

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1964

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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.

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**102 Nevada State Highway Department—Eyeglasses program benefits may not legally be extended to families of highway employees.**

CARSON CITY, January 3, 1964

DR. ROBERT T. MYERS, *Secretary, Nevada State Board of Optometry, P.O. Box 2466, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. MYERS: The Nevada State Highway Department in sponsoring and promoting its overall safety program has initiated and is carrying on as a special phase thereof, a prescription glasses program for its employees. In that connection, the department, on December 28, 1959, outlined and disseminated a definite procedure to be followed by its employees in complying with the program, copies of which were furnished to all Highway Division Engineers in the State. The procedure directs that an office employee in each division office handle the program and asks that employees of the department have an eye examination by their eye doctors, after which completed examination forms are forwarded to a San Francisco optical company for filling the prescription in each case. It is understood that the price schedule of this company for doing this work is below that of local opticians, thereby resulting in a considerable saving to each person fitted. After fulfilling the prescriptions, the San Francisco company bills the Highway Department direct for the expenses incurred in each case, and the department then bills the employee who is requested to pay the department as soon as possible. No bills are paid out of or through Highway Department funds. According to information furnished this office, the program has been extended in several instances to members of the families of highway employees, which has given rise to substantially the inquiry hereinafter stated.

QUESTION

It is legal for the State Highway Department to extend the benefits of its safety program to others than its own employees?

ANALYSIS

Certain state administered programs designed for the protection, improvement or general welfare of state employees are sometimes adopted by states for the purpose of promoting health, safety, or various other beneficial results. But the benefits of these programs do not vest automatically in the general public nor to members of the families of such employees. As a general rule, families may share in these benefits only in cases where the law creating the program so provides. The reason for the rule is obvious. First

of all, members of families of state employees are not themselves employees of the State, and secondly, facilities of the State may not be used for the purpose of bestowing private benefits upon them. The facts hereinabove stated indicate that a financial benefit results to anyone acquiring eyeglasses pursuant to the program.

Furnishing these benefits to the families of state employees necessitates additional service by state employees at state expense, for which there is no legal authorization either by statute or court decision. On the contrary, an act of the Nevada Legislature of 1911 is apparently designed, among other things, to prevent practices of this nature. Under [NRS 197.110](#), public officers are prohibited from using any person or property under his control or direction, or in his official custody, for the private gain or benefit of another.

#### CONCLUSION

It is the opinion of this office that the benefits of the prescription glasses program, carried on through the Nevada State Highway Safety Program, may not be legally extended to members of the families of state highway employees.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**103 Public School Teachers; Salary Deductions for Annuity Premiums—County school district boards of trustees are authorized to make deductions from teachers' salaries for group tax-deferred annuities provided the plan is on a voluntary basis and written request for the deduction is received from the participating teachers.**

CARSON CITY, January 8, 1964

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

#### STATEMENT OF FACTS

DEAR MR. STETLER: Several county school district boards of trustees have adopted resolutions to enter into teacher annuity programs which result in a deferment of federal income tax on a portion of teacher's income used to fund the program. A resume of the procedure is as follows:

Public school employees and employees of certain tax exempt organizations have the right to defer the federal income tax on a portion of their salary used to fund the purchase of these annuities. The annuity plan is, in effect, a voluntary individual pension plan whereby employer contributions (provided by the employee through a bona fide salary reduction or by foregoing a salary increase) are used to fund the purchase of an annuity on the employee's life. These contributions, if within certain limitations, are not currently taxable to the employee. The employee pays a tax on the annuity benefits only when actually received. Thus the tax is imposed at a time when the employee normally will be retired and in a lower tax bracket.

The question presented concerns the authority of the county school boards of trustees to authorize a premium from the teachers' salaries to fund the purchase of the annuities.

#### QUESTION

Are county school district boards of trustees authorized to make deductions from teachers' salaries for group tax-deferred annuities?

#### ANALYSIS

We conclude that annuity deductions are authorized. The reasons for this determination, we believe, are found by the application of fundamental rules of statutory construction to the following statute.

Boards of trustees are authorized to deduct from teachers' salaries, upon written request of the teachers, moneys for the payment of *group insurance of any kind*. (Italics supplied.)

The problem is whether annuity deductions would come within the purview of the above legislative authorization and within the terms of "group insurance of any kind."

The intent of the Legislature may be gathered from statutes relating to the same subject matter—statutes in *pari materia*. 2 Sutherland, *Statutory Construction*, p. 531 (3d ed. 1943). Applying this rule to the instant problem we find that the laws relating to annuities are found in the chapters of NRS dealing with insurance. The annuities in question would be purchased from insurance companies and for purposes of state regulation are considered insurance. [NRS 681.020](#). Annuity contracts are approved by the Insurance Commissioner, [NRS 690.030](#), and annuity premium income is taxed in the same manner as insurance premium income. [NRS 686.010](#). Annuities, therefore, are generally considered by the Legislature in the same context as insurance. As such, it is logical to conclude that the authorization to deduct for "group insurance of any kind" would include the authority to deduct for group annuities.

Although, strictly speaking, annuity contracts are not insurance contracts, the statute in question should be construed with reference to its manifest purpose, which is to allow teachers the advantages they may derive from group contracts of this nature. A strict interpretation of the statute would be inconsistent with the general objective of the Legislature. A more liberal interpretation, in view of these objectives, also leads to the conclusion that deductions for annuities are authorized. 2 Sutherland, *Statutory Construction*, p. 339 (3d ed. 1943).

We should point out, however, that teacher participation in such programs must be on a voluntary basis and deductions may be authorized only after a written request is received from the teacher.

#### CONCLUSION

County school district boards of trustees are authorized to make deductions from teachers' salaries for group tax-deferred annuities provided the plan is on a voluntary basis and written request for the deduction is received from the participating teachers.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

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**104 Allowances by court from county funds for expenses incurred in defense of indigent criminal cases by court appointed attorneys—Courts empowered by law to allow only such expenses for defense of indigent criminal cases as are provided for by statute. Beyond court's jurisdiction to allow any expense for this purpose over and beyond attorney's fees. County commissioners**

**authorized to refuse payment of any claim or expense ordered paid which is not allowable by statute, without being answerable in contempt.**

CARSON CITY, January 16, 1964

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

#### STATEMENT OF FACTS

DEAR MR. MARSHALL: The District Attorney's Office of Clark County, Nevada, has, at the request of the District Court Judges of that county, asked for the opinion of this office in answer to the inquiries hereinafter set forth. No specific facts have been presented in connection with the inquiries, but the situations suggested therein are presumed to exist generally in that county as well as in other counties of the State whenever indigent defense cases arise. The overall problem has to do with the extent of expenses to which a county may be put in providing for the trial of indigents in criminal cases, the specific questions submitted being as follows:

#### QUESTIONS

1. Is counsel for an indigent defendant in a capital case, punishable by death, or in any other case, entitled to receive reimbursement by the State for costs and travel expenses incurred, with or without permission of the court, for interviewing witnesses or prospective witnesses at distant locations both in and out of State, for the accused defendant?

2. Is counsel for an indigent defendant in a capital case, punishable by death, or in any other case, entitled to receive, with or without permission of the court, a transcript of other unrelated court proceedings in which witnesses testified, when the testimony in the reported case may probably be similar or identical to the expected testimony by such witnesses in the pending case?

3. If the court were to order such expenses to be paid (in question number 1) or such transcript to be prepared (in question number 2) at the expense of the government, would the board of county commissioners lawfully be empowered to refuse such payment? Or would the board of county commissioners justifiably be answerable in contempt proceedings for a refusal to honor such an order of the court?

#### ANALYSIS

Answers to these questions do not rest alone upon statutes or stare decises. The basic concept as to the personal rights of the individual as found in the common law are embodied in the first 10 amendments to the U.S. Constitution and are commonly called the American Bill of Rights. They place a prohibition on the U.S. Government from denying these rights to the individual. The concept was carried into the state constitutions where a similar prohibition protects the individual against infringement or denial of his rights by the state. Article I, Constitution of Nevada, designated as the "Declaration of Rights," enumerates these inalienable rights and prohibits their denial by the State. There the rights of an accused person are expressly guaranteed him. Article I, Section 8, thereof provides, inter alia, that (1) "\* \* \* the party accused shall be allowed to appear and defend, in person, and *with counsel*," and (2) "\* \* \* nor shall he \* \* \* be deprived of life, liberty, or property, *without due process of law*." (Italics supplied.) These particular rights have been secured by further provisions in Nevada's Declaration of Rights. The right to trial by jury is secure to all (Art. I, Sec. 3). The privilege of the writ of habeas corpus may not be suspended, except under certain conditions (Art. I, Sec. 5). Excessive bail may not be imposed (Art. I, Sec. 6). The prosecution of capital and other infamous crimes must be pursuant to certain prescribed conditions (Art. I, Sec. 8). An accused may not be compelled to be a witness against himself nor may he be put twice in jeopardy (Art. I, Sec. 8).

In order to enable an accused to realize these cherished rights, the Legislature has enacted several statutes designed for that purpose. Under the provisions of [NRS 169.160](#), he is entitled to (1) a speedy and public trial, (2) be allowed counsel, and (3) produce witnesses on his behalf. [NRS 178.240](#) et seq., provides the procedure for compelling attendance of witnesses residing within the county or district, and also those outside the county ([NRS 178.275](#)). And finally, under [NRS 178.295](#), enacted in 1951, attendance of out-of-state witnesses may be compelled in accordance with the Uniform Act to Secure the Attendance of Out-of-State Witnesses.

Even though available to him as a basic right, an indigent defendant unversed in the law might, nevertheless, be deprived of these benefits and advantages unless represented by counsel. Irrespective of statute, it has been generally recognized that courts have inherent power to appoint an attorney for an indigent person in his defense before a jury. *State v. Hudson*, 179 A. 130 (R.I.). It appears that Nevada courts from the beginning have recognized the existence of this power. *In re Wixom*, [12 Nev. 224](#). In 1875, the Legislature took cognizance of indigent defendants' rights in this respect by enacting a statute providing for the compensation of attorneys appointed to defend them. The act, with little change, now appears as [NRS 7.260](#), the pertinent parts reading as follows:

- 7.260 1. An attorney appointed by a court to defend a person charged with any offense by indictment or information is entitled to receive from the county treasury a fee to be set at the discretion of the district judge, but the fee shall not be set at more than \$300 unless the crime is punishable by death, in which event the fee shall not be set at more than \$1,000.
2. If an attorney is called by a court into a county other than the county in which he has his office, he shall be allowed in addition to the fee provided in subsection 1:
  - (a) His actual living expenses not to exceed \$5 per diem while away from the place in which he has his office and engaged on such case; and
  - (b) Actual and necessary traveling expenses as may be allowed by the court not to exceed 7 1/2 cents per mile traveled.
3. Compensation for services and expenses shall be paid by the county treasurer out of any moneys in the county treasury not otherwise appropriated, upon the certificate of the judge of the court that such attorney has performed the services required and incurred the expenses claimed.
4. An attorney cannot, in such case, be compelled to follow a case to another county or into the supreme court, and if he does so, he may recover an enlarged compensation to be graduated on a scale corresponding to the sums allowed.

According to the great weight of authority, an attorney assigned or appointed by a court to defend or assist in the defense of an indigent accused cannot recover compensation for his services in the absence of a statute providing therefor. 5 Am.Jur. 354, and cases there cited. The power to provide compensation in these cases rests with the Legislature and not the courts. *Pardee v. Salt Lake County*, 118 P. 122 (Utah). The Nevada Supreme Court has said that without any action on the part of the Legislature, it would be the duty of an attorney appointed by the court to defend an indigent accused without any compensation. *Washoe County v. Humboldt County*, [14 Nev. 128](#). In *Wayne Co. v. Waller*, 90 Pa. 99, decided prior to any law in Pennsylvania allowing fees in indigent cases, the court said:

Where counsel are assigned by a court to defend a pauper criminal, the county wherein the trial is had is not bound to pay their fees, nor even the expenses incurred in the preparation and course of the trial. One of the incidents

of the office of counsel, who is an officer of the court, is to defend such prisoners gratuitously.

This is likewise true as to attorneys licensed to practice in the federal district courts who are assigned indigent criminal cases to defend, sometimes at great sacrifice of time and other interests and oftentimes at considerable expense to themselves incurred through travel, interviewing witnesses and other incidentals.

A careful search of the Nevada statutes and adjudicated cases fails to disclose any authority whatsoever for the allowance of any expenses incurred for the defense of an indigent defendant except for the attorney's fees provided for under [NRS 7.260](#). Shortly after this statute was enacted, the Nevada Supreme Court passed upon the legislative intent with reference to certain of its aspects in the case of *Washoe County v. Humboldt County*, supra. There, Washoe County sought to recover certain costs and expenses it had incurred in a criminal action transferred from Humboldt County, including fees for a court-appointed attorney representing an indigent defendant. The fees allowed were, with certain other expenses making up the total claim, objected to on the ground that they were unauthorized by statute, the objectionable items in the attorney's fees being (1) inconvenience and expense resulting from the appointed attorney's absence from his professional duties at home, and (2) additional fees for arguing a motion in arrest of judgment. While recognizing the correctness of allowing an enlarged compensation when a case is transferred to another county or appealed to the Supreme Court, the court ruled that the allowance of item (1) above was improper, holding that it was not the intent of the Legislature to invest the courts with any such discretionary powers. And in holding that item (2) above was not allowable under the statute, the court, speaking through Justice Hawley, said:

\* \* \* The amount allowed in excess thereof is unauthorized and must be rejected \* \* \*

\* \* \* The court has no authority under the provisions of the statute, to fix any fee, except for defending the case, which necessarily includes all motions to be made therein.

After a thorough search of the statutory and case law of Nevada, we have found nothing other than the authorities hereinabove cited which have a bearing on the problem under discussion. We are of the opinion that the court in *Washoe County v. Humboldt County*, supra, definitely interpreted [NRS 7.260](#) to mean that nothing is allowable to an attorney for the defense of an indigent defendant except the fee which the statute specifically sets, but which does not include any extra expenses which he may have incurred. Several decisions from other jurisdictions having statutes similar to our own regarding attorney's fees have been examined, but we have found none holding that travel or incidental expenses of a defending attorney may be allowed within the discretion of a trial court, except where the Legislature has by statute provided for such extra expenses. In Rhode Island, it was held that a statute of this type, which was not unlike the Nevada statute, was not broad enough to authorize additional expenses to the appointed attorney upon appeal of the case defended. *State v. Hudson*, supra, Anno. 100 A.L.R. 313. In *Commonwealth v. Green*, 29 A.2d 491 (Pa.), it was held that an expert witness to testify on behalf of the accused indigent at the expense of the county was to allowable in the absence of a statute expressly authorizing such. In *Commonwealth v. Johnson*, 187 A.2d 761 (Pa.), where the statute allowed a fee of \$500 for an indigent's defense and where a conviction was reversed and remanded for a second trial, an additional fee for the second defense was denied.

We believe that the authority given by statute and court decision must be considered as binding unless they are superseded by the inherent power of the courts. That term has been well defined in 14 Am.Jur. 370, as "The 'inherent powers' of the

court are such as result from the very nature of its organization and are essential to its existence and protection of the due administration of justice. It is fundamental that every court have inherent power to do all the things that are reasonably necessary for the administration of justice within the scope of its jurisdiction.”

Much has been said recently in both the decisions and by text writers regarding rights of the accused stemming from the due process clause of the U.S. Constitution. That term has been variously defined, but recent decisions of the U.S. Supreme Court have given it a much broader scope than that formerly accorded it. It was held to include “assistance of counsel” in *Powell v. Alabama*, 287 U.S. 45, where it was said, “It was the duty of the court having their (defendants) cases in charge to see that they were denied no necessary incident of a fair trial.” A more recent case which constitutes a landmark in the decisions making a wide departure from the earlier rulings as to the rights of an accused under due process, is that of *Gideon v. Wainwright*, dated March 18, 1963, and as yet unreported, but discussed in 31 Law Week 4291. There it was held that the 14th Amendment, U.S. Constitution, guaranteeing due process, extends to the states so as to require that a defendant have an attorney in noncapital cases as well as capital cases. The court, speaking through Justice Black, said that an indigent accused “requires the guiding hand of counsel at *every step* in the proceedings against him.” (Italics supplied.)

If these rulings are to be given consideration in extending an indigent defendant all his rights at trial, then our district courts, in transcending statutory restrictions, are put to a decision as to whether or not justice can be fully administered within the confines of what our statutory and case law affords him. Certainly, this office does not propose to specify or even suggest the extent to which these courts should go in exercising their inherent powers in achieving the administration of justice. That matter lies within the sound discretion of trial judges after full consideration of the facts of each case and with proper regard to the court’s jurisdiction.

Undoubtedly, in many indigent cases, preparation for trial frequently requires the incurrence of considerable extra expenses over and above the allowable attorney’s fee, if the accused indigent is to be given a thorough trial. If the law fails to make proper provision for this purpose, then it becomes a matter to be addressed to the Legislature. In the absence of statutory authorization to provide necessary funds for these extra expenses, it appears attorneys appointed in indigent cases may not be lawfully reimbursed therefor.

Under the provisions of [NRS 244.205](#), boards of county commissioners have power in their respective counties to examine, settle and allow only accounts which are legally chargeable against the county. This authorizes these boards to reject any claim or account which is not authorized by law. Otherwise, unauthorized allowances, even though ordered paid, could jeopardize the county’s budget.

## CONCLUSION

From the foregoing, this office concludes as follows:

1. Nevada has no statute or court decision authorizing court-appointed counsel for indigent defendants to receive reimbursement from the State or county for costs and travel expenses incurred for interviewing prospective witnesses for the defendant preliminary to trial or otherwise. This applies regardless as to where such witnesses are interviewed, whether with or without court permission, and in all types of felony cases. Question number 1 is, therefore, answered in the negative.
2. This office has found no law or authority requiring that counsel for an indigent defendant be furnished, at county expense, a transcript of other unrelated court proceedings containing testimony which may be similar to that expected in the indigent pending case. This is true as to all types of such cases and applies whether or not court permission was obtained therefor. This is not to imply, however, that counsel in these cases is not entitled to have access to and permitted to examine any such transcripts which may be of public record. Question number 2 is likewise answered in the negative.

3. In the opinion of this office, the question as to whether a board of county commissioners would be lawfully empowered to refuse payment of expenses incurred under either of the above situations, although ordered by the court, should be answered in the affirmative. And the question as to whether the county commissioners would be answerable in contempt proceedings for refusal to honor such order, should be answered in the negative.

Nothing in these conclusions, however, is intended to imply or indicate that a court is limited in any way in the appointment of counsel in all indigent criminal cases or to pursue every effort to afford a fair trial to the accused, short of ordering payment of unauthorized expenses.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**105 Public Schools; Support of Juvenile Facility Schools—Provisions of [NRS 387.25](#), as amended, providing general method for apportionment of state distributive school funds to groups establishing school attendance areas, not repealed by a later statute providing a special method of support for schools at juvenile facilities, where Legislature and county commissioners fail to provide funds for effectuating later statute. In such cases, juvenile facility schools entitled to support under earlier statute.**

CARSON CITY, January 22, 1964

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

#### STATEMENT OF FACTS

DEAR MR. STETLER: The Spring Mountain Youth Camp, a youth detention and rehabilitation center, located in Clark County, Nevada, established in 1960, is a facility for juveniles committed by the juvenile courts of that county. Those committed are for the most part persons of school age and capable of receiving and benefiting from either elementary or secondary education. Neither the 1961 nor 1963 Legislatures made any appropriation for the support of any type of education program, pursuant to applicable provisions of the statutes, and as a result, the program has since been carried on under the provisions of the law governing appropriations to attendance area districts, the facility having been accorded that classification since court designation of a permanent resident within the facility area as guardian of those committed.

#### QUESTION

In view of the fact that the Legislature enacted statutes which specifically provide for the support and operation of a program of instruction of children detained in detention homes and juvenile forestry camps, [NRS 388.550-388.610](#), but did not set aside an amount in the distributive school fund for the support of such programs, can the program be legally supported through an appropriation to the school district under [NRS 387.125](#), which provides for the support of public schools, when an attendance area is established in the region in which the detention home or juvenile forestry camp is located?

#### ANALYSIS



Although legislation was enacted in 1949 for the establishment of temporary detention homes for delinquent children ([NRS 62.180](#)), and in 1960 for juvenile forestry camps ([NRS 244.297](#)), it was not until 1961 that provision was made for the instruction of these children while under detention or commitment ([NRS 388.570](#)). Under the section of the statute last cited, provision is made by special method for financing instruction programs in these facilities from the State Distributive School Fund. It is further provided that if the Legislature fails to provide funds for this purpose, then the county commissioners of the county concerned may make such funds available ([NRS 388.610](#)). The County Commissioners of Clark County, having failed to so provide in the case of the Spring Mountain Youth Camp, the dilemma is presented as to how the instruction program may legally receive financial support.

