

Nonetheless, as current practice has been outlined to us, the priority of the list of resident eligibles over the list of nonresident eligibles is absolute, wholly ignoring the relative comparative qualifications, fitness and examination ratings or grades of each particular person named in each of the two lists.

Such being the case, we must, therefore, conclude that such result, of so according residence preference to public employment in the indicated circumstances, is violative of, and contrary to, Nevada legislative declaration of policy and intent in connection with the enactment of the Personnel Act. In our considered opinion, it is also manifestly contrary to fundamental principles, criteria and accepted requirements of any proper merit system for employment in

the public service, and in the circumstances described, would probably be subject to serious legal question. (*Italics supplied.*)

The practice as outlined in the facts of the instant case is obviously a continuation of the policy that existed prior to the issuance of the above opinion. As indicated in that opinion, the mandate of Nevada legislation on this subject is that certification of eligibles for classified positions shall be made according to merit and fitness to be ascertained by competitive examination. The only time a Nevada resident is to be given preference is when his or her rating is the same as that obtained by a nonresident applicant. Theoretically, under present practice, a person who has not been a resident of Nevada for 6 months could score a perfect grade on the examination, be exceptionally well qualified, and yet be placed on the eligible list below any resident who passed by a low or high passing grade. As will be shown, a fair reading of the law indicates that residence requirement is not a condition of eligibility for the examination nor for certification when the nonresident applicant scores a higher grade on the examination.

The following statutes are relevant to this discussion:
[NRS 284.010](#) reads:

1. The Legislature declares that the purpose of this chapter (creating State Department of Personnel) is:
 - (a) *To provide all citizens a fair and equal opportunity for public service;*
 - (b) *To establish conditions of service which will attract officers and employees of character and ability; * * *. (Italics supplied.)*

[NRS 284.150](#), subsection 2, provides:

Appointments in the classified service shall be made according to merit and fitness from eligible lists prepared upon the basis of examination, which shall be open and competitive, except as otherwise provided in this chapter.

[NRS 284.210](#) reads:

All competitive examinations for positions in the classified service shall:

* * * * *

2. Be open to all applicants who meet the reasonable standards or requirements fixed by the chief with regard to *experience, character, age, education, physical condition and such other factors as may be held to relate to the ability of the applicants to perform the duties of the position with reasonable efficiency.* (*Italics supplied.*)

It is obvious from the above legislation that examinations for classified positions are to “be open to *all* applicants who meet reasonable standards or requirements.” It is difficult to perceive the situation wherein the fact of nonresidence would have any bearing at all upon “experience, character, age, education or physical condition.” Only in a rare situation would residence “relate to the ability of the applicant to perform the duties of the position with reasonable efficiency.”

[NRS 284.240](#) provides the circumstances wherein an applicant can be refused examination or certification. This statute, as amended, reads as follows:

The chief may refuse to examine an applicant or, after examination, may refuse to certify an eligible person who comes under any of the following categories:

1. Lacks any of the preliminary requirements established for the examination for the position or employment for which he applies.
2. Is physically so disabled as to be rendered unfit for the proper performance of the duties of the position to which he seeks appointment.
3. Is addicted to the use of habit-forming drugs.
4. Is an habitual user of intoxicating liquors to excess.
5. Has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct.
6. Has been dismissed from the public service for delinquency or misconduct.
7. Has made a false statement of any material fact.
8. Has, directly or indirectly, given, rendered, or paid, or promised to give, render, or pay, any money, service or other valuable thing to any person for, or on account of, or in connection with, his examination, appointment or proposed appointment.
9. Has practiced, or attempted to practice, any deception or fraud in his application, in his certificate, in his examination, or in securing his eligibility or appointment.

There is no authorization, under the above statute, to refuse to examine or certify on the basis of residence. It is a fundamental rule of statutory construction that where a number of things are expressly designated, there is an inference that all omissions were intended by the Legislature (*Expressio Unius Est Exclusio Alterius*). This rule is applicable here because the Legislature listed the reasons for refusing examination or certification, but did not include nonresidence as such a reason.

[NRS 284.250](#), subsection 1, reads:

The chief shall prescribe rules and regulations for the establishment of eligible lists for appointment and promotion *which shall contain the names of successful applicants in the order of their relative excellence in the respective examinations.* (Italics supplied.)