By reason of the failure of the Legislature to appropriate funds under [NRS 388.570](#), or the county commissioners to make such available under [NRS 388.610](#), these sections become wholly ineffective for their intended purposes, but they remain in full force and effect if either of these bodies take appropriate action in the future. If the problem under consideration were allowed to rest here, it is obvious that no public funds could legally be applied toward an education program at the aforementioned camp. We must look to an earlier act of the Legislature providing for apportionment of the State Distributive School Fund ([NRS 387.125](#)). In A.G.O. No. 185, dated October 26, 1960, this office stated that because of the fluctuating nature of the group committed to juvenile facilities in the State, together with the fact that parents and guardians of those under commitment were usually without residence in the facility area for the required period of time, it was not permissible to create a school attendance area under [NRS 388.050](#) so as to qualify for apportionment from the State Distributive School Fund as provided for under [NRS 387.125](#). However, a permanent resident of the Spring Mountain Youth Camp has since been designated by the Clark County Juvenile Court as guardian of those juveniles under commitment there. We are of the opinion that this designation now qualifies the facility to be formed into a school attendance area, and, therefore, entitled to apportionment from the State Distributive School fund in the manner provided for in [NRS 387.125](#).

It is our opinion that [NRS 388.570](#), enacted in 1961 and establishing a special procedure for supporting education programs in juvenile facilities, was not intended to be exclusive, nor does it repeal any previous statute or statutes providing for a general method or procedure for apportionment of school funds under which these facilities might qualify, particularly [NRS 387.125](#), enacted in 1956, as amended. It appears that the Legislature intended the method for providing funds under [NRS 388.570](#) to be permissive, but not mandatory.

#### CONCLUSION

It is, therefore, our opinion that the provisions of [NRS 388.570](#), specifically providing for support of education programs in juvenile facilities of the State, are not exclusive and do not repeal [NRS 387.125](#), an earlier statute under which the facility may become qualified as a school attendance area, in cases where both the Legislature and county commissioners of the county concerned fail to exercise their powers in making funds available so as to enable the functioning of the statute last enacted. The education program at Spring Mountain Youth Camp may be legally supported through appropriations made pursuant to [NRS 387.125](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**106 Commission Form of Government; Interpretation of [NRS 267.040](#)—Petition signed by one-fifth of qualified voters of incorporated city seeking to nominate electors to charter forming commission, may nominate one or more candidates for such commission on same petition.**

CARSON CITY, January 29, 1964

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

DEAR MR. MANZONIE: You have requested an interpretation of [NRS 267.040](#) which reads as follows:

267.040 Nomination and election of electors to frame charter.

Nominations of the electors shall be made by petition of one-fifth of the qualified voters of the incorporated city, unincorporated town or unincorporated area. The nominations must be made and filed with the legislative authority of the city or board of county commissioners at least 5 days before the day of election, as provided for in [NRS 26.030](#), and the names of all candidates so filed shall be placed upon the official ballots to be voted at such election, which election shall be conducted under the general election laws of the state.

You ask, specifically, whether or not the electors, who circulate the petition(s) mentioned in [NRS 267.040](#), can all be on one petition or whether those desiring nomination must circulate their own individual petition.

ANALYSIS

The law contemplates that which is reasonable, and is to be read with that in mind. To compel the circulation of a petition for each elector desiring nomination to the charter framing board, would defeat the very purpose of the act, i.e., to enable the qualified voters to promulgate a commission form of government with dispatch.

The Legislature intended that one or more qualified electors could be placed in nomination on one or more petitions. For example, one petition could include 15 names of electors, and if one-fifth of the qualified voters of the incorporated city signed the petition, all 15 electors on such petition would be nominated. If another petition had the names of four electors thereon, and one-fifth of the qualified voters signed it, all four would be nominated.

In short, the nominating procedure should be as facile as possible, for at the subsequent election, the 15 electors having the highest number of votes will be elected.

CONCLUSION

It is, therefore, the opinion of this office that petitions signed by one-fifth of the qualified voters of an incorporated city seeking to nominate electors to a charter framing commission, in accordance with [NRS 267.040](#), may nominate one or more candidates for such commission on same petition.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**107 Public Employees Retirement Board—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, January 31, 1964

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

STATEMENT OF FACTS

DEAR MR. BUCK: Under the provisions of [NRS 286.380](#), subsection 4, in order that employer contributions may conveniently be made to the Retirement Board, the Legislature provided for the employer contribution in respect to public school teachers through a general appropriation for that purpose, with payment to be made through the office of the State Department of Education.

Under [NRS 286.380](#), subsection 5, the State Board of Education is also required to collect from the various school districts the employee contribution and transmit the same to the Public Employees Retirement Board.

The question was formerly propounded to this office as to whether additional sums earned by duly and regularly employed teachers, in employment by their school boards for such services as bus driving, janitor work, or summer school teaching, might be added to the regular teaching salary, as a basis of computation in determining the sum to be paid by the State Board of Education as the employer contribution. In A.G.O. No. 77, of October 15, 1963, the question was answered in the negative for reasons there given. (See A.G.O. No. 77 of 10-15-63.) That opinion also expressed the conclusion that earnings from 13 1/2 months or any period of time in excess of 12 months may not be credited for any period of 12 months, such a result obtaining when service is performed in two capacities for the same period of time, as for example, the acceptance of full-time employment in another capacity during a period of annual leave or vacation from the principal position. We are concerned here only with the additional service rendered before or after the hours of the regular working day.

QUESTION

When a duly and regularly employed public school teacher is also employed by the county school board to perform additional services, in work upon which the State Board of Education is not authorized to pay the employer and employee contributions ([NRS 286.380](#), subsections 4 and 5), may the county school board pay and the Public Employees Retirement Board receive the employer and employee contributions upon such additional compensation?

ANALYSIS

In the former opinion (A.G.O. No. 77) this office was concerned only with the employer contributions by the State Board of Education to the Public Employees Retirement Board, in behalf of public school teachers retirement, as distinguished from eligibility of such teachers for retirement coverage for such services. This office was not concerned with the number of hours that a teacher might work per day, or with whether or not additional compensation received by the teacher from the board, for services not constituting teaching, could serve as a basis for contributions. We held that the state fund was not liable for contributions upon such increased income.

If a janitor were employed by the county school board, the board would have the obligation to pay the employer contribution upon his wage, and the obligation to pay the employee contribution after making the employee deduction from wages. ([NRS 286.290](#),

subsection 2, and [NRS 286.410](#), subsection 2.) If a school teacher is employed to do such work, or any work beyond his duties as teacher, and the contributions are made thereon through the county school board, the cost of the school operation is not increased by the decision to employ the teacher for such additional work.

A person may hold two or more positions and when the total compensation exceeds \$150 per month he shall be eligible for membership and contributions shall be made upon the gross compensation for all such employment. The amendment contained in subsection 3 of [NRS 286.320](#), Chapter 399, Statutes 1963, so provides. Neither would excess earnings render such wages ineligible as the basis of computation for contributions. [NRS 286.410](#), subsection 1, as amended by Chapter 399, Statutes 1963.

In A.G.O. No. 77 of October 15, 1963, we concluded that employer contributions for such additional service could not be paid from funds appropriated for contributions in behalf of public school teachers, pursuant to [NRS 286.380](#). However, we did not say, or intend to be understood as saying, that such income would be ineligible for a contribution by the county board, which would thus reflect for the teacher a greater total income from public employment than would be reflected from the teacher salary standing alone, all of this by reason of a longer work day.

#### CONCLUSION

The question is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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**108 Veterans; Exemption from taxation on personal property—Legislature did not, by enactment of Chapter 425, Statutes 1963, deny to widows and orphans, totally blind persons and veterans, the exemptions granted them under [NRS 361.080](#), [361.085](#), and 361.090, including exemption on personal automobiles.**

CARSON CITY, February 5, 1964

HON. THOMAS M. GODBEY, *State Assemblyman, 609 Avenue L, Boulder City, Nevada*

HON. BERNARD POSIN, *State Assemblyman, 401 Fremont Street, Las Vegas, Nevada*

GENTLEMEN: You have submitted the following question to this office for an official opinion.

Does Chapter 425, Statutes 1963, creating an “in lieu” tax on automobiles pursuant to Article 16, Section 1, of the Constitution, deny to veterans, widows and orphans and totally blind persons the tax exemptions granted under [NRS 361.080](#), [361.085](#), and 361.090?

#### ANALYSIS

This office has thoroughly studied the effect of this legislation since its enactment in March of 1963. In order to arrive at a logical conclusion on what must be termed a complex question, it is necessary to follow the sequence of events leading up to the enactment of Chapter 425, Statutes 1963, and to review the applicable laws and constitutional provisions which will be determinative of our answer.

Assembly Joint Resolution No. 6, proposing to amend Section 5 of Article 9, and Section 1 of Article 10, of the Nevada Constitution, was passed by the 1960 Legislature. It proposed to amend the foregoing articles by authorizing the Legislature to provide for a tax upon motor vehicles in lieu of an ad valorem property tax, and by excepting the proceeds of any such tax from the requirement that the proceeds of certain taxes, licenses, and fees be used in the repair, maintenance, and construction of the highways in the State.

The resolution passed the 1961 Legislature and was submitted to the people at the 1962 General Election, where it passed. The act implementing the constitutional amendments was passed at the 1963 Session of the Legislature, Chapter 425 of the Statutes, and is now the law.

When a constitutional amendment is adopted pursuant to Article 16, Section 1, it cannot be further amended without following the provisions of Article 16, Section 1, or Article 19 of the Constitution.

So, the question arises as to whether such amendments to the Constitution affect the tax exemption privileges afforded veterans, widows and orphans, and those totally blind. In order to arrive at a conclusion on his score, it is necessary to study and review the applicable sections of the Nevada Revised Statutes.

Let us set forth the pertinent sections:

361.080 Widow's and orphans' exemption. The property of widows and orphan children, not to exceed the amount of \$1,000 shall be exempt from taxation, but not such exemption shall be allowed to anyone but actual bona fide residents of this state, and shall be allowed in but one county in this state to the same family. The person or persons claiming such exemption shall make an affidavit, before the county assessor, of such residence and that such exemption has been claimed in no other county in this state for that year.

361.085. Exemption of totally blind persons.

1. The property, including community property to the extent only of his or her right or interest therein, of all totally blind persons, not to exceed the amount of \$3,000, shall be exempt from taxation, but no such exemption shall be allowed to anyone but actual bona fide residents of this state, and shall be allowed in but one county in this state to the same family. The person or persons claiming such exemption shall make an affidavit, before the county assessor, of such residence and that such exemption has been claimed in no other county in this state for that year. Upon first claiming such exemption in the county the claimant shall furnish to the assessor a certificate of a physician licensed under the laws of this state setting forth that he has examined the claimant and has found him to be a totally blind person.

2. As used in subsection 1, "totally blind persons" includes any person whose visual acuity with correcting lenses does not exceed 20/200 in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20°.

361.090. Veteran's exemptions.

1. The property, to the extent of \$1,000 assessed valuation of any actual bona fide resident of the State of Nevada who was such a resident for a period of more than 3 years before December 31, 1963, or who was such a resident at the time of his or her entry into the Armed Forces of the United States, who has served a minimum of 90 days on active duty, who was assigned to active duty at some time between April 21, 1898, and June 15, 1903, or between April 6, 1917, and November 11, 1918, or between December 7, 1941, and December 31, 1946, or between June 25, 1950, and January 31, 1955, and who received, upon severance from service, an honorable discharge or certificate of satisfactory service from the Armed Forces of the United States, or who, having so served, is

still serving in the Armed Forces of the United States, shall be exempt from taxation.

2. For the purpose of this section the first \$1,000 assessed valuation of property in which such person has any interest shall be deemed the property of such person.

3. The exemption shall be allowed only to a claimant who shall make an affidavit annually, on or before the 1st Monday in August, for the purpose of being exempt on the tax roll, but the affidavit may be made at any time by a person claiming exemption from taxation on personal property.

4. the affidavit shall be made before the county assessor to the effect that the affiant is an actual bona fide resident of the State of Nevada, that he or she meets all the other requirements of subsection 1, and that such exemption is claimed in no other county within this state.

5. Persons in actual military service shall be exempt during the period of such service from filing annual affidavits of exemption and the county assessors are directed to continue to grant exemption to persons on the basis of the original affidavits filed. In the case of any person who has entered the military service without having previously made and filed an affidavit of exemption, such affidavit may be made in his or her behalf during the period of such service by any person having knowledge of the facts.

6. Before allowing any veteran's exemption pursuant to the provisions of this chapter, the county assessor of each of the several counties of this state shall require proof of status of such veteran, and for that purpose shall require production of an honorable discharge or certificate of satisfactory service or a certified copy thereof, or such other proof of status as may be necessary.

7. If any person shall make a false affidavit or produce false proof to the county assessor, and as a result of such false affidavit or false proof a tax exemption is allowed to a person not entitled to such exemption, he or she shall be punished by a fine not exceeding \$1,000 or by imprisonment in the county jail for not more than 1 year, or by both fine and imprisonment.

It will be noted that all three sections state unequivocally that "property" to a certain value shall be "exempt from taxation." Now, do the constitutional amendments and Chapter 425, Statutes 1963, repeal any of these sections? The constitutional amendments heretofore mentioned (effective November 1962) are clearly permissive only and are not self-executing. We understand that the principal purpose thereof was to permit legislation that would implement uniformity of taxation upon motor vehicles, without regard to the county of residence of the owner. Let us here set forth certain provisions of the act implementing the constitutional directive:

Sec. 3. 2. "Vehicle" means any vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS, except mobile homes as defined in section 1 of chapter 217, Statutes of Nevada 1963.

Sec. 4. A tax is hereby imposed for the privilege of operating any vehicle upon the public highways of this state. Such tax shall be in lieu of all taxes based on value and levied for state or local purposes on such vehicles.

Sec. 5. The annual amount of the privilege tax shall be 4 cents on each \$1 of valuation of the vehicle as determined by the department.

[NRS 361.030](#) defines what is and what is not "personal property," and vehicles are included. In Chapter 425, Statutes 1963, the Legislature, by Section 26 of the act, removed vehicles from the definition. But it did so only to remove them from the personal property subject to an ad valorem tax not based on privilege.

The tax on vehicles is still an ad valorem tax for under Section 5 of the act the annual amount of the privilege tax imposed on vehicles is 4 cents on each \$1 of valuation of the vehicle. Notice that in the exemption statutes that property of the exemptees is exempt to a certain value from taxation.

[NRS 482.261](#) and [NRS 482.263](#) read as follows:

482.261 Property tax exemption: Allowance on motor vehicle. Any applicant for registration who wishes to apply any property tax exemption to which he is entitled to the personal property tax on the motor vehicle for which the application is filed shall support his claim of exemption by evidence satisfactory to the department or its agent. The department or its agent, if satisfied by such evidence, shall allow such exemption to the extent of all or part of the property tax due on such motor vehicle.

482.263 Registration lists, amounts of personal property taxes collected, exemptions to be provided county assessors. The department shall furnish monthly to each county assessor an alphabetical list, including all residence addresses, of all registrations made for applicants from the county of such county assessor together with the amount of personal property tax, if any, collected for each motor vehicle and the amount of exemption, if any, from such tax allowed.

These are expressly repealed by Chapter 425, Statutes 1963, Section 42 thereof. The effect of this is merely to eliminate the method and procedure whereby an exemption is applied for under the law prior to the 1963 act.

The question then arises did the Legislature, by repealing these sections and taking vehicles out of the definition of personal property, intend to deny to widows and orphans, totally blind persons and veterans, the exemption guaranteed them under [NRS 361.080](#), [361.085](#), and 361.090?

To ascribe this course of action to the legislators is to assert that they intended to allow the exemption of those of substantial means, who had personal property other than automobiles, or persons who own real property, but deny it to veterans, widows and orphans, and totally blind persons, who own only automobiles, those most entitled to the exemption.

If the Legislature intended to remove the exemption on automobiles belonging to veterans, widows and orphans, and totally blind persons, it has only done so by implication, for nowhere is there an express repeal of [NRS 361.080](#), [361.085](#), and 361.090. It is reasonable to presume that if the Legislature intended to deny exemption on automobiles, it would have done so in clear and unambiguous language.

Crawford, in his learned work on statutory construction, states in a footnote to Section 229, "The whole body of previous and contemporary legislation should be considered in interpreting any statute. The legislative department is supposed to have a consistent design and policy, and to intend nothing inconsistent or incongruous." (Citing cases.)

The statute exempting to the extent of \$1,000 taxation of the property of all widows and orphans, under the constitutional authority to exempt property from taxation for charitable purposes, has been on the books since territorial days, and our Supreme Court, in *Hendel v. Weaver*, [77 Nev. 16](#), recognized the fact that since 1917, exemptions to veterans in one form or another, has been the legislative policy. In this case, the court rationalized that the exemption to veterans was charitable and thus within the constitutional permissive power of exemption.

All of the exemption statutes are substantially as follows: "The property to the extent of \$1,000 assessed valuation \* \* \* shall be exempt from taxation." The in-lieu tax bill provides, "The annual amount of the privilege tax shall be 4 cents on each \$1 of valuation of the vehicle \* \* \*." It is, therefore, clear that an automobile despite any definition is property, and that reading the statutes together should receive the benefits

afforded other property subject to taxation unless there was an express and unambiguous repeal of [NRS 361.080](#), [361.085](#), and 361.090.

Crawford, at Section 310, p. 630, of his volume on statutory construction, directs attention to the presumption against repeal by implication in these words, “This presumption against the intent to repeal by implication rests upon the assumption that the Legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, so that the failure to add a repealing clause indicates that the intent was not to repeal any existing legislation.” (Bookbinder v. U.S., 287 Fed. 790; Chilson v. Jerome, 102 Cal.App. 635, 283 P. 862)

[NRS 361.080](#), [361.085](#), and 361.090 provide the method of claiming such exemptions as would be necessary to exempt automobiles from the privilege tax. The law provides the type of affidavits to be filed with the county assessor at the time of claiming the exemption. Having taken automobiles out of the personal property class, in respect to an ad valorem levy, it appears that they would fall into the category of other property just as does realty. Section 2 of [NRS 361.090](#) has in no way been repealed and it reads, “For the purpose of this section the first \$1,000 assessed valuation of property in which such person has *any* interest shall be deemed the property of such person.” (Italics supplied.)

But there are still other sound and valid objections to the act on constitutional grounds. If the exemption does not apply to widows and orphans, totally blind persons, and veterans who own only an automobile, and applies to those who, in addition to automobiles own other real and personal property, it is discriminatory. It is to be presumed that the Legislature had knowledge of all the law pertaining to taxation of real and personal property and would have repealed or amended the exemption statutes so as to exclude those who own only an automobile in such clear and unambiguous language as to remove all doubt of their intention. That they did not do so is another indication that they did not intend to deny the exemptions under the privilege tax.

The legal situation as to the type of tax here sought to be imposed is clearly stated in the section on taxation in Vol. 51 of American Jurisprudence, Sections 30 and 31, “An excise and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted by laying and fixing their amounts. If the tax is computed upon a valuation of property, and assessed by assessors either where situated or at the owners domicile, although *privilege* may be included in the valuation, it is considered a property tax.” (Italics supplied.)

Therefore, the privilege tax, even though so named, is in fact an ad valorem tax on property. It is to be presumed the Legislature considered this fact when they set the levy within the constitutional \$5 limit on each \$100 of valuation.

#### CONCLUSION

It is, therefore, the conclusion of this office that the Legislature did not intend to, nor did it, by the enactment of Chapter 425, Statutes 1963, deny to widows and orphans, totally blind persons, and veterans the exemption granted them under [NRS 361.080](#), [361.085](#), and 361.090, including the exemption on personal automobiles.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**109 Public Service Commission; Public Utility—Power generating company furnishing power to only one user under a contract is not a public utility and, therefore, not under the jurisdiction of the Public Service Commission.**

CARSON CITY, February 7, 1964



HON. NOEL CLARK, *Commissioner, Public Service Commission, Carson City, Nevada*

DEAR MR. CLARK: You have inquired of this office as to whether the Public Service Commission has jurisdiction over a power generating company selling electric energy to one customer only on a long-term contractual basis, which insures that type of operation.

You augment this question by stating that said generating company and customer are both located on private property without any public highway or streets intervening, and that the property is owned and controlled by the prospective user. You also state that there is no evidence that the public is not being served by Truckee-Carson Irrigation District.

#### ANALYSIS

[NRS 704.020](#)(2b) states that a public utility, among others, shall constitute any plant or equipment, or any part of a plant or equipment within the State for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, light, power, in any form.

It will be noted that the users are named in the plural in each instance. Therefore, service to one customer would not make it a public utility. Black's Law Dictionary, Fourth Edition, at page 1395, defines a public utility as a business or service which is engaged in regularly supplying the *public* with some commodity or service which is of public consequence or need, such as electricity, gas, water, transportation, or telephone or telegraph service.

By this very definition the power generating company which serves only one customer under private contract is not a *public* utility as above defined. Then, too, we take into consideration that Truckee-Carson Irrigation District is serving the public in the same area.

#### CONCLUSION

We, therefore, conclude that a power generating company serving only one user under a contract is not a public utility and therefore does not come under the jurisdiction of the Public Service Commission.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**110 Taxation—Legislature has power to enact statutes defining personal property so as to exclude from assessment unweaned calves and lambs and also all personal property, except livestock, coming into the county between December 31 and June 30, without contravening Article 10, Section 1, Constitution of Nevada, requiring uniformity in all tax laws. Laws of this type do not come within purview of exemption statutes. Construction equipment brought into county for temporary purposes does not acquire tax situs within county for assessment purposes unless owner domiciled within the county, or, in the absence thereof, intends that such property acquire situs in the county, or that it have no tax situs elsewhere.**

Carson City, February 11, 1964

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

## STATEMENT OF FACTS

Dear Mr. Beko: A resident taxpayer of Nye County, Nevada, who was assessed on the secured tax roll, closing on December 31, 1963, for 120 calves and certain other livestock, has protested on the grounds that 40 of the calves were unweaned at the time and, therefore, not taxable under current law which excludes unweaned calves and lambs from the definition of personal property. This exclusionary provision, read in connection with other statutes enacted by the 1963 Legislature, has created certain tax questions which are of general interest to all tax assessors of the State. In this connection Nye County has asked for an opinion as to certain aspects of the present law as specifically presented in questions 1 and 2 below.

Another problem arising out of the tax law as it now stands in this respect, and which could affect all counties to some extent, but which particularly confronts Nye County, is that of taxation of transient machinery in the county. Certain nonresident contractors, between January 1 and June 30 of each year, bring heavy construction machinery and equipment into that county for various jobs in the test site area. There is considerable concern as to whether or not this equipment is subject to taxation by the county, as is indicated by question 3 below.

## QUESTION

1. Assuming that calves are weaned during the period from January 1 to June 30, does the assessor have the authority to assess such animals under [NRS 361.505\(4\)](#), or any other statute?
2. Does Chapter 191, Statutes 1963, violate Article 10, Section 1, of the Nevada Constitution?
3. Does Chapter 451(3), Statutes 1963, violate Article 10, Section 1, of the Nevada Constitution by providing for an exemption from taxation not authorized by the State Constitution?

## ANALYSIS

The right of taxation, inherent in every government, is vested in the Legislature, and is unlimited in that body, except as restrained by constitutional provisions. The Legislature may fix the amount, the time and the manner of imposing taxes. Nevada v. Easterbrook, [3 Nev. 173](#); *State v. C.P.R.R. Co.*, [21 Nev. 260](#). Also see 84 C.J.S. 51 for general discussion. Pursuant to its powers in this respect, the Nevada Legislature has enacted numerous statutes to accomplish this purpose, chief of which appear in [NRS Chapter 360-372](#), inclusive.

As to the manner or method of assessment, [NRS 361.260\(1\)](#) provides in part that "between July 1 and December 31 in each year, the county assessor, except when otherwise required by special enactment, shall ascertain by diligent inquiry and examination all real and personal property in the county subject to taxation \* \* \*." This is supplemented by [NRS 361.505](#), as amended by Chapter 451, Statutes 1963, which added Sections 3 and 4, reading as follows:

3. The county assessor shall close his assessment roll as of December 31, and, except as provided in subsection 4, any personal property coming into the county after that date shall not acquire situs for taxation for the current year.
4. Nothing contained in this section or any other statute shall be construed as prohibiting the county assessor from prorating the count on livestock situated within the state for a portion of a year.

After a thorough study and research as to the legislative intent in adding the foregoing sections to the existing statute, we are convinced that it was for the purpose of achieving greater uniformity in assessment and equalization of taxes. Being

interdependent, they must be read together, and a literal construction is necessary if their purpose is to be attained. December 31 is clearly designated as the cutoff or final date for completion of assessments and closing of the tax roll for the current year. After that no personal property coming into the county acquires a tax situs for the current tax year, except livestock which may be assessed pro rata.

By reason of [NRS 361.030](#)(1)(f), as amended by Chapter 191, Statutes 1963, unweaned calves and lambs are excluded from the definition of personal property. Consequently, on December 31 when the tax roll is closed they do not exist so far as taxation is concerned. But when they become weaned they become property just as other animals. It is, therefore, the opinion of this office that by reason of the wording of the sections of the 1963 amendment above quoted, the clear import is that all calves and lambs upon becoming weaned between December 31 and June 30 immediately acquire a tax situs for purposes of assessment and taxation for the current tax year the same as other property.

We come now as to whether or not Article 10, Section 1, Constitution of Nevada, is violated by chapter 191, Statutes 1963, which amends the existing statutory definition of personal property by excluding unweaned calves and lambs, it being stated that this, in effect, exempts these animals from taxation. There can be no doubt as to the power of the Legislature to define personal property for purposes of taxation. The generally accepted rule in that respect is well stated in 51 Am.Jur. 433, as follows:

The legislative body has inherent power, subject to the controlling provisions of the state organic law and to the applicable paramount provisions of the Federal Constitution, to determine the subject of taxation for general or for particular public purposes, to determine the persons, property, and privileges to be taxed, and to make appropriate changes in the selections and classifications of the properties and persons made subject to taxation. Notwithstanding a constitutional requirement that the legislature shall provide for the equal and uniform assessment and taxation of property and prescribe regulations for the taxation of all property both real and personal, with certain exceptions, a tax cannot be laid unless the general assembly selects the particular species of property to bear the burden of taxation. Freedom to select subjects of taxation is inherent in the exercise of the power to tax.

As hereinabove stated, the 1963 amendment redefining personal property effectuates a nonexistent status for all unweaned calves and lambs for assessment and tax purposes. In view of this, it cannot correctly be said that this class of property has been made tax exempt as that term is defined. 84 C.J.S. 411, states:

Exemption, as applied to taxation, presupposes a liability, and is properly applied only to a grant of immunity to persons or property which otherwise would have been liable to assessment, and exists only by virtue of constitutional or statutory provisions.

We note that all tax exemptions affecting property in Nevada exist by reason of specific statutes ([NRS 361.045](#) to [361.160](#), inclusive). The fact that certain property escapes taxation as a result of legislative action excluding it from the definition of taxable property, as is the case here, is not by reason of design, but a coincidence instead.

It is clear that Chapter 191, Statutes 1963, is not an exemption statute, but a definitive statute instead. For that reason the provisions of Article 10, Section 1, Constitution of Nevada, requiring that uniformity, equal rate of assessment and just evaluation for taxation of property in all laws, is inapplicable here. For that reason the above amendment does not violate this, nor any other section of the Constitution, as we see it.

In answering question 3, hereinabove propounded, we agree with the conclusion of Nye County officials that [NRS 361.505](#)(3), as amended by Chapter 451, Statutes 1963, relieves from taxation all heavy equipment which is brought into the county for construction work after January 1 and removed before June 30 following. Section 3 of the above amendment restricts the exception of personal property which may be assessed after December 31 to livestock only coming into the county. Therefore, any equipment brought into the county between December 31 and June 30, even though it acquires a tax situs, is not assessable or taxable for that period. The wording of the amendment under discussion will admit of no other construction.

Exclusion of certain personal property from assessment between said dates which, in effect, relieves it from taxes during the period, does not, as we see it, give it an exemption under either Section 3 or 4 of the amendment. It affords an escape from assessment instead because of the December 31 delineation for assessments. Fixing the time and designating the manner of making assessments is well within the legislative power. *Nevada v. Easterbrook*; *State v. C.P.R.R. Co.*, supra. We would, therefore, doubt that this amendatory statute would fall within the purview of Article 10, Section 1, Constitution of Nevada. But a question presents itself as to whether or not it meets the requirement of the above-mentioned constitutional section as to uniformity.

The Legislature has defined personal property in [NRS 361.030](#) which, in paragraph (f), includes certain enumerated livestock. Then in the amendment here under discussion it provides that no personal property, except livestock, coming into the county after December 31 shall acquire tax situs for the current tax year. The exclusion of livestock from receiving what is actually a tax benefit might at first glance strongly suggest a discrimination. There is a presumption that acts of the Legislature are constitutional. *Tonopah & G.R. Co. v. Nev.-Cal. Transportation Co.*, [58 Nev. 234](#), as well as other Nevada cases. A test as to uniformity of tax laws which is generally accepted was announced in *Abrams v. San Francisco*, 119 P.2d 197, where the court said:

A law sufficiently meets the constitutional requirement if it acts uniformly on the whole of any single class of individuals or objects and the classification is founded on some natural, intrinsic, or constitutional distinction.

This office feels that any determination as to constitutionality of this statute should be made by the courts. Until then we must abide by the recognized rules of interpretation and regard it as constitutional.

Aside from the exclusion from assessment afforded by this amendment to transient equipment coming into the State, it may escape assessment and taxation for still another reason. Much, if not practically all, of this type of property is owned by nonresidents and never acquires a tax situs within the State so as to become subject to taxation. In a thorough discussion of movable or transient property as to taxable aspects, 110 A.L.R. Anno. At page 717, says:

The courts are all agreed that before tangible personal property may be taxed in a state other than its owner's domicil, it must acquire there a location more or less permanent. It is difficult to define the idea of permanency that this rule connotes. It is clear that "permanency," as used in this connection, does not convey the idea of the characteristics of the permanency of real estate. It merely involves the concept of being associated with the general mass of property in the state, as contrasted with a transient status—viz., likelihood of being in one state today and in another tomorrow.

Many of the cases discussed here are well in point with the situation hereunder discussion. In *Irwin v. New Orleans St. L. & C. R. Co.*, 94 Ill. 105, where the statute required that "all personal property in this state shall be assessed and taxed," it was held

that the statute does not contemplate the assessment of personal property passing through the state, or there for temporary purposes only. In a Kentucky case, decided much later, viz., *Commonwealth v. Union R.R. Co.*, 283 S.W. 239, 283, it was held that chattels transiently present in the transaction of commercial operations, or only temporarily located in a state, do not as a general proposition acquire a situs for taxation within the state.

Several Nevada cases have passed on this or similar points. *Nevada v. Earl*, [1 Nev. 334](#); *Conley v. Chedic*, [7 Nev. 336](#); *Barnes v. Woodbury*, [17 Nev. 383](#), and also *Robinson v. Longley*, [18 Nev. 71](#) (1873), which is discussed in the above-cited annotation. There, Washoe County assessed circus property used in putting on shows about the State but with no intention of establishing a permanent situs here. In denying the validity of the assessment, the court said:

The property was to assessable in this State. In the sense of the statute, for the purposes of taxation, it was not within the State. It was passing through the State at the time of the assessment. It was here temporarily in the ordinary course of business. When he came here plaintiff intended to remain in the State but a few days,—just long enough to fill the engagements advertised,—and then to continue his business to other places in a neighboring state. He intended to take away all the property he brought with him. He was actually “on the wing,” passing from one state to another. As well might this property have been taxed if, for the purpose of rest or health, plaintiff had stopped a few days in Washoe County. As well might a resident of another state be taxed on his money and team, if he comes on a visit to the State, to remain a week.

These cases are authority for the proposition that more than physical existence at any time within a county is necessary to give personal property a tax situs. Such situs is established only in those cases where the owner is domiciled in the State, or, in the absence thereof, the property in question has no other tax situs, or when its owner intends that it remain permanently within the county and to become a part of the personal property therein. Without this, it is not subject to assessment at any period of the tax year.

#### CONCLUSION

From the foregoing we make the following conclusions:

Question 1 is answered in the affirmative. The county assessor of any county is authorized under the provisions of [NRS 361.505\(3\)\(4\)](#) to assess all livestock within the county which are weaned subsequent to December 31 of the current tax year, and to prorate the tax for the remaining portion thereof.

Question 2 is answered in the negative. Chapter 191, Statutes 1963, in excluding unweaned calve and lambs from the definition of personal property, in effect, declared them nonexistent for purposes of taxation, and does not provide for an exemption as that term is legally defined. Since the statute is not a tax measure at all, the provisions of Article 10, Section 1, Constitution of Nevada, are not applicable in testing its validity.

Question 3 must be answered in the negative. Chapter 451(3), Statutes 1963, does not provide for an exemption from taxation of any property in the State. Instead it defines tax situs of property coming into the county after December 31, and must be read together with paragraph (4) of the above chapter, the latter of which authorizes the county assessor to include any property coming within the newly defined tax situs on the assessment rolls and to prorate the taxes thereon for the remaining portion of the current tax year. The act does not prohibit assessment of any property in the county having a tax situs as defined by law, and does not violate the restrictions of Article 10, Section 1, Constitution of Nevada.

Furthermore, in order for transient property, such as construction equipment, to acquire a tax situs in a county of the State, its owner must be domiciled therein, or, in the

absence of such domicile, it must be shown that the owner intended it to have a Nevada tax situs, and that such situs does not exist elsewhere.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**111 Insurance, Commissioner of—A nonresident, qualified insurer may not, by the device of delivery of contract to a nonresident policyholder, effect life and accident and health insurance upon insureds residing in Nevada, violate Nevada insurance laws appertaining to insurers domiciled in Nevada. Creditor life and creditor accident and health insurance statutes construed.**

CARSON CITY, February 11, 1964

MR. PAUL A. HAMMEL, *Insurance Commissioner, State of Nevada, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. HAMMEL: The within matter presents a question of whether or not a foreign insurer, qualified to do business in Nevada, may effect group credit life and group credit accident and health insurance, upon residents of Nevada as the insured, running to a Nevada corporation as the creditor beneficiary, and by reason of the policy delivery and contract formation in another state to a policyholder of such other state, escape the impact of the laws applicable to such transactions, if effected by a domestic insurer with policy delivery in Nevada. If so, such would constitute an operation over which the commissioner would have little or no supervisory jurisdiction. In brief, may a foreign insurer, by an artful device, hereinafter fully explained, acquire a desirable insurance privilege (or privileges) which is unavailable to a domestic insurer?

We now quote from certain statutes which are pertinent to the question here to be analyzed.

690.310 Citation; scope.

1. [NRS 690.320](#) to [690.450](#), inclusive, may be cited as The Model Act for the Regulation of Credit Life Insurance.

2. All life insurance *sold in connection with loans or other credit transactions* shall be subject to the provisions of [NRS 690.320](#) to [690.450](#), inclusive, except such insurance sold in connection with a loan or other credit transaction of more than 5 years' duration. (Italics supplied.)

692.500 Citation; scope.

1. [NRS 692.500](#) to [692.630](#), inclusive, may be cited as The Model Act for the Regulation of Credit Accident and Health Insurance.

2. All accident and health insurance *sold in connection with loans or other credit transactions* shall be subject to the provisions of [NRS 692.500](#) to [692.630](#), inclusive, except such insurance sold in connection with a loan or other credit transaction of more than 5 years' duration. (Italics supplied.)

690.320 Purpose; construction.

1. The purpose of [NRS 690.320](#) to [690.450](#), inclusive, is to promote the public welfare by *regulating credit life insurance*. Nothing in such sections is intended to prohibit or discourage reasonable competition. The provisions of such sections shall be liberally construed.

2. Nothing in [NRS 690.320](#) to [690.450](#), inclusive, shall be construed to authorize any payments for insurance now prohibited under any statute or rule thereunder governing credit transactions. (Italics supplied.)

[NRS 692.510](#) contains the same material contained in [NRS 690.320](#), except that the reference is to credit accident and health insurance.

690.330 Definitions. As used in [NRS 690.320](#) to [690.450](#), inclusive:

1. "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

2. "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction or any successor to the right, title or interest of any such lender, vendor or lessor, and an affiliate, associate or subsidiary of any of them or any director officer or employee of any of them or any other person in any way associated with any of them.

3. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.

4. "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

[NRS 692.520](#) contains the same material as [NRS 690.330](#), except appertaining to credit accident and health insurance.

690.340 Forms of credit life insurance. *Credit life insurance shall be issued only* in the following forms:

1. Individual policies of life insurance issued to debtors on the term plan;

or

2. *Group policies* of life insurance *issued to creditors* providing insurance upon the lives of debtors on the term plan. (Italics supplied.)

[NRS 692.530](#) contains the same provisions applicable to credit accident and health insurance.

Under [NRS 690.350](#), provision is made for the amount payable under credit life insurance to not exceed the unpaid indebtedness on the date of death.

Under [NRS 692.540](#) (the comparable section) provision is made for the amount payable under the credit accident and health insurance to equal the contractual monthly installments.

Under [NRS 690.360](#), the term of credit life insurance is provided, and under [NRS 692.550](#), the term of credit accident and health insurance is provided. Generally, under both the term is the commencement and the full discharge of the contractual indebtedness.

Under [NRS 690.370](#), provision is made in the case of group credit life insurance for the issuance of a certificate to the insured, giving to him relevant data as provided. The similar provision as regards group credit accident and health insurance is contained in [NRS 692.560](#).

690.380 Filing, approval and withdrawal of forms.

1. *All policies, certificates of insurance, statements of insurance, applications for insurance, binders, endorsements and riders shall be filed with the commissioner.*

2. The commissioner shall, within 30 days after the filing of all policies, certificates of insurance, statements of insurance, applications for insurance,

binders, endorsements and riders, in addition to other requirements of law, disapprove any such form if the table or premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of such policy.

3. If the commissioner notifies the insurer that the form does not comply with the requirements of this section, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No such policy, certificate of insurance, statement of insurance, nor any application, binder, endorsement or rider, shall be issued or used until the expiration of 30 days after it has been so filed, unless the commissioner gives his prior written approval thereto.

4. The commissioner may, at any time after a hearing held on not less than 20 days' written notice to the insurer, withdraw his approval of any such form on any of such grounds.

5. It is not lawful for the insurer to issue such forms or use them after the effective date of such withdrawal of approval.

6. Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review. (Italics supplied.)

[NRS 692.570](#) contains the above provisions as applicable to group credit accident and health insurance.

#### 690.570 Premiums and refunds.

1. *Each insurer issuing credit life insurance shall file with the commissioner its schedules of premium rates for use in connection with such insurance. Any insurer may revise such schedules from time to time and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by [NRS 690.380](#).*

2. Each individual policy, group certificate or statement of insurance of credit life insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of premium due shall be paid or credited promptly to the person entitled thereto. But the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing such refund shall be filed with the commissioner.

3. If a creditor requires a debtor to pay the premium in connection with credit life insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

4. The amount charged to a debtor for credit life insurance shall not exceed the premium charged by the insurer, as computed at the time the charge to the debtor is determined. (Italics supplied.)

[NRS 692.580](#) contains an identical provision applicable to group credit accident and health insurance.

690.400 Issuance of policies. *All policies of credit life insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an*



insurance business therein, and shall be issued only through holders of licenses or authorizations issued by a commissioner. (Italics supplied.)

[NRS 692.590](#) is identical except its application to group credit accident and health insurance.

[NRS 690.410](#) contains provisions applicable to group credit life insurance as to the manner of adjusting and settling claims, and the payment to the creditor. [NRS 692.600](#) contains the same provisions but applicable to group credit accident and health insurance.

[NRS 690.420](#) provides that when credit life insurance is required as additional security for any indebtedness, the debtor shall be accorded the privilege of selecting the insurer. [NRS 692.610](#) is the comparable provision applicable to group credit accident and health insurance.

[NRS 690.430](#) makes provision for the manner of enforcement of the statutes and rules and regulations by the commissioner appertaining to group credit life insurance. [NRS 692.620](#) contains similar provisions appertaining to group credit accident and health insurance.

[NRS 690.440](#) makes provision for judicial review of determinations of the commissioner of matters appertaining to group credit life insurance, under the provisions of [NRS 680.230](#). [NRS 692.630](#) contains identical provisions appertaining to determinations by the commissioner of matters appertaining to group credit accident and health insurance under the provisions of [NRS 680.230](#).

[NRS 690.450](#) authorizes the commissioner to revoke or suspend licenses for violations of the lawful orders of the commissioner, in matters appertaining to group credit life insurance; whereas, [NRS 692.640](#) authorizes the commissioner to revoke or suspend licenses for violations of the lawful orders of the commissioner, in matters appertaining to group credit accident and health insurance.

\* \* \* \* \*

Metropolitan Life Insurance Company (a foreign corporation domiciled in the State of New York) is an insurer qualified to do business (life and accident and health) within the State of Nevada.

Mason-McDuffie Investment Corporation is a Nevada corporation and extends long term credit to residents of the State of Nevada upon real property loans secured by first mortgages and first deeds of trust.

The Banker's Trust Company is a banking corporation domiciled in the State of New York, not qualified to do business in Nevada, and in the manner of operation hereinafter described is denominated the "policyholder."

Metropolitan has money to lend upon first mortgages and first deeds of trust, and to this end takes assignments, with recourse, from the local corporation which makes the loan, secured by an encumbrance, and upon accepting the local corporation which makes the loan, secured by an encumbrance, and upon accepting the individual assignment, advances its funds thereon, thus permitting the correspondent firms to rotate their limited funds. The manner of operation dictated by Metropolitan to the correspondence firms, including Mason-McDuffie Investment Corporation, requires that such loans be additionally secured by credit group life policies and credit group accident and health policies, issued by Metropolitan, to Banker's Trust Company as the policyholder, and serviced as to premiums by the correspondent corporations. The correspondent corporations also service the loans as regards the receipt of monthly payments thereon. Thus, Metropolitan lends its funds and as a part of the same operation, greatly increases its policy premium income.