[NRS 284.255](#), subsection 1, reads:

Appointments shall be made from the appropriate eligible list, * * *.

[NRS 284.265](#) recites:

Appointing authorities shall give written notice to the chief of their intention to establish new positions and of the existence of any vacancy to be filled in any office or employment in the classified service. *Within a reasonable time after the receipt of such notice, the chief shall certify from the list of eligible persons, appropriate for the grade and class in which the position is classified, the three names at the head thereof.* (Italics supplied.)

Under the law as it presently exists the proper procedure for examining and certifying applicants for classified positions is as follows: The examinations are to be open to all applicants without regard to residence ([NRS 284.210](#)); the Chief of the Personnel Division shall then establish eligible lists *which shall contain the names of successful applicants in the order of their relative excellence* in the respective examinations ([NRS 284.250](#)); and after receiving notice from the appointing authority that a position is open, the chief shall certify from the eligible list, the three names at the head thereof ([NRS 284.265](#)).

The Legislature has not spelled out the preference that is to be accorded a resident, and it is difficult to visualize a situation wherein the preference could be applied under the statutes as they presently exist. As stated in Opinion NO. S-14, supra, "if the rating obtained by a nonresident applicant is in any degree at all higher than the nonresident is presumptively better qualified."

The problem we are confronted with concerns a remote situation wherein the nonresident and resident have identical scores on the examination.

Who is to give the preference, the Chief of the Personnel Division, the Personnel Advisory Commission or the appointing authority?

It is stated in 10 Am.Jur., Civil Service, Sec. 8, that "ordinarily, the civil service commission has no power to appoint to any office or position, but the power to appoint is in the head of the department or office in which a position is listed under the Civil Service Act. The Commission generally certifies to the office having the power of appointment a limited number of names of those certified." This situation exists in Nevada.

Since the appointing authority is the proper party to select the employee, it is our conclusion that this is the party to apply the residence preference. If both residents and nonresidents are certified, the appointing authority shall give the resident preference if his or her qualifications are equal to those of nonresidents.

The general rule-making authority of the Personnel Advisory Commission and the Chief of the Personnel Division does not empower them to enact the proposed rule. A rule or regulation, to be valid, may only implement the law, and it must be in furtherance of the intention of the Legislature, as evidenced by its acts. 2 Am.Jur.2d, Administrative Law, Sec. 300, p. 127. A rule cannot supply omissions of the statute. Id. Sec. 289, p. 118.

CONCLUSION

The State Personnel Chief and/or the Personnel Advisory Commission cannot adopt a rule establishing residence in Nevada as a condition for certification of eligibles for classified positions even though their qualifications are equal with those of nonresidents.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

97 Intoxicating Liquors; Retail Liquor Sales Aboard Aircraft Flying In and Out of Nevada—Cities and counties, through their governing bodies, empowered to enact ordinances requiring retail liquor license for such sales within their respective jurisdictions, provided such ordinances are non discriminatory and do not unreasonably interfere with interstate commerce. License Fees and Taxes for Storage of Liquor Within the State—Air lines transporting liquor into the State, although for only brief storage and with no intent to make general sales therein, become an importer under [NRS 369.030](#), and subject to importer's license and payment of excise taxes on liquor so stored, such shipments not coming within the exemptions afforded by the Free Port Law.

CARSON CITY, December 4, 1963

MR. JAMES J. NOEL, *Acting Secretary, Nevada Tax Commission, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. NOEL: Pacific Air Lines Company operates passenger flights from northern California to Reno, Nevada, and return, and also flights from southern California to Las Vegas, Nevada, and return. Presently, there are facilities for serving liquor while in flight over California, and consideration is being given to extending this service to the portion of the flights over Nevada as well. To accomplish this, it is proposed that quantities of liquor be brought into Nevada for storage at the company's stations for periods ranging from 24 to 36 hours, after which it would be reloaded for the return trip for retail sales aboard plane. No sales would be conducted except while in flight between California and Nevada and return.

QUESTIONS

1. Is a license required to serve liquor over the State of Nevada?
2. Is a license required to store temporarily (14 to 36 hours) liquor in the company's station at Reno at Las Vegas?