That in the issuing and servicing of such policies of credit group life and credit group accident and health policies, Metropolitan requires that its correspondents shall

designate Banker's Trust Company of New York City, New York, as agent for such correspondent corporations, and as policyholder, with authority to accept and service claims and proofs of loss under said policies, as well as to credit sums receivable under said policies to the discharge or partial discharge of the accounts of indebtedness of the Nevada resident borrowers.

That Metropolitan has at the present time some 22 of such correspondents situate throughout the country, all of which have designated Banker's Trust Company of New York as agent, with uniform authority as aforesaid, in its contractual arrangements with the various correspondents as well as with Metropolitan.

That the group contracts of credit insurance (life, as well as accident and health) are issued to Banker's Trust Company, domiciled in the State of New York, as aforesaid, and are, or have been, delivered in the State of New York and are, therefore, under the law of contracts, represented to be governed by the laws of the State of New York.

The insurance law of the State of New York appears to contemplate an operation of this description. See: Section 204, subsection c, of the insurance law of the State of New York, which provides:

The policy may be issued to an assignee to whom such creditor or vendor has transferred all of its right, title and interest to the unpaid indebtedness, or to the unpaid purchase price, under all such agreements made by it. Vol. 27, McKinney's Consolidated Laws of New York—Pocket Parts.

That the form of the policies of group credit life insurance (No. 19, 500 G.) and group credit accident and health insurance (No. 21, 300 G.) have not been filed with the commissioner nor approved by him, and are of such content that they could not be legally issued if applied for by Mason-McDuffie Investment Corporation, as the policyholder, for delivery in Nevada.

That although Metropolitan maintains the agency system for the normal and usual sale and servicing of its policies in Nevada, it does not utilize the services of such agents, domiciled in Nevada, and duly licensed by the Insurance Department of the State of Nevada, in the sale or servicing of its group credit life or its group credit accident and health policies insuring Nevada risks.

The group creditor life policy (No. 19, 500 G.) by its terms may be effective for as long as 25 years and may cover an indebtedness of not to exceed \$30,000.

The group creditor accident and health policy (No. 21, 300 G.) may be effective for as long as 25 years and may cover an indebtedness of unpaid balance not to exceed \$10,000.

Metropolitan has informed this office that pending an official opinion, it will suspend and has suspended its Nevada operation (here under scrutiny) and that if the manner of operation hereinabove, described is approved, there will be no loss to the State of its commission of 2 percent upon gross premiums, as provided by [NRS 686.010](#).

#### QUESTION

Is the manner of operation heretofore outlined herein, which the Metropolitan Life Insurance Company desires to follow in the State of Nevada, in respect to its Nevada risks, insuring a Nevada creditor, through the agent designated as "policyholder," authorized and to be approved under the laws of the State of Nevada?

#### ANALYSIS

We have carefully examined the provisions respecting "Group Life Insurance" contained in Sections [NRS 690.090](#) to [690.170](#), as well as the provisions entitled "Regulations of Credit Life Insurance: contained in Sections [NRS 690.310](#) to [690.450](#), inclusive, and are convinced that the former sections have no application to the problem here to be determined. The former provisions regulate group life insurance and although

provision is made therein for the group life insurance policies that may be issued in the protection of creditors, there are many provisions therein that have no application to group creditor life insurance; whereas in the latter sections, only credit life insurance is considered.

Another compelling reason exists to support this conclusion, viz.: The provisions of [NRS 690.090](#) to [690.170](#) are derived from Chapter 189, Statutes 1941, as amended by Chapter 241, Statutes 1955; whereas [NRS 690.310](#) et seq., is of Chapter 413, Statutes 1959. This is a complete new statute dealing exclusively with this subject matter constituting a complete revision thereof, and being of later date, must be construed as repealing such former section of the same subject matter, that may be in conflict therewith. We are convinced that [NRS 690.310](#) to [690.450](#) and [NRS 692.500](#) to [692.650](#) are controlling as to the scope of this opinion.

It is urged by counsel for Metropolitan, in the memorandum of law supplied, that the problem involves a contract made and entered into by and between two corporations domiciled in the State of New York; that the contract is negotiated, entered into and delivered in the State of New York; that the doctrine of *lex loci contractus* controls, in the absence of Nevada law forbidding or precluding such operation.

Assuming, without declaring, that such is in generality a correct statement of the law, we shall show that the Nevada law does preclude such operation.

Although, under [NRS 690.090](#), there are provisions in respect to delivery of policy "in this state," there is no such language in the pertinent statutes, either as regards group creditor life policies or group creditor accident and health policies, the latter under [NRS 692.500](#) to [692.650](#).

We have carefully shown the exact similarity wherever possible of the regulations covering group credit life insurance and group credit accident and health insurance, as heretofore digested and quoted, in order to show that the conclusions as regards one type of creditor insurance, also affects the other, and in the same manner.

We have also had in mind, by quoting copiously from the pertinent statutes, a showing that the controls are specific and complete as to both group credit life and group credit accident and health insurance policies.

Sections [NRS 690.310](#) to [692.500](#) provide that all life insurance and all accident and health insurance "sold in connection with loans or other credit transactions" shall be subject to the sections that follow thereafter. It is, therefore, clear as to which provisions of the law regulate the type of operation proposed by Metropolitan. The section provides, however, "except such insurance sold in connection with a loan or other credit transaction of more than 5 years' duration." We shall show presently that it was not the intention of the Legislature to leave "insurance sold in connection with a loan or other credit transaction of more than 5 years' duration" without any control or supervision by the commissioner.

The purposes of the acts are to "promote the public welfare" by regulating credit life insurance and credit accident and health insurance. [NRS 690.320](#) and [692.510](#).

Credit life insurance or credit accident and health insurance when effected in group policies shall be issued to Nevada creditors only. [NRS 690.340](#) and [692.530](#).

If the contentions of Metropolitan could be adopted, the mandatory controls over domestic insurance companies in the issuance of group creditor life and group creditor accident and health insurance policies, as provided to "promote the public welfare" by [NRS 690.350](#), [692.540](#), 690.360, 692.550, 690.370, and 692.560 would be inapplicable and totally ineffectual.

"All policies, certificates of insurance, statements of insurance, applications for insurance, binders, endorsements and riders shall be filed as here contemplated by Metropolitan. This company claims to be beyond the supervisory jurisdiction of the commissioner in this respect. But, these are mandatory requirements as applied to a domestic company engaged in the same business.

“Each insurer issuing credit life insurance shall file with the commissioner its schedule of premium rates \* \* \*.” [NRS 690.390](#). A similar provision applies to credit accident and health insurance. [NRS 692.580](#). Metropolitan has not filed such schedule, and contends that it is not required to do so. The provision is mandatory as regards a domestic insurer.

“All policies of credit life insurance shall be delivered or issued for delivery in this state \* \* \*.” [NRS 690.400](#). A similar provision regulates the issuance and delivery of group credit accident and health insurance policies. [NRS 692.590](#).

The other provisions of the statutes which we have analyzed ([NRS 690.410](#), [692.600](#), 690.420, 692.610, 690.430, 692.620), placing mandatory duties upon a domestic insurer, are urged by Metropolitan to have no application to that company. Such a holding on our part would emasculate the act and deprive the commissioner of almost all authority over the company as to such coverage, and would thus accord to a foreign company rights and privileges which are clearly not available to a domestic company. Such a construction cannot be adopted. By the proposed mode of operation, a foreign company would operate in a manner violative of Nevada laws, which the McCarran Act, in leaving the administration of insurance exclusively with the states, did not intend. *State v. State Mutual Life Assurance Co. of America*, (Texas 1962), 353 S.W.2d 412. It would unduly prolong this long opinion to discuss this Texas case further. Suffice to say that it distinguishes cases usually cited in support of this theory of the place in which the contract is made, as being controlling. It holds that by this device the law of the state in which the insureds live and in which the indebtedness exists must control and cannot be violated.

Neither will the clause quoted at the outset in regards to contracts of more than 5 years' duration, alter the conclusion as to such contracts. Such would render the statute entirely impotent and permit an escape by tailoring all contracts to the 5-year minimum term. The statutes do control in our opinion, as to all such contracts regardless of the term.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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### **112 Hospitals—County hospitals cannot establish additional branch facilities without an election and a vote on a bond issue to finance such facilities.**

CARSON CITY, February 12, 1964

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

DEAR MR. MARSHALL: The Southern Nevada Memorial Hospital, a county hospital located in Las Vegas, has been asked to establish a branch facility at Indian Springs, Nevada. The question presented to this office concerns the authority of the hospital to establish such a branch facility, the expense of which will be borne out of the operating revenues of the county hospital and not by funds received through a bond issue authorized by a vote of the people.

## QUESTION

May a county hospital establish branch facilities without the necessity of a bond issue, voted upon and approved by the electors of the county, by paying the expense of the facility out of the hospital's general operating revenue?

## ANALYSIS

On April 7, 1959, this office issued an opinion (A.G.O. No. 36) stating that [NRS 450.060](#) expressly governs and controls the manner and means by which additional necessary sites and buildings for hospital purposes may be acquired, namely, by holding of a bond election, and approval of a bond issue by the voters and taxpayers.

Although the cited statute is designed to apply to existing hospitals taken over by a board of hospital trustees, it does, when considered in *pari materia* with other statutes on this subject, indicate the general legislative intent to require an election and bond issue to finance all additional facilities for county hospitals.

A review of relevant statutes may be helpful in explaining this conclusion. [NRS 450.030](#) and [450.040](#) provide the method by which a county hospital may be established. A petition with the required number of signatures is presented to the county commissioners asking that an annual tax be levied for the *establishing and maintenance of a public hospital, at a place in the county or counties named therein*. The petition is to specify *the maximum amount of money proposed to be expended in purchasing or building the hospital, including the acquisition of a site*.

We see, therefore, that when a county hospital is originally established, the location of the site and the maximum amount to be expended for acquiring the same is submitted to the people for vote. This requirement apparently is to give the taxpayers an opportunity to vote on the obligation that will ultimately be borne by them. When this maximum amount and specified site is authorized by the people, a board of hospital trustees cannot acquire additional facilities and expend more money without submitting this added expense to the people on the same basis.

The fact that the expense of acquisition and maintenance of an additional site may be borne out of the operating revenues of the county hospital and is not paid by a direct tax levy does not alter this conclusion. All moneys we are concerned with are deposited in the hospital fund, and if the operating revenues are exhausted for expansion purposes, they would have to be replenished through a tax levy. This would be circumventing the indicated legislative limitations. That which cannot be done directly, should not be accomplished by indirection.

As above indicated, [NRS 450.060](#), although designed to apply to existing hospitals taken over by a board of hospital trustees, does clarify the general legislative intent. It specifically states that "additional necessary buildings and sites may be acquired by holding an election and voting a bond issue \* \* \*." There is no reason to conclude that county hospitals built through bond issues have any broader powers than existing hospitals taken over by a board of hospital trustees.

It is our opinion that [NRS 450.280](#) provides the method by which a county hospital may be enlarged. This statute reads as follows:

Whenever the board of hospital trustees of any county shall deem it advisable that an annual tax be levied for the enlargement \* \* \* of a public hospital, the board shall, by resolution, request the board of county commissioners of the county to levy an annual tax \* \* \* and thereupon the board of county commissioners shall submit the question of issuing bonds therefor to the qualified electors of the county at the next general election \* \* \*.

## CONCLUSION

County hospitals cannot establish additional branch facilities without an election and a vote on a bond issue to finance such facilities. Although the facility we are

presently concerned with may impose a relatively small financial burden upon the county hospital, the law does not seem to make any exceptions. If it is the desire of the Hospital Board of Trustees to establish such facilities without the necessity of the present requirements, perhaps the best approach would be to present amendments to present laws at the next session of the Legislature.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL W. WALSH, *Deputy Attorney General*

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**113 Coroners—County commissioners have authority, under Chapter 135, Statutes 1963, to pass an ordinance providing for appointment of coroner by the county commissioners, and to prescribe his qualifications and duties. In the absence of such an ordinance, Chapter 259 of NRS prevails.**

CARSON CITY, February 18, 1964

HON. M. M. BISHOP, *State Assemblyman, 1212 South Second Street, Las Vegas, Nevada*

DEAR MR. ASSEMBLYMAN: You have inquired of this office as to whether, under Chapter 135, Statutes 1963, the Clark County commissioners can appoint a coroner or whether they must wait until the expiration of the present justice of the peace term.

#### ANALYSIS

Chapter 135, Statutes 1963, amended Chapter 244 of NRS by adding a new section as follows:

Section 1. Chapter 244 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The boards of county commissioners shall have the power and jurisdiction in their respective counties to create by ordinance the office of county coroner, to prescribe his qualifications and duties and to make appointments to such office.

2. Any coroner so appointed shall be governed exclusively by the ordinances pertaining to such office which may be enacted by the board of county commissioners, and the provisions of chapter 259 of NRS shall not be applicable.

Section 2 of the act amended Chapter 259 of NRS by providing that if a coroner is chosen by the new method, as provided above, the provisions of Chapter 259 do not apply.

If the commissioners should pass an ordinance adopting the procedure set forth in Chapter 135, Statutes 1963, the justice of the peace would no longer be ex officio coroner and, therefore, the appointments of deputy coroners would terminate.

Chapter 135, Statutes 1963, became effective on July 1, 1963.

#### CONCLUSION

It is, therefore, the opinion of this office that by the passage of an ordinance implementing Chapter 135, Statutes 1963, that the commissioners could appoint a coroner and prescribe his qualifications and duties; that upon such appointment, the term

of the ex officio coroner and the terms of his appointed deputies, would terminate. In the absence of such an ordinance, the provisions of [NRS 259 apply](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**114 Lake Tahoe Fire Protection District—The elected directors of the Lake Tahoe Fire Protection District continue to hold office in accordance with [NRS 474.130](#) prior to amendment, with one director to be elected on the last Friday in March, 1964.**

CARSON CITY, February 18, 1964

MR. RICHARD YOUNG, *President, Lake Tahoe Fire Protection District, Zephyr Heights, Lake Tahoe, Nevada*

DEAR SIR: You have inquired of this office as to the election of directors of the Lake Tahoe Fire Protection District, and an interpretation of [NRS 474.130](#), as amended by Chapter 283, Statutes 1963.

ANALYSIS

We are faced with the problem of trying to comply with the 1963 amendments, but the Legislature has failed to take into consideration that under [NRS 474.070](#) five divisions with one director each may be elected. The district did elect five directors. Therefore, [NRS 474.130](#), as amended by the 1963 Statutes of Nevada (Chapter 283), is incompatible with an election of five directors, but applies only to the election of three directors.

In the absence of a formula provided by the Legislature by which five directors may be elected, the 1963 act, insofar as your district is concerned, becomes unworkable. Therefore, we must revert to [NRS 474.130](#) prior to amendment.

[NRS 474.140](#) must then be followed as to the date of election, or the last Friday in March, at which one director will be elected.

CONCLUSION

It is, therefore, the opinion of this office that the elected directors of the Lake Tahoe Fire Protection District continue to hold office in accordance with [NRS 474.130](#) prior to amendment, with one director to be elected on the last Friday in March, 1964.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**115 Mobile Homes; Certification by County Assessors; Registration—Mobile homes acquiring tax situs between January 1 and July 1 may be certified by assessors to Department of Motor Vehicles by letter showing no tax levied and no tax paid. Department of Motor Vehicles then authorized to register and plate mobile homes.**

CARSON CITY, February 19, 1964

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

DEAR MR. SPITZ: You have called to the attention of this office certain conflicts in the law governing the taxing and registration of mobile homes, which create a confused situation between the assessors and your department.

You indicate that under Chapter 217, Statutes 1963, which amends Chapter 482 NRS, the law requires that your department shall issue a certificate and plate to any mobile home moved on any highway or road in this State, after a receipt from the county assessor showing that all personal property taxes levied against such unit and its contents have been paid. A certified letter to this effect is all that is necessary to authorize your department to issue such registration and plate.

The conflict arises in that under the law, as it now stands, mobile homes coming into the State between January 1 and July 1 do not acquire tax situs and, therefore, the assessors in certain instances have refused to deliver a certifying letter as required by Chapter 217, Statutes 1963.

#### ANALYSIS

There should be no conflict where the mobile home acquires tax situs in the period between July 1 and December 31, for the assessment, under the law, could be levied and collected at any time after January 1.

Let us now consider the wording of [NRS 482.397\(5-2\)](#). The wording is that the county assessor's receipt (or certified letter) show "that all personal property tax levied against such mobile home and its contents have been paid." It is apparent that if no tax has been levied, no payment could be made on mobile homes acquiring tax situs during the period January 1 to July 1. Therefore, it must clearly appear that a certifying letter from the assessor to that effect would satisfy the requirements of the statute, so that the Motor Vehicle Department could register and plate such vehicles.

To hold otherwise would be to deny the State the revenue from registering and plating mobile homes, and would cause utter confusion on the highways of our State for all mobile homes could, presumably, be drawn at will across our network of traveled arteries.

#### CONCLUSION

It is, therefore, the opinion of this office that the county assessors are authorized, and should, with regard to mobile homes acquiring Nevada situs between January 1 and July 1, issue a certifying letter to the Department of Motor Vehicles to the effect that such mobile homes and their contents have not been levied against and, therefore, no tax has been paid, and that upon the receipt of such letter the Department of Motor Vehicles should register and plate mobile homes in accordance with Chapter 217, Statues 1963.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**116 Unincorporated Towns—County commissioners authorized by statute to enlarge boundaries of unincorporated towns through same procedure, as far as applicable, as land in unincorporated towns is annexed to adjacent incorporated cities.**

CARSON CITY, February 27, 1964



HON. JOHN CHRISLAW, District Attorney, Douglas County, Minden, Nevada

DEAR MR. CHRISLAW: In connection with the changing of boundaries of unincorporated towns, inquiry as to the procedure necessary for effecting the same is presented to this office as hereinafter set forth.

#### QUESTIONS

1. Do the provisions of Section 269.015 or any other section of the Nevada Revised Statutes authorize the board of county commissioners to add land to an unincorporated town previously in existence?
2. If the county commissioners do have the power and authority to add land to an existing unincorporated town, what procedure should be followed insofar as notice is concerned?

#### ANALYSIS

[NRS 269.015](#) provides as follows:

269.015 Boundaries: Definition; change. In addition to the powers and jurisdiction conferred by other laws, the boards of county commissioners of the counties of this state shall have the power and duty to fix and define the boundaries of any unincorporated town or city in their respective counties within which the jurisdiction herein conferred shall be exercised as follows:

1. In the case of any disincorporated town or city the boundaries shall be fixed at the time of such disincorporation.
2. A change of such boundaries shall be made by the board upon petition of the owners of the majority of the taxable property sought to be detached as provided in [NRS 269.020](#).

Prior to 1957 when this section was last amended, county commissioners were empowered to change boundaries of unincorporated towns upon petition of “the owners of the majority of the taxable property thereof.” But as the law then stood, no procedure was provided for accomplishing such change. The 1957 Legislature, in amending the above section, obviously sought to supply the necessary procedure. As noted from paragraph 2 of the above section, such changes are made “as provided in [NRS 269.020](#).” While this wording is somewhat unclear at first glance, we believe that the Legislature intended it to mean “in the same manner as provided for in [NRS 269.020](#).” We must look then to this section of the statutes as to the proper procedure.

[NRS 269.020](#) reads as follows:

269.020 Annexation of town, part of town to incorporated city:  
Procedure.

1. In addition to the powers and jurisdiction conferred by other laws, the boards of county commissioners of the counties of this state shall pass and adopt an ordinance to provide the method by which unincorporated cities and towns, or parts thereof, in their respective counties may be annexed to incorporated cities and towns.
2. Such ordinances must provide:
  - (a) That land adjacent and contiguous to the limits of any incorporated city or town shall be detached from the unincorporated town or city at the request of the majority of the property owners of the land sought to be detached.
  - (b) That the land sought to be detached shall consist of not less than 60 acres.

(c) That if the proposed annexation to an incorporated city or town shall not be accomplished within a 6-month period, the land shall thereupon revert to and again become a part of the unincorporated city or town.

3. No annexation thereof shall be effective unless such ordinance is complied with.

There, provisions are specifically applicable to the annexation of unincorporated towns to incorporated cities. However, the procedure therein provided for must also, pursuant to the provisions of [NRS 269.015\(2\)](#), be followed in bringing outlying county territory within the boundaries of an unincorporated town. It appears from a careful reading of these statutes that it was clearly the legislative intent that the provisions of [NRS 269.015\(2\)](#) be carried out through the aid of [NRS 269.020](#). It is a rule of statutory construction that where the Legislature manifests a definite purpose in an act, it will be presumed that in furtherance of such purpose, the lawmaking power formulated the subsidiary provisions in harmony therewith. *Nye County v. Schmidt*, [39 Nev. 456](#), 464.

#### CONCLUSION

By reason of the foregoing, we conclude as follows:

[NRS 269.015\(2\)](#) authorizes county commissioners to add land to an unincorporated town previously in existence.

In order that the provisions of [NRS 269.015\(2\)](#) be carried out through applicable procedure of [NRS 269.020](#) in detaching land from the county and annexing it to an unincorporated town to which it is adjacent or contiguous, it is necessary that the county commissioners pass and adopt an ordinance containing the following:

1. That land adjacent and contiguous to the boundaries of an unincorporated town shall be detached from the county upon petition of the owners of a majority of the taxable property sought to be detached;
2. That the land sought to be detached shall consist of not less than 60 acres; and
3. That if the proposed annexation to an unincorporated town is not accomplished within a 6-month period, the land shall continue to be a part of the county.

Compliance with such ordinance in all its particulars makes it mandatory that the commissioners order that the land involved be detached from the county and become included with the boundaries of and annexed to the unincorporated town to which it is adjacent and contiguous.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**117 State Librarian—Subject to the powers and duties of the State Planning Board, as provided for in [NRS Chapter 341](#), the State Librarian is authorized by [NRS 378.100](#) to direct disbursement of funds appropriated for State Library services and library construction under provisions of Title I and Title II, respectively, of Library Services Act of 1956, as amended by Public Law 88-269, enacted by Congress on February 11, 1964.**

CARSON CITY, March 4, 1964

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

#### STATEMENT OF FACTS

DEAR MRS. HEYER: The Library Services and Construction Act, enacted by Congress on February 11, 1964, provides under Title I for funds to be used in library services, viz., books, equipment, materials, operating expenses, etc., and under Title II for funds to be used in library construction, viz., construction of new buildings, expansion, remodeling, alteration, etc. The moneys appropriated are available to the states on a matching fund basis upon submission and approval of plans for their use by the persons or agencies authorized by state law to supervise the administration of such plans.

#### QUESTION

Does [NRS 378.100](#) authorize the Nevada State Librarian to accept and direct the disbursement of funds appropriated to the State for use under both library services and library construction plans?

#### ANALYSIS

The pertinent parts of [NRS 378.100](#) provide as follows:

The state librarian is authorized to accept and direct the disbursement of funds appropriated by any act of congress and apportioned to the state for library purposes.

When the Legislature delegated power and authority to the State Librarian to direct the disbursement of funds appropriated for “library purposes,” it used this term in an all inclusive, rather than a restrictive sense. Purposes,” as here used, means the things necessary to be done to effect the full and useful objective of the State Library. This necessarily includes a building program as well as a service program. Had the Legislature intended that anything less than full power be delegated to the State Librarian in achieving this objective, it would have so worded the statute to give it such meaning. It is a rule of construction that in construing a statute, words must be given their plain meaning. Ex parte Zwissig, [42 Nev. 360](#).

#### CONCLUSION

It is the conclusion of this office that by use of the words “library purposes” in [NRS 378.100](#), subject to the powers and duties of the State Planning Board, as provided for in [NRS Chapter 341](#), the State Librarian is authorized to direct the disbursement of funds appropriated under the terms of The Library Services and Construction Act, enacted by Congress on February 11, 1964, under either Title I thereof pertaining to library service, or Title II pertaining to library construction.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**118 Tuberculosis—County not obligated to bear any of the cost of care of indigent tubercular patients. That burden imposed on the State by [NRS 443.105](#).**

CARSON CITY, March 5, 1964

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

DEAR MR. MANZONIE: You have inquired of this office as to whether the County of Clark bears any of the financial responsibility for the treatment of indigent tubercular patients.

#### ANALYSIS

[NRS 443.105](#)(1) provides that every person who, under the regulations of the State Board of Health, is found to be infected with tuberculosis, and to constitute a threat to the health and safety of the public, or who is suspected of being so infected, shall be cared for at public expenses, if he produces a written statement subscribed and sworn to or affirmed before a notary public declaring that he is unable to pay for medical or hospital care.

[NRS 443.105](#)(2) provides that the cost of such care shall be paid by the Health Division from moneys provided by direct legislative appropriation, and within the limits of such appropriation.

The moneys subject to appropriation are raised by taxation, all counties paying their proportionate share, and in view of the language of the statute, the law is mandatory that the cost of such care shall be paid by the State from legislative appropriation.

No mandatory burden can, therefore, be placed on the county to pay a proportionate share of the cost of care for indigent tubercular patients. That duty lies with the State, and if the sums appropriated by the Legislature are insufficient to meet this obligation, then the request of the State Department of health for such funds as are necessary should be presented to the next session of the Legislature.

#### CONCLUSION

It is, therefore, the opinion of this office that Clark County is not obligated under the law to bear any part of the cost of care for indigent tubercular patients.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**119 Nevada Industrial Commission—Nevada Industrial Commission not authorized under existing statutes or court decision to enter into cooperative agreement with a state agency for rehabilitating persons receiving industrial compensation.**

CARSON CITY, March 10, 1964

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*  
Att: Wm. J. Crowell, General Counsel

#### STATEMENT OF FACTS

DEAR MR. CROWELL: The Nevada Industrial Commission seeks to enter into an agreement with the Nevada State Board for Vocational Education (Vocational rehabilitation Division) with the aim of promoting rehabilitation service to handicapped persons receiving industrial compensation. It is proposed that the Industrial Commission pay for all medical and psychological examinations and treatments and prosthetic appliances as may be found necessary by the rehabilitation agency to successfully

rehabilitate the person participating. The amount necessary to meet payment of these expenses would in turn be deducted from the compensation allowance of the participant. Credit for the amount so deducted would then be given the rehabilitation agency as a part of its matching funds in applying for federal moneys available through the Federal Department of Health, Education, and Welfare. Only those persons volunteering and otherwise eligible would participate in the plan. Several questions regarding the proposed agreement have been propounded and submitted to this office, chief of which is that pertaining to the authority of the Industrial Commission to enter into this type of undertaking and which is substantially as hereinafter stated.

#### QUESTION

The Nevada Industrial Act was first enacted in 1913, and, after several amendments, was given its present wording, except for a few minor changes, in 1957. It is administered by a board of three commissioners whose powers and duties are defined in Chapter 616 NRS generally, and particularly, in 616.220 thereof. A careful reading of these fails to reveal anything that specifically delegates any power of the board or commission to enter into a cooperative agreement *with* any other state agency for rehabilitation purposes. It is a general rule that commissions and boards have only such powers as are specifically delegated to them by law or which may be reasonably implied therein.

Industrial insurance acts are in most jurisdictions, including Nevada, liberally construed. *Industrial Commission v. Adair*, [67 Nev. 259](#); *Industrial Commission v. Peck*, [69 Nev. 1](#). But a rule of liberal construction goes more to the manner or method of exercising a power than it does to its substance. Given the most liberal construction, the rule does not permit the reading into the act of something new and different than what the Legislature saw fit to provide. We feel that the powers given the Industrial Insurance Board as set forth in the statutes are exclusive.

#### CONCLUSION

For the reasons hereinabove mentioned, it is our opinion that the Nevada Industrial Commission is not authorized under the provisions of any statute or court decision to enter into the proposed agreement. The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**120 Election Laws; Candidate—One who is registered as the member of one political party and changes his registration subsequent to the preceding primary election cannot file as a candidate of any party at the succeeding election.**

CARSON CITY, March 16, 1964

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

DEAR MR. BEKO: You have set forth the following facts with questions related thereto as follows:

On October 4, 1962, a registered Republican voter requested his current registration cancelled. On that same date he reregistered as a Democrat. He has been and still is a registered Democrat. He now wishes to file for public office on a party ticket. The declaration of candidacy states, "that I have not changed the designation of my political party affiliation on an official affidavit of registration in any state since the date of the last primary election." My questions are:

1. Can he file on a Republican ticker?
2. If he can, is his registration of October 4, 1962, void or must he reregister as a Republican?
3. If he cannot file as a Republican, can he file as a Democratic candidate?
4. If he cannot file, as a Republican or a Democrat, under what designation can he file?

#### ANALYSIS

The primary election in 1962 was in September. The registered voter referred to in your letter changed his registration on October 4, 1962, from Republican to Democrat.

It is apparent, therefore, that having had the right under [NRS 293.540](#) to have his registration as a Republican canceled, and then having registered as a Democrat, he cannot now run as a Republican.

The question as to whether he can run as a Democrat is governed by Section 3 of Chapter 488, Statutes 1963, which provides as follows:

No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation in an official affidavit of registration in the State of Nevada or in any other state since the date of the last primary election in the State of Nevada.

Having changed the designation of his political party since the 1962 primary election, your registered voter cannot run as a Democrat.

The voter cannot file under any other designation in view of the provisions of Section 4 of Chapter 489, Statutes 1963:

Each independent candidate shall be required to state under oath that he has not been registered as a member of any political party since the date of the last primary election immediately preceding the filing of the certificate.

#### CONCLUSION

It is, therefore, the opinion of this office that questions numbers 1, 2, and 3, must be answered "No," and that question number 4 must be answered "None."

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**121 Insurance, Division of—The so-called "retaliatory tax law" contained in [NRS 686.010](#), subsection 3 (Chapter 472, Statutes 1963), is not applicable to Chapter 695 of NRS regulating "Title Insurance and Land Value Insurance."**

CARSON CITY, March 19, 1964

MR. PAUL A. HAMMEL, *Commissioner, Insurance Division, Department of Commerce, Carson City, Nevada*

## STATEMENT OF FACTS

DEAR MR. HAMMEL: Chapter 695 of NRS “Title Insurance; Land Value Insurance.” Generally, the chapter contains provisions for the regulation, under the supervisions of the Insurance Commissioner of the State of Nevada, of those companies engaged in this type of insurance. [NRS 695.160](#) provides for the payment of a tax of 2 percent upon the total risk premium income of such insurers, payable to the State of Nevada.

[NRS 686.010](#) (hereinafter more fully discussed) also makes provision for the collection of a tax of 2 percent upon gross premiums received by insurers other than as designated in Chapter 695.

However, [NRS 679.210](#) provides that the statutes regulating the operation and government of insurers generally, and as contained in Chapters 679 to 694 of NRS, inclusive, shall not apply to title and land value insurers (Ch. 695) unless specifically provided within Chapter 695. The 2 percent tax provision, therefore, applies to title and land value insurers only, because it is contained in Chapter 695 of NRS.

[NRS 695.170](#) provides (subsection 1) that all title insurance companies operating under Chapter 695 shall be under the supervisory jurisdiction of the Commissioner of Insurance, and (subsection 2) that the Commissioner of Insurance shall have power to “impose regulations on such companies” in accordance with the provisions of the general insurance law of the State. At this juncture, however, we should make the distinction that the power to impose regulations upon such companies differs widely and is much less than the power to modify or alter the application of statutes.

The Legislature of 1963 enacted Chapter 472, which amended [NRS 686.010](#) by adding a subsection number 3. Subsection 1 remained without change, which provides generally for the levy of a tax of 2 percent upon the gross premium income of insurers. Subsection 2 thereof provides that until January 1, 1964, the amount of annual licenses shall be deducted from the gross premium tax, in those cases in which the tax is greater. Subsection 3 thereof contains the so-called “retaliatory” provision. It provides the following:

On and after January 1, 1964, when by or pursuant to the laws of any other state or foreign country and 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.

## QUESTION

Are the provisions of the so-called “retaliatory” tax law ([NRS 686.010](#), subsection 3, as amended by Chapter 472, Statutes 1963) applicable to title insurance companies?

As formerly observed [NRS 679.210](#) provides that the provisions contained in Chapters 679 to 694 of NRS, inclusive, do not apply to title and land value insurers

(Chapter 695 of NRS) unless specifically provided within Chapter 695 of NRS. The retaliatory tax law ([NRS 686.010](#), subsection 3) falls within said group of excluded statutes. Neither is this retaliatory tax law specifically included within Chapter 695 of NRS.

However, [NRS 695.170](#) might appear to be in conflict with such tentative conclusion. [NRS 695.170](#) provides:

Powers of commissioner of insurance; regulations.

1. All title insurance companies, corporations or associations operating under the provisions of [NRS 695.010](#) to [695.210](#), inclusive, shall be under the regulation and supervision of the commissioner of insurance.
2. The commissioner of insurance *shall have power to impose regulations* on such companies in accordance with the provisions of the general insurance laws of the State of Nevada as contained in chapters 679 to 694, inclusive, of NRS. (Italics supplied.)

The question here to be resolved is the proper construction to be placed upon the language “power to impose regulations.”

We are clearly of the opinion that the language “power to impose regulations” must be construed to encompass and include rule-making power only. It was not intended by the Legislature to empower the commissioner to nullify the positive provisions of [NRS 679.210](#), which are clear and unambiguous.

The power of an administrative agency must not be extended beyond its legitimate boundaries and to the point of nullifying statutes.

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 Wn.2d 322, 105 P.2d 53. Quoted in dissenting opinion of *Morgan v. Department of Social Security* 127 P.2d 686, at 706.

It follows that [NRS 695.170](#) does not authorize the commissioner by regulation to nullify [NRS 679.210](#) in such a manner as to construe [NRS 686.010](#), subsection 3, as applicable to title insurance.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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**122 Sheriff; Fees—Sheriff of Ormsby County not entitled to retain fees for business licenses sold, but must remit same to county treasury in accordance with [NRS 248.280](#).**



CARSON CITY, March 26, 1964

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

DEAR MR. STOKES: You have requested of this office an interpretation of [NRS 364.020](#). This section reads as follows:

The sheriff, as ex officio license collector, shall receive, and is hereby authorized to retain (except when he is required to turn the same in to the county treasury for county purposes), as compensation for the collection of licenses, 6 percent of the gross amount on each business license sold.

This law has been on the statute books since 1915. However, it is limited in its interpretation by [NRS 248.280](#), the act which itemizes the fees to which the Sheriff of Ormsby County is entitled, and the procedure to be followed in receiving those fees. [NRS 248.280](#)(6) provides: "The sheriff shall collect and safely keep all fees, percentages and compensations of whatever kind or nature allowed him by law, for services rendered by him or his deputies, and he shall, on the 5th day of the month next succeeding the month in which such fees, percentages and compensations are collected, pay the same to the county treasurer."

[NRS 248.280](#)(7) provides as follows:

At the expiration of each month, the sheriff shall make out and file with the county treasurer a full and accurate statement, under oath, of all fees, percentages and compensations received in his official capacity during the month. He shall file a duplicate copy with the board of county commissioners, in which statement he shall set forth the causes in which and the services for which such compensations were received, and the board of county commissioners is prohibited from allowing the salary to the sheriff if he fails to comply with the provisions of this section.

It thus becomes apparent that the exception set forth in [NRS 364.020](#), to wit, except when he is required to turn the same in to the county treasury for county purposes, is applicable in Ormsby County. (See *Trathen v. Dunkle*, [53 Nev. 357](#).)

#### CONCLUSION

It is, therefore, the opinion of this office that the Sheriff of Ormsby County is not entitled to retain for his personal use an amount equal to 6 percent of the gross amount on each business license sold, but must, in accordance with [NRS 248.280](#)(6)(7), turn such fees into the county treasury.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**123 Corporations; Foreign—A foreign corporation whose sole business in Nevada would be the "underwriting and selling improvement bonds of cities, counties and improvement districts," would not be acquiring "loans, notes or other evidences of indebtedness secured by mortgages, deeds or deeds of trust on real property situate in this state," within the meaning of [NRS 80.240](#).**

CARSON CITY, March 30, 1964

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

#### STATEMENT OF FACTS

DEAR MR. KOONTZ: A corporation organized under the laws of the State of California has not qualified to do business in Nevada, under [NRS 80.010](#). This corporation “is engaged solely in the business of underwriting, distributing, selling and dealing in, on a principal basis (not as a broker), improvement bonds, municipal bonds and other tax-exempt bonds.

“The principal part of its business is underwriting and selling improvement bonds of cities, counties and improvement districts. It proposes to engage solely in that business in Nevada.”

#### QUESTION

Is a foreign corporation which would function in this manner authorized to do business in Nevada pursuant to the provisions of [NRS 80.240](#) without the necessity of qualifying to do business in Nevada?

#### ANALYSIS

[NRS 80.240](#) provides the following:

1. Any corporation or insurance association organized under the laws of any other state, district or territory of the United States, or foreign government, which does not maintain an office in this state for the transaction of business, may carry on any one or more of the following activities:

(a) The acquisition of loans, notes or other evidences of indebtedness secured by mortgages, deeds or deeds of trust on real property situated in this state, by purchase or assignment, or by participation with a domestic lender, pursuant to the commitment agreement or arrangements made prior to or following the origination, creation or execution of such loans, notes or other evidences of indebtedness.

(b) The ownership, modification, renewal, extension or transfer of such loans, notes or evidences of indebtedness, the foreclosure of such mortgages or deeds of trust, or the acceptance of additional obligors thereon.

(c) The maintaining or defending of any action or suit relative to such loans, notes, mortgages or deeds of trust.

(d) The maintaining of bank accounts in Nevada banks in connection with the collection or securing of such loans.

(e) The making, collection or servicing of such loans.

(f) The acquisition of title to property under foreclosure sale or from owners in lieu of foreclosures, and the management, rental, maintenance, sale or otherwise dealing or disposing of such real property.

(g) The physical inspection and appraisal of all property in Nevada which is to be given as security for such loans and negotiations for the purchase of such loans.

2. Any corporation or association carrying on the activities enumerated in subsection 1 of this section shall, for the purpose of this section, be deemed to have appointed the secretary of state as its agent for all purposes for which corporate resident agents are required under the general corporation laws of this state and shall, on or before June 30 of each year, file a list of officers and directors and shall pay a fee of \$50 for filing the list of officers and directors and the fee shall be in lieu of any fees or charges otherwise imposed on corporations under the laws of this state. The filing of such annual list shall not constitute the

maintenance of an office for the transaction of business within this state for the purposes of subsection 1 of this section.

3. No corporation or association carrying on the activities state in subsection 1 of this section shall be required to qualify or comply with any provisions of [NRS 80.010](#) to [80.230](#), inclusive, or Title 55 of NRS.

It will be observed from the statement of facts that the foreign corporation would deal as an underwriter exclusively in bonds. It would not acquire “loans, notes or other evidences of indebtedness secured by mortgages, deeds or deeds of trust on real property situated in this state.”

It is important and significant that the function of an underwriter be clearly understood.

“Underwriting” is defined as agreement, made before shares are brought before public, that, if public does not take all shares or number mentioned in agreement, underwriters will take shares which public does not take. In re Hackett, Hoff & Thiermann, C.C.A. Wis., 70 F.2d 815, 819. Firebaugh v. Seegren, 265 Ill.App. 381.

An “Underwriting Contract” is an agreement by the subscribers of bonds, based on a consideration, to insure the sale of the bonds subscribed at a stipulated price. Firebaugh v. Seegren, 265 Ill.App. 381.

As an “Underwriter,” it would, therefore, appear that this California corporation occasionally would enter into contracts with the governing bodies of Nevada cities, counties, and improvement districts in respect to the issuance of general obliteration bonds by such entities. The contracts would provide that in respect to an issue (or a designated portion thereof), the private corporation purchase such bond issue, or the residue thereof, after a public offering at a given price. Such contracts, from the viewpoint of the issuing entity, would lend security to the project of issuing, by the guarantee of a ready market.

As we have pointed out in previous opinions, hereinafter cited, the enumerated transactions constitute exceptions to the general rule that a foreign corporation is not permitted to enter the State and do business therein without fully qualifying in the manner prescribed by law. To so qualify carries certain financial and other burdens.

The Legislature, in its wisdom to encourage foreign capital to enter the State of Nevada to thus facilitate rapid growth and the improvement of real property, has, in the enactment of [NRS 80.240](#), provided an exception to the general rule requiring full qualification. However, being an exception to the general rule requiring a foreign corporation to qualify under [NRS 80.010](#) as a condition precedent to the privilege of entering the State to do business therein, [NRS 80.240](#) must be strictly construed, and the privilege of taking this “short cut” must be limited to those functions that are enumerated.

It is our opinion that municipal, general obligation, bonds, issued by Nevada cities, counties, and improvement districts, do not constitute, “loans, notes or other evidences of indebtedness secured by mortgages, deeds or deeds of trust on real property situation in this state,” within the meaning of [NRS 80.240](#).

This department has, on five previous occasions, released opinions construing [NRS 80.240](#).

See: A.G.O. No. 50 of 4-26-55; A.G.O. No. 102 of 9-12-55; A.G.O. No. 126 of 11-21-55; A.G.O. No. 199 of 8-26-56; and A.G.O. No. 246 of 9-1-61.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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**124 University of Nevada—Board of Regents' power to purchase land without legislative authorization; borrow money for purchase of land, and to purchase land subject to mortgage.**

CARSON CITY, April 14, 1964

MR. NEIL D. HUMPHREY, *Business Manager, University of Nevada, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. HUMPHREY: The University of Nevada is interested in purchasing certain real estate located within the area of its approved master plan. The following questions have been submitted to this office for determination.