ANALYSIS

A glance at the questions here propounded brings us to a quick realization that we are confronted with a situation involving interstate commerce which is governed by Art. 1, Sec. 8, U.S. Constitution, wherein Congress is empowered to regulate commerce between the states. It was learned from bitter experience under the Articles of Confederation that unless this power was vested in the central government, hopeless confusion was bound to result through competitive and widely varying state laws. Even though the power was so vested by the states by and through their adoption of the constitution, continual conflicts have since existed between state and federal laws in the regulation of commerce between the states, and a myriad of federal and state court decisions attempting to clarify the situation have filled the reports. Probably the most numerous of the decisions have passed upon state laws seeking to exact some form of taxes, assessments or fees from commerce crossing state lines.

The early theory was substantially that no phase of interstate commerce could be taxed at all. The present view, however, is that interstate commerce "must pay its way"; and that the test of validity is whether the tax discriminates against or unreasonably burdens interstate commerce. See: *Western Livestock v. Bureau of Revenue*, 303 U.S. 250 (1938); *McGoldrick v. Berwind-White Coal Min. Co.*, 309 U.S. 33 (1940); *Otto v. Mississippi Valley Barge Line Co.*, 336 U.S. 169 (1949). After reviewing innumerable federal decisions involving state statutes wherein a levy was made on interstate shipments, the California Supreme Court, sitting in Bank, in *Martin Ship Service Co. v. City of Los Angeles*, 215 P.2d 24, recognized that a tax imposed on a local activity related to interstate commerce is valid if, and only if, the local activity is not such an integral part of the interstate commerce, the flow of commerce, that it cannot realistically be separated from it. In *United Air Lines v. Joseph*, N.Y. Sup.Ct., App.Div., May 12, 1953, cited and annotated in 3 C.C.H. Aviation Cases, 18, 200, although the court struck down a New York City ordinance imposing a privilege tax for the privilege of doing business within the municipality on the ground that it unreasonably interfered with interstate commerce, it nevertheless recognized that where a combination of intrastate and interstate activity is involved, a gross receipts tax is valid if the burden of such tax is allocated to that portion of the activity which is intrastate.

Although these authorities deal mostly with a direct tax imposed by laws of certain states upon the earnings and activities of interstate carriers, we believe that the same ruling, by analogy, applies to the power to impose and collect a license fee for the privilege of retailing liquors aboard interstate aircraft. Statutes requiring interstate carriers

to secure a license for dispensing intoxicating liquors within the state enacting the same have frequently been upheld. 30 Am.Jur. 612.

The laws of Nevada do not provide for the issuance of retail liquor licenses by the State. That function is left to city councils ([NRS 366.355\(r\)](#) and [NRS 366.360](#)) in the case of incorporated cities; boards of county commissioners ([NRS 269.170\(d\)](#)) in the case of unincorporated cities and towns; and to county liquor boards, consisting of the county commissioners, district attorney and sheriff to each county ([NRS 244.350](#)), as to the portion of any county not within an incorporated city or an unincorporated city or town. The State's sovereignty in the space above the land and waters within its boundaries, extends upwards indefinitely, subject to the right of flight over it by aircraft ([NRS 493.030](#)). Any liquor dispensed through bar service aboard an aircraft in flight over any part of the State presumably constitutes a retail sale and subject to the licensing provisions of the hereinabove cited sections of the statutes.

We know of no instances in this State where the power vested in city or county officials with respect to retail liquor licenses, has ever been exercised to the extent of requiring such licenses for aircraft retailing liquor while in flight over territory within their control. The impracticability of applying ordinances of this nature becomes readily apparent. In flights from points in northern California to Reno and return, any aircraft would actually be over a portion of Washoe County and possibly a smaller portion of Douglas or Ormsby county for a very few minutes before landing at the Reno Airport, and again, after the takeoff for the return trip. The time in flight over these counties and over the City of Reno, would not permit more than a negligible amount of liquor to be sold, and probably none at all. A similar situation exists with reference to flights from southern California to Las Vegas and return. It appears that any revenue that either the cities or counties concerned might derive from this source would be small indeed, if not entirely nil.

Even though both cities and counties may be empowered under the law through their governing bodies to require a retail liquor license for aircraft conducting bar service while flying over their respective jurisdictions, the exercise of the power under present Nevada law and most existing situations, would, in our opinion, create insurmountable problems, making enforcement difficult if not impossible. The means of enforcement would hardly justify the end results to be attained. The situation might well be considered by the Legislature.

An answer to question number 2 hereinabove propounded is dependent upon both state and federal laws. At the outset, it appears that the act of transporting any liquor into the State, even though it be temporarily stored therein and shipped out within a few hours is nevertheless an act of importation requiring an importer's license pursuant to [NRS 369.180](#).

[NRS 369.030](#) defines "importer" as follows:

* * * Any person who, in case of liquors which are brewed outside the state, is first in possession thereof within the state after completion of the act of transportation.

[NRS 369.390\(2\)](#) provides:

An importer's license * * * shall permit the holder thereof to import liquor to the place specified therein and to no other place. It shall not authorize the sale or transfer for sale of any type of liquor. In order to make such sale or transfer the licensee must first secure the appropriate license or licenses applicable to the class or classes of business in which he is engaged.

We believe that the legislative intent is clear in these sections to make liquor imported into the State subject to the imposition of certain license fees. And it should be

added that by the provisions of [NRS 369.330](#), such liquor also becomes subject to an excise tax. The inquiry presents itself as to whether such license fees and tax levies violate the interstate commerce clause of the U.S. Constitution. Power to regulate commerce in regard to the importation of intoxicating liquors is no longer within the exclusive province of the federal government. The 21st Amendment, U.S. Constitution, Par. 2, adopted in 1934, prohibits transpiration or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws of any such state, territory or possession. The effect of this amendment was to grant the states the right to legislate concerning intoxicants brought from without the state for use or sale therein, unfettered by the commerce clause. *Ziffrin v. Reeves*, 308 U.S. 132. In a case arising in California and decided in a federal court, where further interpretation was given the amendment, it was held that any right which a person may have to transport liquor from state to state does to confer the privilege of selling it without regulation by the state, i.e., obtaining an importer's license. *Wylie v. State Board of Equalization of Calif.*, 21 Fed.Supp., 604.

The importer cannot circumvent nor evade the fees and taxes imposed on imported liquors by himself dispensing them through retail sales aboard aircraft as is proposed by the air lines company. Such practice is prohibited by [NRS 369.500](#) providing that "no retailer or retail dealer shall purchase any liquor from other than a state licensed wholesaler."

Even if the air lines company as an importer could escape the license fees and excise tax, it is still subject to an ad valorem or property tax upon any liquor acquiring a situs within the State. Imported liquor stored within the State for a short time does not become personal property in transit so as to find exemption under the Free Port Law when it is planned to retail some of it within the State. Under [NRS 361.160\(1\)\(b\)](#), personal property in transit is defined as personal property, goods, wares, and merchandise:

which was consigned to a warehouse, public or private, within the State of Nevada for storage in transit *to a final destination outside the State of Nevada*, * * *. (Italics supplied.)

Although the Free Port Law must be liberally construed, we believe nevertheless that personal property to come within the above definition, must, in its entirety, have a final destination outside the State. If any portion thereof, however small, is sold within the State, as is planned here, it ceases to remain personal property in transit so as to entitle it to tax exemption.

CONCLUSION

By reason of the statutes, decisions and constitutional provisions governing the matters here under discussion, this office is of the following opinions:

1. That although county commissioners, county liquor boards and city councils of incorporated cities in Nevada are probably empowered by law to require a retail liquor license for aircraft making flights into the State and dispensing drinks while in flight over their respective jurisdictions, provided such ordinances are nondiscriminatory and do not unreasonably interfere with interstate commerce, nevertheless, ordinances enacted for exercising such power would, under existing law and conditions, be difficult or impossible to enforce effectively, and most likely would not produce revenue commensurate with the expenses involved.

2. That an air lines company transporting intoxicating liquor into Nevada becomes an importer subject to the payment of an importer's license fees as well as excise taxes thereon, the power to levy such fees and taxes being authorized by the 21st Amendment, U.S. Constitution, Par. 2, and further that such imported liquor is also subject to property taxes upon acquiring situs within the State.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

98 Nevada State Department of Health and Welfare—Nevada State Department of Health and Welfare is an arm of the executive department of the State, and being legally constituted by law, is properly authorized to cooperate with the federal government in accepting benefits of, and administering construction program provided for in Public Law 88-164.