QUESTIONS

1. Can the University of Nevada buy land without specific legislative authorization?
2. If the answer to question number 1 is affirmative, can the university of Nevada borrow money from either a bank or interfund (i.e., from an unrestricted fund with sufficient surplus) to finance such purchase?
3. Again, if the answer to question number 1 is affirmative, can the University of Nevada purchase mortgaged property subject to the mortgage and pay the mortgage from income produced by the property?

ANALYSIS

It is our conclusion herein that the Supreme Court of Nevada has construed provisions in the State Constitution relating to the University of Nevada in such a manner as to give this institution a large degree of independence from other branches of state government, and, as such, has classified the University as a constitutional corporation. Although the University is not an unrestrained entity, the authority to govern itself through its Board of Regents in regard to executive and administrative matters is exclusive and within this scope the regents are rulers of an independent province beyond the rule-making power of the Legislature.

We would like to point out that there is a sound reason for a creation of such an institution and other states, through constitutions and judicial decisions, have created similar universities enjoying a constitutionally independent status.

The argument for constitutional independence, which we feel should be set forth herein, has been stated at some length in formal opinions of the Supreme Courts of Michigan, Minnesota, Idaho, California, and Nevada, and may be summarized as follows:

Legislatures, made up of varied personnel and subject to frequent and violent changes in composition according to the fluctuating political fortunes of parties and individuals, and convening for short and crowded sessions usually only at biennial intervals, cannot give the continuous study and wholehearted devotion which is requisite to the development of a wise educational policy for the state. Few members of the Legislature are likely to have had experience in the study of problems of higher educational administration, and many of them will not

greatly comprehend the aims and methods of academic and scientific teaching and research. On the other hand, a governing board of laymen chosen exclusively for the task is likely to exhibit the needed qualities such as experience, and understanding growing out of experience, in dealing with problems of educational policy; and the ability and disposition to weigh wisely the counsel of the expert professional educators whom it employs in executive capacities. Cf. Elliott, *Colleges and Courts*, p. 509 (1936 Ed.)

It will be our endeavor herein, with hope that we are not presumptuous, to attempt to clarify some of the powers the regents may exercise in the control of the University. In doing this, we will outline some of the legal history of the University from its constitutional creation to its present day status, and apply other state constitutional provisions and judicial decisions to the instant problems.

Nevada Constitution, Article XI, Section 4, provides:

The legislature shall provide for the establishment of a state university, which shall embrace departments for agriculture, mechanic arts and mining, *to be controlled by a board of regents, whose duties shall be prescribed by law.* (Italics supplied.)

This section, as originally proposed to the Constitutional Convention on July 21, 1864, read as follows:

The legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possession such qualifications as may be prescribed by the Board of Regents.

It will be noticed at this point that the original proposal did not state that the University was to be controlled by a Board of Regents. There was considerable discussion among the members of the convention concerning free admission and who would have authority to provide regulations governing free admissions. Mr. Collins indicated that this would be within the control of the Board of Regents and on the following day an amended section was proposed, which read:

The legislature shall provide for the establishment of a State University \*  
\* \* which shall be free to all white pupils possessing such qualifications *as may be prescribed by the Board of Regents*, and whose parents or guardians are citizens of this state. (Italics supplied.)

As clearly indicated, the effect of this amendment was to give the Board of Regents the authority to prescribe regulations governing the admission of students. This was the first step in the creation of a constitutional corporation, which, according to the Supreme Court of Nevada, has exclusive power to control itself through its Board of Regents in regard to executive and administrative matters. In *King v. Board of Regents*, 65 Nev., at p.565, the court stated this control “is exclusive of such right in any other department of the government save only the right of the legislature to prescribe duties and other well-recognized legislative rights.”

After the proposal of this last amendment, there was still concern among the delegates concerning the authority of the board and Mr. Crosman moved to strike out all that portion after the word “Regents,” stating that the matter would then be entirely open for legislative action; that the Legislature would “determine whether the institution shall be free for all children \* \* \* or what shall be the terms of admission in any and all cases.” He continued:

Now I submit to the Chair and to the Convention, whether it would not be more explicit, and better in every way, to let the section provide simply for the University, and then for a Board of Regents, and leave all the rest to the legislature.

Another amended section was then proposed which recited that:

The legislature shall provide for the establishment of a State University, which shall be under the control of the Board of Regents *whose powers and duties* shall be prescribed by the legislature. (Italics supplied.)

Shortly thereafter the final adopted section was submitted, which read, as it does today, as follows:

The legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts and mining, to be controlled by a Board of Regents, *whose duties* shall be prescribed by law. (Italics supplied.)

The deletion of the word “power” is the primary determining factor in this analysis. Although there has been much controversy concerning the purpose of this deletion, we cannot escape the plain and simple fact that it was omitted from the final accepted section, which fact leads us to the conclusion that the Legislature is not to prescribe the powers of the Board of Regents and that there is a difference between “powers” and “duties.”

In *King v. Board of Regents*, 65 Nev., at pp. 566 and 567, the court considered the portion of the constitutional debates relevant to this conclusion:

There was further discussion and the section was finally adopted by rejecting the clause “*whose powers and duties shall be prescribed by law.*” Thus on the one hand *the convention refused to grant powers to the legislature to restrict the powers of the regents* but did grant the legislature the right to prescribe the duties of the regents. Mr. Nourse would have authorized the legislature to prescribe both the powers and duties of the regents “and not leave it be inferred perhaps, that they have absolute power.” (Italics supplied.)

Also in the *King* case, at p. 564, the court stated that, “It is the right of the regents to control the university, in their constitutional executive and administrative capacity, (which right) is exclusive of such right in any other department of government.”

The difficult problem lies in a determination of the nature of the powers the regents may exercise. Does this power include the right to purchase land for University purposes without legislative authorization? As Dean Newman stated in his work entitled, “The Legal Position of the University of Nevada as an Agency of the State of Nevada,” at p. 16:

Unhappily there is no authoritative pronouncement—from any supreme court, constitution scholar, education commission, or other source—that lists University powers and functions and tells us whether they are or are not “executive or administrative.”

Perhaps the simplest approach would be to apply common definitions of the terms “powers” and “duties” to the instant problem and look to the Legislature’s own concept of powers.

“Power” is defined as the “ability to act.” “Duty” is defined as “that which one is bound, by any natural, legal, or moral obligation to do or perform.” Funk & Wagnalls, *New College Standard Dictionary*. It seems to us that the purchase of land is the exercise of a power within the regent’s ability to act in their executive and administrative capacity.

That the purchase of real estate is the exercise of a power has, on numerous occasions, been recognized by the Legislature. An example is Chapter 387, Stats. 1963, which purports to authorize the University to purchase certain real estate and recites that the University may do all things necessary to carry out the *powers* granted by the act.

We can also look to [NRS 396.420](#) wherein the Legislature has stated that 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 \* \* \*.” Also, [NRS 396.430](#) recites that, “The board of regents shall have the *power* to sell or lease any property granted, donated, devised, or bequeathed to the University \* \* \*.” (Italics supplied.) By these enactments, the Legislature has considered the purchase, acceptance, lease or sale of real estate the exercise of a power.

In support of this conclusion, another statement in the King case, p. 548, is relevant:

There have been established at the University of Nevada by the board of regents a College of Arts and Science \* \* \*, the College of Engineering \* \* \*, and the College of Agriculture. \* \* \* The maintenance of this situation, its modification, *change or expansion* all lie within the functions of the regents. (Italics supplied.)

The answer to the second and third questions lies in analysis of Article XI, Section 7 of the Nevada Constitution, which reads:

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

Was the intent of the constitutional Convention to subject all or part of University funds to the direction of the Legislature? Can the University use unrestricted funds for the purchase of real property without legislative authorization?

In answering these questions, we will be guided by the decisions of other states and the constitutional debates. A case almost directly in point is *State v. State board of Education*, 196 P.201 (Idaho 1921). The Idaho attorney general sought to prohibit the Board of Regents of the University of Idaho from pursuing a course of conduct which was set forth in a resolution passed by the regents. This resolution provided in part:

Whereas, the Board of Regents denies the authority of the Legislature under the guise of “regulations,” to deprive the said board of the state government, *of absolute exercise of full discretionary powers in the purchase and sale of property, and the employment of services, or to interfere in any way with the expenditures of the funds belonging to the University.*

\* \* \* \* \*

*Resolved, that the bursar is hereby directed to purchase from Julia A. Moore, of Moscow, Idaho, a certain tract of land necessary for agricultural experimentation \* \* \* and to pay therefor a sum not to exceed \$100, one-half of the purchase price to be paid upon execution and delivery of the deed by warrant*

upon the treasurer of the University \* \* \* the balance of said purchase price to be paid six months from date of the execution of said deed \* \* \*. (Italics supplied.)

It was contended by the Attorney General that the Regents will pay claims against the University out of funds in the hands of the State Treasurer, without submitting them for allowance by the State Board of Examiners. In particular, that they propose the purchase of lands on a time contract for University needs, without specific authorization by the Board of Examiners in violation of law.

The constitutional provision in question read substantially the same as Nevada's and provided that the regents were to have "the general supervision of the University, and the control and direction of all funds of, and appropriations to, the University, *under such regulations as may be prescribed by law.*" (Italics supplied.)

The court, in holding that the regents had the power to purchase the land, cited the Michigan case of Board of Regents v. Auditor, 132 N.W. 1037, wherein it was said:

It (the University) is made the highest form of juristic person known to the law, a constitutional corporation of independent authority, which, within the scope of its functions, is co-ordinate with and equal to the Legislature.

The Idaho court then said:

The regulations which may be prescribed by law, and which must be observed by the regents in their supervision of the University, and the control and direction of its funds, refer to the methods and rules of conduct of its business and accounting to authorized officers. *Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board, under the authority granted by the Constitution.* (Italics supplied.)

The court continued:

It is admitted by the Attorney General, and we think correctly so, that the proceeds of federal land grants, direct federal appropriations, and *private donations to the University are not subject to the constitutional requirement that money must be appropriated before it is paid out of the state treasury.* \* \* \* The moneys in such funds may be expended by the Board of Regents, subject only to the conditions and limitations provided in the acts of Congress making such grants and appropriations, or the conditions imposed by the donors upon the donations.

\* \* \* \* \*

*(If they (regents) have money which is available for the purchase of land, \* \* \* we know of no valid reason why they should not do so.* (Italics supplied.)

Again in 1943, the Idaho Supreme Court had an opportunity to construe this same section of their Constitution in Dreds v. Board of Regents, 139 P.2d 467. The court began with the statement that, "This appeal involves the *powers and duties* of the 'Regents of the University of Idaho.'" (Italics supplied.) The action involved one Leona Dreds who was appointed by the Board of Regents as a nurse in the University infirmary at an agreed salary. She happened to be the niece of one of the regents, and the Board of Regents declined to pay her salary on the grounds that her employment was in violation of the state Nepotism Act. She brought action to recover her salary and the appeal involved two questions; (a) Did the Nepotism Act apply to the Board of Regents of the University of



Idaho? And, (b) If it was intended to so apply, did the Legislature have the power to make it applicable to the Board of Regents of the University of Idaho?

It was contended that the following sentence conferred certain lawmaking powers on the Legislature:

The regents shall have the general supervisions of the university, and the control and direction of all the funds of, and appropriations to, the university, *under such regulations as may be prescribed by law.* (Italics supplied.)

The court said:

It is not believed that the framers of the constitution meant any such thing by using the words “under such regulations as may be prescribed by law,” for the reason that to give this clause such a construction would contradict and repudiate the terms of the preceding sentence \* \* \*.

It seems reasonable and consonant with the other portions of the section, to believe that “such regulations as may be prescribed by law” were intended to refer *only to appropriations the legislature might make* to the University from time to time. \* \* \* (Italics supplied.)

“Regulate” does not mean to prohibit, or destroy or change, but rather signifies “to adjust by rule, method or established mode; to direct by rule or restriction”; “to reduce to order, method or uniformity.” It is the antonym of “disorder, upset, disarrange.”

The foregoing definitions all carry the implication that the word regulations used in this section of the constitution refers more to the manner, method, procedural and orderly conduct of business than to mandatory or prohibitive legislation. \* \* \*

Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board, under the authority granted by the Constitution.

It is true the university is “under the exclusive control of the state” but that does not make it a department of state government or subordinate to the legislature. It is also true that the university is a “state agency,” in the sense that it has been created by the state and exists as a public corporation for educational purposes; but the legislature has no power to impair, dissolve or destroy it. It received its charter and authority from the people at the same time and in the same manner the legislature was created, each independent and exclusive of the other in the sphere of its own purpose and objects.

The Nevada Constitutional Debates (p. 745) indicates that the members of the convention contemplated a similar construction.

Mr. Collins. \* \* \* Therefore, I do not see the force of the word “capital,” because if it was intended to tie up both the principal and interest, it was not in accordance with the design of the Convention, which was to hold the original sum only, *allowing the interest to be at the disposal of the Board of Regents, to be appropriated according to the judgment and discretion of that Board, under such provisions of the law of Congress* granting the ninety thousand acres to this State. (Italics supplied.)

Also in the King case, at p. 569:

The power of the legislature to provide the requisite money and to limit and decrease the amount considered by the regents to be necessary is entirely a different function from the administration and control of the university itself.

Dean Newman had a very enlightening remark in his work, *supra*, at pp. 40 and 41, as follows:

Thus, after the presentation of budgets and the appropriation of moneys for University support and maintenance, the University is “to be controlled” only by the regents (sec. 4); and they alone are “to control and manage” its “affairs,” and also its “funds” (sec. 7). With respect to the supplementary phrase “under such regulations as may be provided by law” and its synonym “define their duties” (both in sec. 7), the comments in the Idaho case, which was approved in *King* (65 Nev. at p. 559), are pertinent: “The regulations which may be prescribed by law which must be observed by the regents in their supervision of the university, and the control and direction of its funds, refer to methods and rules of conduct of its business and accounting to authorized officers. Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board under the authority granted by the constitution.

Courts in other states with similarly classified universities have held that the Legislature can, within reason, attach conditions to its university appropriations, and that if a constitutional university accepts such conditional funds, it is then bound by the conditions. *State v. Chase*, 175 Minn. 259, 220 N.W. 951; *Fanning v. Univ. of Minn.*, 183 Minn. 222, 236 N.W. 217; *State v. State Board of Education*, 33 Idaho 415, 196 P.201; *Regents v. Auditor General*, 167 Mich. 444, 132 N.W. 1037.

Another case in point is *Fanning v. University of Minnesota*, 183 Minn. 222, 236 N.W. 217. This was a taxpayer’s suit to enjoin the construction of a dormitory on the campus of the University of Minnesota. The regents had authorized the construction without legislative permission and proposed to pay the cost of construction out of the net earnings of the dormitory; from rentals accruing from property acquired by the University in the enlargement of its campus; and from the earnings of the University press.

The Supreme Court of Minnesota held that in the exercise of its power of government, the board had authority to construct the dormitory on the campus without legislative authority and use the proceeds above indicated to finance the cost. The court said:

The people by their constitution choose to perpetuate the government of the university which had been created by their territorial legislature in a board of regents, and the powers they gave are not subject to legislative or executive control. \* \* \* This does not mean that the people created a corporation or institution which is above the law. The board must keep within the limits of its grant. It is charged with the duty of maintaining a university for the purpose of higher education. \* \* \* The \* \* \* constitution intended a university which would grow and develop and undertake activities in the way of research and in other respects not then visualized in the dreams of its founders. There are many things the board cannot do. It does not claim otherwise. In a real sense the property of the university is the property of the state, which through its taxpayers is its chief supporter. The board cannot divert it to other than university purposes. It must govern a university which the territorial statute and the constitution established and perpetuated \* \* \*

*The power to govern a university implies the power to construct buildings.*  
\* \* \* The legislature might appropriate money for their construction. It has not done so. The university may build, but it must have money. *If it has money not*

*otherwise appropriated, it may use it for dormitory purposes.* Whether it shall build is a question of policy with which the board is concerned and in the determination of which we have no voice. The policy is for the university authorities, and the university authorities are the regents. (Italics supplied.)

\* \* \* \* \*

The campus rentals all the time were subject to the disposition of the board for university purposes. \* \* \* And, having the right of disposition, the board could use campus rentals for the building of a dormitory without a legislative appropriation for such purpose and in spite of an appropriation for a different one.

In *The Regents of the University of Minnesota v. Hart*, 7 Minn. 61, 72 (1862), the court said:

The Board of Regents is a public corporation, for the purpose, among other things, of erecting a University building, and for that purpose \* \* \* possesses all the powers necessary to the attainment of that end. They could make all necessary contracts, and give written evidences to creditors, of debts incurred in and about the work, payable at a future date \* \* \*

And, in *State v. Regents of University System of Georgia*, 175 S.E. 567, 572 (1934), the State of Georgia, in its sovereign capacity, filed a suit against the regents of the University to enjoin the execution of a contract executed by the regents and an agency of the federal government, under which the University proposed to obtain a loan in the sum of \$2,817,000 to be used in the construction of new buildings at different branches of the University system. The court held that the regents were authorized, in their discretion, to purchase lands for college purposes, to construct dormitories, gymnasias, and other buildings necessary to the usefulness of the University and incur liabilities for that purpose. The following statement is relevant:

It may be conceded that the state is the equitable and beneficial owner of all property now vested in the Regents of the University System, and that the corporation by that name is the holder only of legal title; but it does not follow that the corporation may not enter into any contract which in its reasonable discretion is necessary for the usefulness of the institution, or may not incur liabilities in its own name for that purpose. Being a distinct legal entity, any such liability would be a debt of the corporation and not a debt of the state.

We are of the opinion that the authorities above cited reflect the status of the powers of the University of Nevada's Board of Regents over University funds. While it might be inferred from the cases heretofore cited that the University, acting through the Board of Regents, has the power to borrow money from a bank without legislative sanction, we feel that such broad power might lead to abuse. The Legislature controls the State's purse strings and should be kept advised of reasons why appropriated moneys are not sufficient to meet the University's building or expansion programs.

It might well be the feeling of the Legislature that because of tax income, building and expansion programs should be curtailed. To then allow the University to borrow money over and above appropriated funds would be to pledge the credit of the State to the repayment of such sums as an overly-zealous Board of Regents might borrow.

If the University has funds to its credit by reason of a donation, grant, gift, of course such funds, we feel, could be used without legislative sanction for needed buildings, grounds or equipment unless the use of such were restricted by the terms under which they were made available. Thus, if funds over and above those appropriated by the

University are available, mortgaged property could be purchased with such funds only if the property produced sufficient income to meet the mortgage payments.

#### CONCLUSION

It is, therefore, the opinion of this office that the University can buy land without specific legislative authorization only if funds are used which are acquired over and above legislative appropriation, and only to the extent of such surplus. The University, acting through its Board of Regents, cannot borrow money from a bank or financial institution without legislative authorization. The University can purchase mortgaged property only if funds other than those appropriated by the Legislature are available, and then only if the income from such mortgaged property is sufficient to meet the mortgage payments.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

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#### **125 Commissioner District; Voting Precinct—Board of County Commissioners has power, upon designation of voting precinct by county clerk, to add such precinct to commissioner district in which there is an adjoining precinct.**

Carson City, April 1, 1964

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

DEAR MR. BEKO: You have pointed out to this office that Nye County now has three commissioner districts formed under the provisions of [NRS 244.050](#).

Amendments to this section enacted by the 1959, 1960, and 1961 Sessions of the Legislature contain no provisions for amending or modifying commissioner districts.

Your question in view of this is whether Lathrop Wells, which has been established as an election precinct under the provisions of [NRS 293.207](#) and [293.210](#), can be included in one of the commissioner districts already established?

#### ANALYSIS

We can see no reason why this cannot legally be done. In holding that each commissioner district should be composed of adjoining precincts the legislature envisioned that new precincts should be in that commissioner district in which there is an adjoining precinct, and if possible to ascertain in that district which would most nearly be brought up to one-third of the voting population by such addition. This should govern as to whether Lathrop Wells should be in Commissioner District number 2 or Commissioner District number 3.

#### CONCLUSION

It is therefore the opinion of this office that the Board of County Commissioners, upon designation by the county clerk, can add a voting precinct to a commissioner district in which there is an adjoining precinct.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**126 Banks, Superintendent of—National banks being created and regulated under authority of congressional acts, may not be burdened by conditions imposed by State, except insofar as the congressional acts provide.**

CARSON CITY, April 21, 1964

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

DEAR MR. ROBISON: Formerly the Secretary of State received an inquiry from an attorney at law of a sister state, in respect to the construction to be placed upon the statute of 1955, which with certain amendments not pertinent here has become [NRS 80.240](#). The following question was then presented:

“Is a federal savings and loan association, organization under the laws of the United States of America, in order to enjoy the benefits and privileges secured by Chapter 228, Statutes 1955, required to file annually in the office of the Secretary of State a list of officers and directors and pay a fee of fifty dollars (\$50)?”