CARSON CITY, December 10, 1963

MR. D. N. O'CALLAGHAN, *Director, State Department of Health and Welfare, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. O'CALLAGHAN: Public Law 88-164, enacted by Congress on October 31, 1963, and cited as "Mental Retardation Facilities Construction Act," authorizes, among other things, the appropriation of funds for the fiscal year beginning July 1, 1964, for allotment among the states and territories to assist public and nonprofit groups, in (a) the construction of facilities for the mentally retarded; and (b) the construction of community health centers. By letter dated October 18, 1963, the Governor of Nevada designated the Department of Health and Welfare, for the purpose of submitting a state plan to be administered by that department in order to take advantage of the act. In accordance with Sections 134(a)(1) and 204(a)(2) thereof, this office has been requested to submit an official opinion as to the authority of said department to carry out the program involved.

ANALYSIS

The Welfare Department of the State of Nevada was created by legislative enactment in 1949 (Chapter 327, Statutes 1949), and as amended appears as [NRS 422.010](#) to [422.350](#), inclusive. Included in the powers vested in said department under [NRS 422.270](#), and which are pertinent to the issue here raised, are the following:

422.270 (Powers and duties of state welfare department.) The state welfare department shall:

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

2. Act as the single agency of the State of Nevada and its political subdivisions in the administration of any federal funds granted to the state to aid in the furtherance of any services and activities as set forth in subsection 1.

3. Make rules and regulations for the administration of this chapter which shall be binding upon all recipients and local units.

4. Conduct research, compile statistics on public welfare, determine welfare needs and make recommendations for meeting such needs.

5. Cooperate with the Federal Government in adopting state plans, and in all matters of mutual concern, including adoption of such methods of administration as may be found by the Federal Government to be necessary for the efficient operation of welfare programs.

Under Section 422.260 of the act, the State of Nevada:

1. * * * assents to such additional federal legislation as is not inconsistent with the purposes of this chapter.
2. * * * accepts the appropriations of money by Congress in pursuance of the Social Security Act and authorizes the receipt of such money into the state treasury for the use of the state welfare department in accordance with this chapter and the conditions imposed by the Social Security Act.

At the 1963 Session of the Nevada Legislature, the “Department of Health and Welfare” was created and embraced the following divisions: (a) Alcoholism, (b) Children’s Home, (c) Health, (d) Nevada Girls Training Center, (e) Nevada State Hospital, (f) Nevada Youth Training Center, and (g) Welfare. (Chapter 393, Statutes 1963.) All powers and functions of the State Welfare Department as set forth in [NRS 422.270](#), including those hereinabove specifically listed, passed over to and became vested in the Department of Health and Welfare.

The department thus created is an arm of the executive branch of the State of Nevada, and is designed to facilitate and effectuate enforcement of laws pertaining to the welfare of the State’s citizens. In our opinion, the authority to act in this capacity and for this purpose cannot be questioned, and its existence and functions are not in conflict with nor opposed to either the Constitution of the State of Nevada or that of the United States, nor with or to any laws of either government. The act of 1963, creating the department and vesting it with the powers specifically hereinabove enumerated, remains and is presently, in full force and effect, and has not been repealed, declared unconstitutional, diminished, modified, or altered by legislative act, court decision, or the ruling of any other department or agency of the state or federal government. It appears further that the personnel of the office are well equipped through both training and experience to deal efficiently with all welfare problems of the State, including those having to do with the administration of any federal programs in which the State may participate.

CONCLUSION

Based on the foregoing, we are fully convinced that the Department of Health and Welfare is a lawfully constituted state department with full power and authority to act in any capacity for and on behalf of the State in all matters pertaining to the welfare of its citizens. It is, therefore, our opinion that said department is the proper state agency authorized by law to administer the construction program provided for in U.S. Public Law 880164, and that its designation for that purpose by the Governor of Nevada was and is correct.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

99 Public Service Commission: Municipally Owned Utilities—Municipally owned and operated utilities not public utilities within the statutory definitions so as

to come within jurisdiction of Public Service Commission or subject to its rules and regulations.