In the opinion released by this office (A.G.O. No. 199 of August 21, 1956), we pointed out that such institutions so created and constituted “are created, regulated and controlled by the federal government and by federal statutes. The states are therefore ousted of jurisdiction except insofar as their jurisdiction over such institutions is acknowledged by the provisions of the federal statutes. *M’Culloch v. Maryland et al.*, 4 Wheaton 316, 4 L.Ed. 479.”

We cited that a corporation organized under the Home Owners Loan Act as First Federal Savings and Loan Association of Wisconsin, had a lawful right to transact business as a federal savings and loan association within Wisconsin, and was under the sole authority and control of the laws of the United States. *First Federal Savings and Loan Association v. Finnegan*, 16 F.Supp. 678.

We pointed out that under the federal statute the states had been given authority to impose certain specific taxes, and that such statutes being permissive, were to be strictly construed.

We ended the opinion by remarking that we did not know that the federally chartered building and loan association referred to by counsel had been authorized by the United States officials having jurisdiction, to bring its operations into Nevada. If it had been so authorized Nevada officials could not attach conditions except as authorized by the federal law. If it had not been so authorized, consent to enter, given by the State of Nevada, upon conditions, would be totally unavailing and ineffectual. (See A.G.O. No. 51 dated July 12, 1963.) We expressly refrained from declaring that such federally chartered building and loan corporation domiciled and with headquarters within another state had authority to enter the State of Nevada, and do business therein, but declared that if it had such authority, to qualify for the limited privileges available to foreign corporations under [NRS 80.240](#), would avail nothing. The question was answered in the negative.

QUESTION

Is a national bank, with charter granted under the laws of the United States of America, supervised by federal officials, which does not maintain an office in the State of Nevada for the transaction of business, in order to enjoy the benefits and privileges secured by [NRS 80.240](#), as amended, required to file annually in the office of the Secretary of State a list of officers and directors and pay a fee of fifty dollars (\$50)?

ANALYSIS

We thus have the same question as that formerly presented, except that there we were dealing with federally chartered savings and loan associations, whereas here we are dealing with federally chartered banks.

[NRS 80.240](#), as amended by Chapter 359, Statutes 1963, in part provides:

80.240 (Doing business without qualification, power of foreign corporations, associations to make secured loans in state; conditions; service of process.)

1. Any corporation or insurance association organized under the laws of any other state, district or territory of the United States, or foreign government, which does not maintain an office in this state for the transaction of business, may carry on any one or more of the following activities:

(a) The acquisition of loans, notes or other evidences of indebtedness secured by mortgages, deeds or deeds of trust on real property situate in this state, by purchase or assignment from, or by participation with, a domestic lender, pursuant to the commitment agreement or agreements made prior to or following the origination, creation or execution of such loans, notes or other evidences of indebtedness.

(b) The ownership, modification, renewal, extension or transfer of such loans, notes or other evidences of indebtedness, the foreclosure of such mortgages or deeds of trust, or the acceptance of additional obligors thereon.

(c) The maintaining or defending of any action or suit relative to such loans, notes, mortgages or deeds of trust.

(d) The maintaining of bank accounts in Nevada banks in connection with the collection or securing of such loans.

(e) The making, collection or servicing of such loans.

(f) The acquisition of title to property under foreclosure sale or from owners in lieu of foreclosure, and the management, rental, maintenance, sale or otherwise dealing or disposing of such real property.

(g) The physical inspection and appraisal of all property in Nevada which is to be given as security for such loans and negotiations for the purchase of such loans.

Section [NRS 80.240](#) also has certain other subsections which are not material here. Subsections 2 and 3 deal with the appointment of the Secretary of State as agent for the service of process upon such corporations, and the manner in which such process is to be disposed of by the Secretary of State. Subsection 4 thereof provides for the payment of a fee annually to the Secretary of State, and the filing of a list of officers and directors. Subsection 5 thereof provides that such corporations operating in this limited manner in Nevada shall not be required to qualify as provided in [NRS 80.010](#) to [80.230](#), inclusive.

Under [NRS 80.010](#), provisions are made for the qualification of corporations chartered under state law, to enter the State, as a prerequisite to doing business therein. In A.G.O. No. 50 of April 26, 1955, we said that the present statute ([NRS 80.240](#)) has been enacted "to permit certain foreign corporations, in the limited functions declared by the statute, to do business, as an exception to the law previously applicable to such corporations." However, [NRS 80.010](#) was not enacted in respect to corporations with charter emanating from the federal government, under acts of Congress, but in respect to corporations created under state laws.

The formation of national banks is governed by the provisions of Title 12, Section 21, et seq., U.S.C.A. Under Section 81 thereof, and annotated cases, the place of business is defined.

Assume that a national bank with principal place of business and domicile located in another state, according to the provisions of Section 81, title 12, U.S.C.A., does not maintain an office in Nevada for the transaction of business, and has the right to enter the

State of Nevada and transact business herein. If such banking corporation does not have the right to enter Nevada under such circumstances to conduct business therein, it cannot be corrected or precluded by state authority. *Ingalls v. Ingalls*, 81 So.2d. 610; *Bank of America, National Trust and Savings Association v. Lima*, 103 F.Supp. 916.

Assume also that in the right to enter the State of Nevada and do business herein, it has general rights as respects conducting the banking business, except as forbidden by state law. *Ingalls v. Ingalls*, supra; *Bank of America national Trust and Savings Association v. Lima*, supra.

Having general banking rights, in Nevada, (as we have assumed) and to do a general banking business herein, it has all of the rights and privileges contained in [NRS 80.240](#) and more, for such is only permissive of a limited business function. A.G.O. No. 50 of April 26, 1955.

It follows, that insofar as the State is authorized to prevent, such a national bank has the rights granted by [NRS 80.240](#), as amended, by virtue of its federal charter, without the necessity of complying with the terms of the state statute.

National Banks are brought into existence under federal legislation, are instrumentalities of the federal government and are necessarily subject to paramount authority of the United States, but are subject to the laws of a state in respect to their affairs, unless such laws interfere with purposes of their creation, tend to impair or destroy their efficiency as federal agencies or conflict with paramount law of the United States. *Bank of America, National Trust & Savings Association v. Lima*, supra.

National banks are generally held not to come within state statutory requirements relating to foreign corporations unless legislative intent to treat such institutions as foreign corporations is clearly manifested in unmistakable language. *Bank of America, etc.*, supra.

Lest we be misunderstood, let it be crystal clear, that we do not declare or find that a national bank, domiciled in another state, has the right to enter Nevada and do a general banking business herein, for we do not know such to be the case. But we do declare that if it has no such right or power, it is beyond the authority of the state government to prevent such operation, for the supervising authority is exclusively that of the national government.

To exercise the powers and functions enumerated in [NRS 80.240](#) are not precluded to local banks, either of national or state charter, but are extended to foreign corporations, not otherwise authorized to do business in Nevada. If such national bank domiciled in another state, may enter the State and do a general banking business, under federal law, it may exercise the powers contained in [NRS 80.240](#), as amended, for the greater includes the lesser power.

In A.G.O. No. 199 of August 21, 1956, we said in reference to nationally chartered building and loan association: "If it has such authority (authority to enter the State and do a general building and loan business therein) the State cannot divest it or limit it by the provisions of the statute in question. If it has it not, the State cannot confer it by the exaction of the fee and by requiring the compliance with the other provisions of the statute in question." We repeat the same with reference to the institution here under consideration.

We have previously construed [NRS 80.240](#). See Attorney General Opinions: Number 50 of April 26, 1955, supra; Number 102 of September 12, 1955, modified by Number 126 of November 21, 1955; Number 199 of August 21, 1956, supra; Number 246 of September 1, 1961, and Number 123 of March 30, 1964.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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**127 Banks, Superintendent of—A bank incorporated under the laws of the State of Nevada, being now a wholly owned subsidiary of a holding corporation, is precluded and forbidden to make loans to the owners of the stock of the holding or parent corporation upon the collateral security of such stock. [NRS 662.070](#) and [662.140](#) construed.**

CARSON CITY, April 15, 1964

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

DEAR MR. ROBISON: You have made inquiry of this office as to whether a bank may lend money and take as collateral security therefor, stock issued by the holding financial corporation.

ANALYSIS

In the case cited by you the controlling interest of a bank was transferred to a financial corporation, said bank at the time being a virtually wholly owned subsidiary of the holding financial corporation: In fact the holding company controlled all but approximately one-half of 1 percent of the bank's outstanding stock.

[NRS 662.070](#) provides:

662.070 (Limitations on acquisition; purchase by bank of own capital stock.) No bank shall make any loan or discount on the security of the shares of its own capital stock, not be the purchaser or holder of such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall, within 6 months from the time of its purchase or acquisition, be sold or disposed of at public or private sale.

It appears that provisions of this content are frequent and well near uniform among the several states. The banks operating under federal charter are under much more exacting and confining restrictions. Such banks are forbidden from dealing in any capital stocks of any corporation (except perhaps those under federal charter), except solely upon the order or account of customers and "in no case for its own account." Title 12 U.S.C.A., Section 24 "Seventh." *Noel Estate v. Commercial national Bank of Shreveport*, 232 F.2d. 483.

[NRS 658.100](#) provides:

658.100 (Enforcement of banking laws by superintendent of banks; rules and regulations.) In addition to the other powers conferred upon him by this Title, the superintendent of banks shall:

1. Be charged with the enforcement of the provisions of this Title; and



2. Have the power to make rules and regulations for the governing of banks doing business under the terms of this Title.

[NRS 659.020](#), as amended by Chapter 89, Statutes 1963, provides the contents of the articles of incorporation of banks formed under this title. This section provides among other things that the stock shall be of par value not less than \$1 per share, and shall be assessable, that the paid in capital shall be not less than \$50,000, and the paid in surplus shall be not less than 20 percent of the paid in par value of the capital stock; that each of the directors (not less than 5) shall be a bona fide subscriber to not less than \$1,000 of the stock of the bank, fully paid and not hypothecated.

[NRS 662.050](#) provides that no bank shall give preference to any depositor or creditor. It also provides exceptions as regards the securing of deposits made by the United States, the State of Nevada, or any of its political subdivisions. It also provides that a bank may borrow money for temporary purposes and pledge its assets as collateral security. It provides that with the consent of the Superintendent of Banks and the State Board of Finance it may borrow to the amount of 50 percent in excess of its paid up capital and surplus and may pledge its assets in security thereof.

[NRS 662.090](#) provides that any bank incorporated under the laws of the State of Nevada may become a member of the Federal Reserve System and [NRS 662.100](#) provides that banks created under the laws of the State of Nevada, may enter into such contracts as required to obtain the insurance provided to depositors under the Federal Deposit Insurance Corporation. We understand that the bank has the protection available to the banks and to its depositors under sections 662.090 and 662.100 of NRS.

The sections 662.140 to 662.260 of NRS make reference to investments that may be made by banks incorporated under the laws of the State of Nevada, and clearly limit the employment, both directly and indirectly, of such bank moneys.

[NRS 662.140](#) provides:

662.140 (Investments generally; limitations on acquisition of certain stock.)

1. No bank shall employ its moneys, *directly or indirectly*, in trade or commerce by buying or selling goods, chattels, wares or merchandise, *and shall not invest any of its funds in the stock of any bank or trust company or corporation*, nor make any loans or discounts upon the security of the shares of its own capital stock, *nor be the purchaser or holder of any such shares*, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall, within 12 months from the time of its purchase, be sold or disposed of at public or private sale. After the expiration of 12 months, any such stock shall not be considered as part of the assets of any bank or trust company.

2. Nothing in this section nor in this Title shall be deemed to prohibit banks from subscribing to, purchasing, or becoming the owners of stock in:

(a) Federal Reserve banks as established by Act of Congress, approved December 23, 1913, being c. 6, 38 Stat. 251, or any amendment thereof; or

(b) Any governmental agency or liquidating or financial corporation created by the Congress of the United States.

3. Any bank may sell or become the owner of any property which may come into its possession as collateral security for any debt or obligation due it, according to the terms of any contract depositing such collateral security, and if there be no such contract, then such collateral security may be sold in the manner provided by law. Any such property must be sold within 2 years from the date of its acquisition. (Italics supplied.)

It will be observed that banks of state charter, may not employ their moneys, “directly or indirectly” in the purchase of stocks of corporations, except those corporations “created by the Congress of the United States.” This section 662.140(2)(b) of NRS, contemplates that corporations of this description may be created in the future. This subsection then has the effect of pertaining loans to be made upon the security of the capital stock of such financial corporations, despite the fact that they are not specifically mentioned. Considering the fact that thereafter certain congressionally created corporations are specifically mentioned, constituting an exception to the rule, forbidding the advancing of money upon the security of the capital stock of such, in the absence of this provision, corporations of this description, created by Congress thereafter, would be ineligible.

Thereafter it is provided that state chartered banks may invest moneys in the capital stock of certain congressionally created financial corporations, viz.:

(a) Investments in stock of joint-stock land banks and national agricultural credit corporations (662.150),

(b) Investments in stock of banks engaged in international or foreign banking (662.160),

(c) Investments in obligations of Federal Housing Administrator and national mortgage associations (662.170),

(d) Investments in bonds of HOLC, the federal home loan bank, farm loan bonds and other obligations issued by federal land banks and banks for cooperatives (662.180), and

(e) Investments in Federal National Mortgage Association.

The stocks or other securities of these enumerated congressionally created corporations, and any other congressionally created corporation that might fall under the provisions of [NRS 662.140\(2\)](#), (a) and (b), constitute the exception to the rule, that a bank of state charter, may not invest its moneys, “directly or indirectly” in the shares of the capital stock of a corporation. Under the doctrine of “*inclusio unius est exclusio alterius*,” (the inclusion of one is the exclusio of another) this enumeration of exceptions must be regarded as exclusive.

The provisions of [NRS 661.010](#) to [661.040](#), inclusive, of NRS, constitutes requirements of banks of state charter, in regard to the creation of and maintenance of a proper capital structure as well as the ratio of equity capital to deposits. These sections delegate broad power to the Superintendent of Banks in respect to the maintenance of capital structure of such institutions, in the protection of the depositors and other creditors. [NRS 661.030](#) makes provision for an assessment against the holders of the bank stock, to make good an impairment of capital.

The provisions of [NRS 658.110](#), authorize specifically the summary exercise of certain discretionary powers on the part of the Superintendent of Banks, and particularly with reference to banking methods and requirements as well as fiscal soundness and integrity.

We have touched broadly upon the powers and duties of the Superintendent of Banks, which he is empowered to exercise in and for the public welfare. Such statutes being welfare statutes, designed for the protection of the public are to be liberally construed. Experience has shown the dire consequences of failing banks, and this business being vitally coupled with a public interest, is and must be strictly controlled and supervised. See *Banks and Banking—Zollmann, Vol. 9, Part XXX, Chapter 229, “Commissioner of Banking.”*

What we have said, particularly with reference to the provisions of [NRS 662.140](#), appears to be conclusive as to the question propounded. However, the question here under review is of tremendous importance, and we are therefore reluctant to give the treatment less than then most painstaking and analytical scrutiny and study, in order that the conclusion tentatively reached may be double-checked as to reason and law.

An exhaustive search of the authorities convinces us that there is a dearth of assigned reasons in the adjudicated cases for the existence of the statutory provisions which forbids or prohibits a state bank from lending moneys upon the security of its capital stock. ([NRS 662.070](#))

Let us first consider the rationale for the statute ([NRS 662.070](#)) as though we were dealing with the question of a loan of money by the bank to a stockholder upon the security of the capital stock issued by the bank. After having considered those reasons let us secondly consider which of such reasons are applicable and valid as to loans by the bank to individuals upon the security of the capital stock issued by the financial corporation. Thirdly, let us add such further reasons, if any, that would not be applicable in the first situation but which proscribe the practice here under review. In considering this matter in this manner we should constantly keep in mind the legal principle that if certain conduct is unobjectionable when committed by one person or in one instance it must not be forbidden when committed by many persons or on many occasions. Stated conversely, if a practice cannot be tolerated when committed by many it must be forbidden and prevented when threatened to be committed by one.

The following reasons are suggested for the existence of the statute:

1. Banks are presumptively created not for the borrowing benefit of the stockholders, who are presumed to be lenders, but for the benefit of the public, in the use of its facilities and accommodations in their business. *Vansands v. Middlesex County Bank*, 26 Conn. 144.
2. If permitted, the stockholders would have a peculiar and undue influence with the bank directors, in such matters, to the deprivation of such services and facilities of the public generally. *Vansands v. Middlesex County Bank*, supra.
3. Statutes of this kind are designed, in part, to prevent the transfer of the bank stock to the bank, and this result in the impairment of the bank's capital. *Gould v. Fidelity State Bank of Dodge City*, (Kan. 1939) 87 P.2d 594.
4. If such loans were made, and repayment was not made, resulting in the acquisition by the bank of its capital stock in satisfaction of the loan indebtedness, the ratio of capitalization to deposits would be destroyed, rendering the bank insecure, by an impairment of capital, to the prejudice of the bank creditors, including the depositors.
5. If such loans were permitted, the stockholders including officers and directors of a state bank in bad financial condition, with depositors unprotected or only partially protected by the Federal Deposit Insurance Corporation, could pledge their stock in security for loans, and thus avoid loss or greatly reduce their loss at the expense of the depositors and other creditors.
6. Under Nevada law, the stockholders may be assessed upon their capital stock to make good an impairment of capital ([NRS 661.030](#)). However, if the stock ownership has changed in part to the bank, by reason of unpaid loans, for which the stock was pledged as collateral security, stock so held could not be assessed, to the great prejudice of the depositors and other creditors.
7. Loans to stockholders, who may also be officers and directors of the bank, could not, and would not be upon an impersonal basis, would lack objectivity, would not be free of prejudice and favoritism, would not be upon ascertained values, the stock being narrowly held and seldom traded, all to the prejudice and financial loss of depositors and other creditors.

Which of these reasons (and to what degree), that serve as reasons for the existence of [NRS 662.070](#), in respect to loans made by a bank to its stockholders, upon the security of its corporate stock, also apply and possess persuasive force when considered in the situation under review?

1 and 2. Propositions numbered 1 and 2 apply fully here as if the loan were made upon the security of the stock of the bank.

3. The bank's capital can also in this case be impaired by loans to the stockholders of the parent (holding) corporation, upon the security of its stock. Although

the bank stock is held by the holding corporation, it can be rendered insolvent by excessive loans upon security that might be inadequate in salvage value to secure the loan, or upon a concentration in a disproportionate amount upon one security. The stock of the holding company could be rendered of slight value by the participation on the part of such company in unfruitful or unprofitable enterprises. If the stock of the holding financial corporation fell to fractional value of that now represented, by reason of unprofitable enterprises and resulting losses, the bank which would hold quantities of the stock of the holding corporation by reason of unpaid loans, would be "caught in the down draft" as a consequence, to the financial injury of the depositors and other creditors.

4. For the bank to acquire its capital stock or by loans to the owners of the holding corporation stock, unhappily, to render the bank stock of slight value, leads to the same result, namely an impairment of capital of the bank stock.

5. Presumably the stockholders and officers of the holding corporation know a great deal about the financial condition of such corporation as well as a great deal about the bank, its wholly owned subsidiary. For the holding corporation stockholders to thus "sell" their stock to the bank, in this indirect manner, could be the result of a feeling of insecurity, and in any event if it resulted in the bank acquiring the stock of the holding corporation in any great proportion of the total, it could be a means of such stockholders selling out, thus impairing the bank's capital, all to the prejudice and financial loss of the depositors and other creditors of the bank.

6. If the holding corporation becomes an insolvent or bankrupt corporation, it could not respond to an assessment, properly placed upon the stock of the bank, and the assessment provisions of the law would be ineffectual to the prejudice and financial loss of the depositors and other creditors of the bank.

7. Since the officers and directors of the holding corporation have control over the bank, its wholly owned subsidiary, and presumably have control over the officers and employees of the bank, in respect to their contracts of employment, it would be unrealistic to suppose that the officers of the bank, when a loan is sought, upon the security of a pledge of stock issued by the holding corporation, would be in a position to consider the merits of the loan, to the same degree as if the loan applicant were a stranger. The loan officer of the bank could not look at the application objectively, nor in a manner free of favoritism, nor upon a conservative appraisal of the value of the property pledged as security, nor could he deny that the property pledged as security, nor could he deny that the property tendered constitutes acceptable security for the projected loan, all to the prejudice and potential loss of the bank depositors and other creditors.