CARSON CITY, December 12, 1963

CLARENCE L. YOUNG, ESQ., *City Attorney, Lovelock, Nevada*

STATEMENT OF FACTS

DEAR MR. YOUNG: The City of Lovelock, Pershing County, Nevada, owns and operates its own municipal water system, being supplied by water brought from a nearby source. Some surplus water above the needs of residents of the city is also furnished to persons living outside the city limits. It is proposed to increase the water supply through additional pipe so as to provide water for domestic needs to farms lying in upper Lovelock Valley which is also without the city limits. This will necessitate certain expenses which are to be met by a loan to be obtained by the city through available sources.

QUESTION

Would the city be classed as a public utility and subject to the Public Service Commission rules and regulations in this proposed system?

ANALYSIS

Under the provisions of [NRS 703.150](#), the Public Service Commission "shall supervise and regulate the operation and maintenance of public utilities, as named and defined in Chap. 704 of NRS." The definitions of public utility stated in [NRS 704.020](#) do not, in our opinion, include municipally owned utilities. Such was the ruling of this office in A.G.O. No. 732, March 11, 1949, and which was followed in A.G.O. 187, July 17, 1952. Although the Nevada Supreme Court has had no occasion to interpret the latter statute, it has been held that where a statute does not expressly include municipal corporations operating utility plants, such plants are not within the jurisdiction of a Public Service Commission under the statute. *Springfield Gas & Electric Company v. City of Springfield*, 126 N.E. 739; 18 A.L.R. 929 and Anno. Cases.

That the Legislature definitely intended to exclude municipal corporations from the jurisdiction of the Public Service Commission is further evidenced by [NRS 704.340](#), providing that, "A municipality constructing, leasing, operating or maintaining any public utility shall not be required to obtain a certificate of public convenience." It seems to be well settled in California and some other jurisdictions that a city is not a private corporation when carrying on a municipally owned public utility. *City of Pasadena v. R.R. Commission of the State of California*, 192 P. 25; 10 A.L.R. 1425 and Anno. Cases.

Nothing appears in the Nevada statutes affirmatively vesting any power in the Public Service Commission in municipally owned utilities. Nor does a Public Service Commission have any inherent powers. All its powers and jurisdiction, and the extent and nature of the same, must be found within the statutory or constitutional provisions creating it. 43 Am.Jur. 701, and cases cited.

CONCLUSION

From the foregoing authorities, we reaffirm the earlier opinions of this office that the Public Service Commission has no jurisdiction over a municipally owned utility, and further that it does not become a public utility by being municipally operated. The question propounded, in its entirety, is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

100 Administration, Department of—It is not within the province of the Board of Examiners to provide by administrative ruling, for repayment to employees of the State, of the costs of moving residence and domicile within the State, in those cases in which the existing statutes appertaining to such department may not be construed as permissive.

CARSON CITY, December 27, 1963

MR. HOWARD E. BARRETT, *Director, Department of Administration, Carson City, Nevada*

STATEMENT OF FACTS

Dear Mr. Barrett: On June 27, 1962, an inquiry was directed to this office from the office of Director of the Budget, inquiring whether or not the State Board of Fish and Game Commissioners would be authorized to pay the cost of moving of one of its regular employees with permanent status, at the instance of the commission, to a distant point within the State of Nevada.

It was observed that the agency was a "special fund" agency with no appropriation to it by the Legislature later than the year 1951. It was stated that from the requested opinion it was desired to deduce a general rule for the guidance of other departments of the state government.

On July 6, 1962, this department replied by letter opinion to the effect that the statute in respect to the powers of the State Board of Fish and Game Commissioners, regarding the expenditure of its moneys, was very broad and that, therefore, this power could be inferred. We stated, however, that no general rule could be deduced therefrom and that in each case, the question of authority or want of it to expend appropriated moneys of a department in this manner would be considered in light of the pertinent statutes affecting the department or agency involved.

Subsequently, the 52d Regular Session of the Nevada Legislature convened on January 21, 1963. A bill, general in scope, to permit a state agency, board or commission of the executive branch of government to pay the costs of moving its employees from its budget funds, in certain instances, under authority of its governing body previously given, was prepared and in readiness for the consideration of the Legislature. The Assembly Committee on Ways and Means, we are informed, was requested to introduce the bill. However, this committee, we are informed, urged that it be introduced by the Committee on Finance. The latter committee, having been contacted, was urged to introduce the bill and press for passage, but declined to introduce the same.

QUESTION

May the Board of Examiners adopt an administrative rule or regulation, general in scope, to provide for the reimbursing of the costs of moving of regular state employees of the executive branch from one location to another in Nevada, brought about at the instance and request of the employing agency or department?

ANALYSIS

An exhaustive set of proposed regulations in regard to the qualification for such financial assistance and recoupment have been prepared and are available for adoption. If this question could be answered in the affirmative, these proposed regulations would be desirable, and would be equitable and in keeping with careful financial administration.

However, the history of the proposed legislation must be regarded as a defeat by the Legislature of this proposal. It was a decided defeat and not a defeat of a measure by a close vote, or bare majority. The proposal was rejected by the Legislature in the incipient or incubation stage. It is inescapable that the history of this proposal and lack of favorable consideration constitutes a legislative rejection of the concept of a general or blanket authority for the repayment of such costs. This is not to say that certain agencies or departments, which we have not considered, are not authorized under their specific statutes to recoup such losses or prepay such charges. In this respect, we will of necessity be required to deal with cases as they arise.

It is not within the power of any board, commission, department or agency of the executive branch of the state government to substitute its views, by administrative ruling, in cases in which the specific statutes do not authorize such payment, for the determination of the legislative branch. Such would constitute an attempt to legislate.

In exercising the rule-making power, however, such administrative officers and boards must act within the limits of the power granted to them. (Citing cases.) The basis for that proposition is, of course, that rules and regulations which have the effect of extending , or which conflict in any manner with, the authority-granting statute do not represent a valid exercise of authorized power, but, on the contrary, constitute an attempt by the administrative body to legislate. *Anhauser-Busch, Inc. v. Walton*, 135 Me. 57, 190 A. 297. Quoted as above in *State v. Miles*, 5 Wh.2d 322, 105 P.2d 53. Quoted in dissenting opinion of *Morgan v. Department of Social Security*, 127 P.2d, 686, at 706.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By D. W. PRIEST, *Chief Assistant Attorney General*

101 Insurance, Department of—The Commissioner of Insurance may authorize the examination of books, accounts, securities, and other property owned by duly licensed title insurance companies of Nevada, without the aid of a subpoena or other legal process; but may not at random examine escrows held by such companies, except by aid of such process.

CARSON CITY, December 30, 1963

MR. PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*

Dear Mr. Hammel: The Legislature of 1925 enacted Chapter 57, which was an act to regulate the business of title insurance in the State of Nevada. The original act required the deposit of securities or cash with the State Treasurer as a “guarantee fund” for the protection of policy holders.

The Legislature of 1941 enacted Chapter 189, denominated the “Nevada Insurance Act” and therein, among other things, created a State Department of Insurance under the administration of the State Controller.

The Legislature of 1951 enacted Chapter 314, which created the office of Insurance Commissioner, as a separate and distinct office for the administration of the insurance laws of the State of Nevada.

Under the provisions of Chapter 162, Statutes 1951, the Insurance Commissioner of the State has from that date been granted supervisory jurisdiction over the title insurance companies of the State, then existing or later formed.

Under the provisions of [NRS 695.010](#) to [695.210](#), the Insurance Commissioner is required to annually license and to supervise the operation of the title companies of the State of Nevada, and under the provisions of [NRS 695.180](#), the Insurance Commissioner is empowered to examine the books, accounts, securities, and other property of licensed title insurance companies, in order that he may ascertain that the provisions of the law ([NRS 695.010](#) to [695.210](#)) are fully complied with.

On October 18, 1963, this office issued A.G.O. No. 80, in which it was concluded that the Real Estate Division of the Department of Commerce (Real Estate Commission), by its civil officers, employed by the said commission, had no authority, there being no specific statute to authorize it, to make an investigation of escrow files maintained by title insurance companies and others, without the aid and authority of proper legal process. Such search, if it had been authorized, would have been for the purpose of discovery of violations of the laws appertaining to the Real Estate Division, and would have involved not only title insurance companies, but other escrow keepers and holders, as well as persons not under the supervisory jurisdiction of the commission.

QUESTIONS

1. May a title insurer of Nevada, under the supervisory jurisdiction of the Department of Insurance, require of the Insurance Department that it serve a subpoena, or other legal process, upon such insurer as a condition precedent to being permitted to examine the books, accounts, securities, and other property belonging to such title insurance company?

2. May a title insurer of Nevada, under the supervisory jurisdiction of the Department of Insurance, require of the Insurance Department that it serve a subpoena, or other legal process, upon such insurer as a condition precedent to being permitted to examine the escrow files held by such insurer, in which the insurer is designated as "escrow keeper"?

ANALYSIS

We first call attention to the fact that the property sought to be examined under the language of question number 1, is property of the insurer, in which third parties (if involved at all) are involved only in an incidental manner. Whereas, under the second question, records are sought which do involve the private interests of parties that are not under the supervisory jurisdiction of the Insurance Commissioner. An escrow differs from a trust deed in one important particular which is significant under the questions here propounded, viz.: In the case of a trust deed being recorded, the transaction is, in many important particulars, open to public inspection and examination. An escrow is normally not recorded and is not, by conduct of the parties, made available to public scrutiny.

Under the provisions of [NRS 695.020](#), title insurance companies of Nevada are required to be licensed by the Commissioner of Insurance. Under [NRS 695.030](#) and [695.040](#), the title companies, prior to being licensed, must have a minimum paid-up, unimpaired capital, deposited with the State Treasurer, and under [NRS 695.050](#) such deposit must be approved by the commissioner both as to quantity and quality of securities or other assets. Under [NRS 695.090](#), title insurance companies, under the supervisory jurisdiction of the commissioner, are required to build up a reserve fund, the same being supplemental to the fund required prior to beginning of business. The commissioner is charged with a duty of not only seeing that these funds and assets are in accordance with law prior to the granting of a license, but also, that they remain such

during operation. He must, therefore, have authority to examine such records as are pertinent to such responsibility.

[NRS 695.180](#) provides:

695.180 (Examination of accounts, securities by commissioner)

1. Whenever he deems it necessary, the commissioner of insurance is authorized to examine the *books, accounts, securities and all property belonging to any title insurance company* incorporated under the laws of this state in order to satisfy himself:

(a) As to the value of the assets of the company; and

(b) That such company has complied with the provisions of [NRS 695.010](#) to [695.210](#), inclusive.

2. If the commissioner of insurance finds that the assets of the company are not of the value of at least \$100,000 or that the company is not complying with the provisions of [NRS 695.010](#) to [695.210](#), inclusive, he shall *give notice to such company to repair its capital immediately*, or to comply fully with the provisions of [NRS 695.010](#) to [695.210](#), inclusive. The commissioner of insurance shall refuse to issue a certificate of authority or shall revoke his certificate of authority issued to such company authorizing it to do business in this state until such time as the company shall have fully complied therewith.

3. If any such company shall refuse to permit an examination, the commissioner of insurance shall refuse to issue a certificate of authority or shall revoke his certificate of authority issued to such company.

4. The commissioner of insurance shall have power to examine any officer, agent or employee of such company under oath, and require answers in writing, with reference to the *financial condition of the company*. (Italics supplied.)

It will be observed in this as well as other sections of Chapter 695, that the commissioner has been granted only such powers as are necessary to determine the financial condition of any company, and that it is in compliance with the law, particularly with reference to its capital assets and its liabilities.

The records and things that the commissioner may examine are enumerated. The enumeration is exclusive under the doctrine of *inclusio unius est exclusio alterius*. Under this statute, the authority is not given to conduct a “fishing expedition” in the hopes that something interesting may be turned up. A statute which might authorize such an expedition would be of doubtful constitutionality under the provisions of Section 18, Article I, of the Constitution.

The conclusions here recited are in harmony with procedures normally followed in such cases, for it must be kept in mind that in case an escrow company fails to properly carry an escrow, it will normally be taken to account by private counsel.

CONCLUSIONS

1. Question number 1 is answered in the negative.
2. Question number 2 is answered in the affirmative.

Respectfully submitted,

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