Other compelling reasons exist, which warrant the issuance of an administrative order by the Superintendent of Banks, to the effect that such loans by the bank to owners of the capital stock of the holding financial corporation, upon the security of the stock certificates of such, are not authorized by law and must be discontinued, and further providing that such existing loans must be paid and cleared from the books and records of the bank as accounts receivable, all within a specified and limited period of time, namely:

1. When secured loans are made by banking institutions the management is concerned about the continuing adequacy of the security at all times during the amortization of the loan. If the loan were made upon the security of the bank stock (which of course is forbidden) the bank officers would be in a position to know to what extent the loan was secured, from time to time, and to grant or refuse extensions thereof. Of course, if made upon the security of the stock of the holding corporation, the bank management could not judge this with any degree of accuracy, all to the prejudice of the depositors and other bank creditors.

2. If the bank stock were owned by a number of individuals the bank management would know, to a degree, something about the ability of the owners to respond by payment, upon an assessment being placed upon the stock, but not so when owned by a corporation with many corporate activities and actual and contingent liabilities.

In short, more reasons, as well as reasons with more force exist, for the denial of the practice here under consideration, than if the practice were the pledging of bank stocks by the owners, with the bank as collateral security for loans to be made to such bank stockholders. We therefore conclude that the prohibition contained in [NRS 662.070](#) is applicable to prohibit the practice that is here under review, also that [NRS 662.140](#) precludes such practice.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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**128 Chapter 704 NRS interpreted—Where the pickup and relay of television programs is initiated and consummated in the State, it is an intrastate transaction under the jurisdiction of the Public Service Commission of Nevada, and cities and counties cannot grant exclusive franchises.**

CARSON CITY, April 22, 1964

SIDNEY R. WHITMORE, ESQ., *City Attorney, Las Vegas, Nevada*

DEAR MR. WHITMORE: You have forwarded to this office an inquiry as to whether the City of Las Vegas has the power to grant an exclusive franchise to a company wishing to install a community antenna project.

#### ANALYSIS

Those provisions of the Nevada statutes which permit cities and counties to grant franchises to install a television transmission system have been preempted, where the installation pickup and distribution is intrastate, by Chapter 373, Statutes 1963, amending [NRS 704.020](#) et seq.

Under the definitions of this chapter a public utility shall mean radio or broadcasting instrumentalities except those subject to the jurisdiction of the Federal Communications Commission and airship common and contract carriers, and any plant, property, or facility furnishing facilities to the public for the transmission of intelligence via electricity, with an exception as to those facilities in interstate commerce.

The question then arises as to what constitutes intrastate transmission as opposed to interstate. These we feel can easily be distinguished. Where the pickup of television programs is within the state, whether by relay towers or otherwise, and transmission of programs is then conduit to homes and businesses within the State, it constitutes the transmission of intelligence via electricity and being intrastate in character is under the jurisdiction of the Public Service Commission.

If, on the other hand, the pickup is in another state and the cables for transmission cross the state line and are then conduited to homes and businesses, this constitutes interstate commerce and the Public Service commission would not have jurisdiction.

#### CONCLUSION

We are, therefore, of the opinion that if the transmission of television by community antenna is intrastate in character that the Public Service Commission of Nevada and not a political subdivision of the State, has the power to grant a franchise.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**129 Taxation; Cemeteries—[NRS 361.130](#), providing for tax exemption of cemeteries operating under certain limitations and restrictions, interpreted to grant exemption to those operated without profit even though limited to burial for particular classes and charges are made for plots, crypts and otherwise for use in defraying expenses of maintenance, etc. Regardless of nature of ownership or absence of restrictions as to classes of persons buried therein, all cemeteries realizing profits from operation thereof are subject to taxes in same manner as other property. Cemetery plots and mausoleum crypts without tax value after put to use.**

CARSON CITY, April 22, 1964

MR. JAMES J. NOEL, *Acting Secretary, Nevada State Tax Commission, Carson City, Nevada*

DEAR MR. NOEL: County assessors of Nevada are concerned with the interpretation of certain state statutes on assessment and tax exemptions insofar as they pertain to cemeteries, mausoleums, and mortuaries, the specific statutes and the content of each being as follows:

[NRS 361.045](#) Taxable property. Except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation.

[NRS 361.225](#) Valuation basis for assessment. All property subject to taxation shall be assessed at 35 percent of its full cash value.

[NRS 361.130](#) Exemptions of cemeteries and graveyards. All cemeteries and graveyards set apart and used for and open to the public for the burial of the dead, when no charge is made for burial therein, shall be exempt from taxation.

#### QUESTIONS

1. Would a cemetery be taxable in the case of ownership by a non-profit organization, i.e., Masons, Oddfellows, church, etc.?
2. To what extent are cemeteries, mausoleums and mortuaries held for profit subject to taxation before the plots or crypts are sold and placed in use and to what extent are these same places for burial subject to taxation after the plots or crypts are sold or placed in use?

#### ANALYSIS

Throughout history, where an organized society existed, it has been found necessary to provide burial places for the dead. It was recognized that such places were a protection to public health, as well as affording a sanctuary for those departed. Acting under these concepts, a cemetery was established in every community across the nation as it developed. Usually they were located in tracts set aside in the early stages of the development, at first through the joint efforts of the people of the community generally,

and later, at the instigation of churches, lodges, and other interested institutions or organizations. Their care and upkeep was usually volunteered by those interested, and the thought of exacting a tax for the privilege of their existence was almost beyond conception. And, in fact, many communities throughout the country as well as in Nevada, still maintain their cemeteries in this traditional manner. However, with the increase of population and the development of heavily populated urban centers, even the establishment and maintenance of cemeteries failed to escape commercial exploitation. This pointed the way to taxation of cemeteries, mausoleums, and other such places when operated for profit.

The general sentiment of all civilized peoples, is that the resting place of the dead is hallowed ground, and in some respect it should not be treated as subject to the laws of ordinary property. 10 Am.Jur. 503. Generally, cemeteries are exempt from taxation upon the theory, most commonly accepted, that they perform functions which benefit the public. Okla. Co. v. Queen City Lodge, No. 197, I.O.O.F., 156 P.2d. 340; Catlin v. St. Paul's P. E. Church & Trinity College, 20 N.E. 864. Another reason given for favoring such exemptions is the difficulty in collecting a tax on this type of property as well as the obvious impropriety of selling the graves of the dead in order to meet the expenses for carrying on the government for the living. Oak Lawn Cemetery v. Baltimore County, 198 A. 600.

In framing the Constitution of Nevada, the delegates to the constitutional convention of 1864, foresaw the necessity and wisdom of authorizing tax exemptions for certain property within the State, the operation and maintenance of which resulted in a quid pro quo or benefit to the State. This is provided for in Article X, Section 1, Constitution of Nevada, the pertinent part of which is as follows:

\* \* \* and there shall also be excepted such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

Pursuant to this provision of Legislature at its 1891 Session enacted a statute granting tax immunity to cemeteries operating with certain limitations or restrictions. This statute, in its original wording, is presently the law on this subject, being now [NRS 361.130](#), above quoted. The Legislature in providing for exemption of taxes on this type of property was cognizant of and bound by the limitations of the enabling clause of the Constitution above set forth. It is elementary in rules of statutory construction that a statute may be no broader nor grant any more rights than are authorized by the Constitution. Measured by the exemption categories enumerated in the said section of the Constitution, it is obvious that the purposes of cemeteries are neither municipal, educational, literary, nor scientific. However, their uses and purposes do have a charitable aspect in that their operation and function are a benefit to the public for which the State, county or city would probably be required to pay otherwise. A relief from payment of taxes by cemeteries would in such case reduce the burden government. (See *Hendell v. Weaver*, [77 Nev. 16](#), 19.)

The very wording of the statute granting tax exemption to cemeteries indicates with certainty that the Legislature recognized that some cemeteries were then or would in the future be operated for profit. In order that all benefits resulting from the operation of any cemetery inure to the public, the Legislature effectively and wisely employed the wording in the statute, "open to the public" and "when no charge is made for burial therein." These clauses or terms appear to impose a definite limitation or restriction upon the type or class of cemetery which the Legislature intended to exempt from taxes. We can entertain no doubt but that those cemeteries established and maintained for general community purposes and which are not restricted to interment of any particular class of persons and which are operated without profit, fall clearly within the purview of the exemption intended. But what about those falling in the following types of operation: (1) Those established and maintained by churches, lodges, benevolent institutions, and other

organizations, operating without profit, which limit burials to their own members or families and make a charge for burial plots; (2) Those established and maintained by private groups, corporations, or associations, etc., which are unrestricted as to class of persons interred and selling plots or crypts for profit; and (3) Those operated for profit by private groups, corporations, or organizations, where large tracts are developed and from which designated areas are sold for burial uses to other organizations or individuals?

With reference to the first type above mentioned, it is observed that most churches, lodges, and frequently other organizations as well, establish, operate, and maintain cemeteries in various communities of the State, with burial therein being limited to their own members and families of members. As we see it, this amounts to no more than the taking over and managing by an organization, a function formerly performed by the community. In other words, the function performed is a public function because it benefits the community and is performed without profit to the organization acting in lieu of the community. While “public” usually means “all the people,” we believe that for tax exemption purposes it means an operation by the public or by an organization on behalf of the public. Despite the rule that exemption statutes must be strictly construed, we believe nevertheless that where the burden of operating and maintaining a cemetery is taken over from the community by an organization which restricts burials therein to its own members and their families, such cemetery is still within the purview of the exemption granted, provided it operates without profit. It should be said that the class of persons interred in a cemetery operated by an organization, gain eligibility for such burial at the expense of paying membership dues and paying for the plot or crypt used for that purpose. Nonmembers, and even some members whose families do not choose to pay for burial plots, are usually interred in those cemeteries operated and managed at community expense. Thus again it is seen that an organization sponsored cemetery or mausoleum serves a public purpose and brings a benefit to the community.

Although a charge is made for the plot or crypt where an organization member is interred, we don’t believe that this necessarily contravenes the statutory requirement that burial be without charge in a cemetery claiming the tax exemption granted. If the charges made are all consumed for upkeep, maintenance, and similar expenses, leaving no profits to the sponsoring organization, the cemetery, in our opinion, falls within the classification which the Legislature intended to exempt under the statute.

The types of cemeteries described in (2) and (3) above, insofar as our search and investigation reveals, fall definitely within the classification of commercial enterprises with the realization of profit being the chief objective. This being almost universally true, it is axiomatic that they do not fall within the purview of the exemption statute. And this, in our opinion, should prevail regardless of the fact that they are open to all classes of the public or whether operated by individuals, religious or fraternal organizations, associations, corporations, or any other type of body or organization. The cases are so numerous as to establish it a rule that cemeteries used for profit making purposes will be denied exemption. Jackson—The Law of Cadavers, 2d Ed., P. 270.

It has been held that cemeteries, as used in tax exemption laws, include all kinds of places for interment of the dead. *Mt. View Cemetery (W.Va.)* 155 S.E. 547. This holding may well serve as a guide in applying [NRS 361.045](#), above quoted, providing that all property, unless otherwise provided by law, shall be subject to taxation. In those cases where cemeteries are found to qualify for exemption of taxation, then all its property used in connection with its operation should be exempt. By the same token, if it is found to be subject to taxation, then all property constituting a part thereof or used in connection therewith should be taxed. Once the cash value is established, [NRS 361.225](#), above quoted, must be followed in setting the assessment valuation, i.e., 35 percent of the cash value.

This brings us to a consideration of the question as to whether cemetery plots and mausoleum crypts should be assessed before or after they are placed in use. Burial or interment places, whether they be cemetery plots or mausoleum crypts, have the unique



distinction of possessing a value only when unoccupied, except in those rare instances when cemeteries are moved to new locations or bodies are transferred from a crypt. Unlike other real property, a grave site continues permanently in the use for which it was designated at the time of interment of its occupant. Likewise, crypts, once assigned as a last resting place of a decedent, continue in such use. Consequently, neither place thereafter has any present or future economic value to the living. It follows that any assessment of such property for tax purposes must be based upon its cash value before occupied or placed in use for interment. No taxes may be assessed or collected after assignment for use because this type of property then has no value.

#### CONCLUSION

Based upon the foregoing, we conclude as follows:

1. Question number 1 is answered in the negative. Cemeteries owned and operated by religious groups, fraternal organizations, benevolent societies, and other organizations or individuals are tax exempt when no profits are realized by any such organization or any of its members or individuals from sales of plots or charges assessed for burial or from other sources, and it is shown that all income is applied to upkeep, maintenance, and other necessary expenses of the property involved. This is true even though an organization owning any such cemetery restricts burial to its own members or their families.

It should be added that any cemetery, regardless of ownership or whether restricted or unrestricted as to the class of persons who may be interred therein, which realizes a profit for its owners, members or anyone else, is not tax exempt under the law as this office interprets it.

2. In answering question number 2, cemetery plots and mausoleum crypts have taxable value only when unoccupied at which time those subject to taxation should be assessed and taxed. Mortuaries subject to taxation should be assessed and taxed at any time while in existence. Assessed valuations should be in accordance with the provisions of [NRS 361.225](#), i.e., 35 percent of the cash value of all property owned or constituting a part thereof in accordance with [NRS 361.045](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**130 Mining; Hours of Work—The period of employment of repair or maintenance crews working on equipment in a reduction plant is 8 hours per day, except in cases of emergency where life or property is in imminent danger. Reduction plant employee cannot work a subsequent shift after having worked 8 hours in a 24-hour period.**

CARSON CITY, April 28, 1964

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

DEAR MR. DEMETRAS: You have submitted to this office two questions concerning an interpretation of [NRS 608.200](#), [608.220](#), 608.230, and A.G.O. No. 188 of December 23, 1920, and No. 46 dated June 25, 19163:

1. May a reduction plant repair or maintenance crew complete any repair or maintenance work upon which it is engaged at the end of an 8-hour period when such

reduction plant is operated by a single employer in conjunction with, and as an integral part of, such employer's mines-plant operation?

2. May a reduction plant employee work a subsequent shift or period thereof in the same 24 hours if no qualified employee is available for relief when such reduction plant employee is employed by a single employer operating such reduction plant in conjunction with, and as an integral part of, that employers mines-plant operation?

#### ANALYSIS

The sections of NRS above referred to have been covered in A.G.O. No. 188.

I take it that a reduction plant comes closer to the definition of a mill or smelter than to any other unit defined in Chapter 608, and therefore [NRS 608.210\(1\)](#) would apply. This reads:

1. The period of employment of workingmen in smelters and in all other institutions for the reduction or refining of ores or metals shall be 8 hours per day, except in cases of emergency where life or property is in imminent danger.

It would, therefore, stand to reason that a repair or maintenance crew could not work over 8 hours except in case of emergency where life or property is in imminent danger. What constitutes imminent danger. What constitutes imminent danger to property subject to repair can only be determined as each occasion arises.

#### CONCLUSION

It is the opinion of this office that a reduction plant repair or maintenance crew cannot complete any repair or maintenance work upon which it is engaged at the end of an 8-hour period, unless such repair or maintenance is necessary in cases of emergency where life or property is in imminent danger, and that question 2, under the interpretation that a reduction plant is in the nature of a mill or smelter, must be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**131 Gaming—The use of slugs, chips, or foreign money in slot machines designed to receive or be operated by lawful coin of the United States of America is illegal under Nevada law ([NRS 465.080](#)). Slot machines not designed to receive or be operated by lawful coin of the United States could possibly be operated other than by the receipt of, or operation by, legal coins of the United States of America, but the matter is one which should be called to the attention of the Legislature.**

CARSON CITY, April 29, 1964

MR. EDWARD A. OLSEN, *Chairman, Gaming Control Board, Carson City, Nevada*

DEAR MR. OLSEN: You have submitted three questions to this office which are of paramount interest:

1. Would it be lawful for a casino to cause to be manufactured slugs or chips (checks) capable of being received by the dollar slot machines?
2. Would it be lawful for a casino to authorize the use of foreign coins of the same denomination (such as a Canadian silver dollar) in their machines?

3. Would it be lawful for a casino to alter its dollar slot machines in such a way as to receive slugs or chips of a size other than lawful United States coin?

#### ANALYSIS

[NRS 465.080](#) when broken down so as to apply to slot machines reads as follows: “It shall be unlawful for any person \* \* \* in playing any slot machine \* \* \* designed to receive or be operated by lawful coin of the United States \* \* \* to use other than lawful coin, legal tender of the United States of America \* \* \*.”

This would preclude other than a negative answer to questions 1 and 2. As to question 3, an analysis of the wording of [NRS 465.080](#) indicates that the Legislature did not contemplate the use of a slot machine designed to receive, and be operated by, other than legal United States tender.

This office, in the absence of legislative fiat, is reluctant to encourage the use of slot machines using slugs or chips and, therefore, places on the Gaming Control Board the burden of making a decision as to whether such machines should be authorized, realizing that the contretemps has arisen as a result of the shortage of silver dollars.

#### CONCLUSION

It is, therefore, the opinion of this office that questions 1 and 2 should be answered in the negative. We take the position on question 3 that possibly, under the law as written, machines not designed to receive, or be operated by, coin of the United States of America, could be used, but we believe that this is a matter to be called to the attention of the Legislature.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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### **132 Old-Age Assistance—Ex-patients of State Hospital eligible for old-age assistance under same residence requirements as other persons.**

CARSON CITY, May 4, 1964

MR. PETER W. CAHILL, *Administrator, Division of Welfare, Department of Health and Welfare, Carson City, Nevada*

#### STATEMENT OF FACTS

DEAR MR. CAHILL: The Division of Welfare of the Department of Health and Welfare has requested an interpretation of [NRS 427.200\(2\)](#) and [NRS 43.030](#) in connection with residence requirement of a patient of the Nevada State Hospital upon his release to participate in old-age assistance benefits. In substance, the inquiry is as follows:

#### QUESTION

In order to be eligible for old-age assistance immediately upon release from the State Hospital, is it necessary that an ex-patient shall have met the residence requirement for the State Hospital at the time of entrance, even though the additional required residence has been acquired while a patient?

#### ANALYSIS

Anyone qualifying for old-age assistance must meet the requirements of [NRS 427.200\(2\)](#), providing as follows:

Assistance shall be granted under this chapter to any person who has all of the following qualifications combined at the time of receiving assistance:

\* \* \* \* \*

2. Is a resident of the State of Nevada who has actually resided in this state for a period of 5 years or more during the 9 years immediately preceding the making of the application for such assistance, the last 1 year of which shall have been continuous and immediately preceding the making of such application.

This provision makes it clear that the residence requirements therein specified are to suffice generally in qualifying applicants for old-age assistance. We are confronted with whether or not those persons who are required to meet residence requirements for other purposes fall into a different class or category in qualifying for this benefit. Persons who enter the Nevada State Hospital are required as a prerequisite to meet the residence requirements laid down in [NRS 433.030](#), which reads as follows:

In determining residence for the purpose of this chapter, a person who has lived continuously in this state for a period of 1 year, and who has not thereafter acquired a residence in another state, or abandoned his residence in this state or has not been absent from this state after acquiring such residence in this state for more than 1 year, shall be deemed to be a resident of this state. Time spent in a public institution or on parole therefrom, or as a parolee from an institution in another state, shall not be counted in determining the matter of residence in this state.

This requirement poses no problem for those persons for whom it was specifically designed, i.e., those who possessed 1 year of continuous residence in Nevada before entering the said hospital as patients. But we understand that occasionally a person is admitted there as a patient without meeting the necessary residence requirement, and who has lost or abandoned residence elsewhere. Assuming that such person remains a patient long enough to meet the requirement for old-age assistance under [NRS 427.200\(2\)](#), is he nevertheless ineligible because he did not have the residence requirements to enter the hospital under [NRS 433.030](#)?

In reading these two sections of the statute, we cannot find that they are interdependent. Neither does it appear that the Legislature intended to make any exceptions in [NRS 427.200\(2\)](#). Certainly none are specified, and it is a rule of construction that something cannot be read into the statute which the Legislature did not see fit to add in its enactment. Furthermore, it would be a paradoxical situation if the statute in question meant that this particular group of persons, whom we are informed are very few, could acquire a residence at any time while patients at the State Hospital when a barrier exists in the first place to beginning or commencing such residence. If this was the law, we could conceive that most if not all of these persons could never become eligible for this assistance in which case their care might become a serious problem.

We must bear in mind that if a mental patient is found to be a resident of some other state, procedure for his transfer will result in his being returned there. This would eliminate him as a potential recipient of any old-age benefits. However, when it is discovered that he has no residence elsewhere, the State of Nevada, as his legal guardian, in keeping him as a patient, acknowledges existence of his residence. When he has met the residence provided for in [NRS 427.200\(2\)](#), he is eligible for old-age assistance the same as other eligible persons.

## CONCLUSION

It is the opinion of this office that failure to meet the requirements of [NRS 433.030](#) does not disqualify ex-patients of the State Hospital from eligibility to benefits under [NRS 427.200\(2\)](#). The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**133 Securities Act, Nevada—A corporation, although authorized to sell securities, intrastate, prior to July 1, 1963 (the effective date of Chapter 318 may not now sell such securities by public offering, prior to registration. Chapter 90 NRS.**

CARSON CITY, May 5, 1964

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

*Attention:* George M. Spradling, Deputy Secretary of State

#### STATEMENT OF FACTS

DEAR MR. KOONTZ: The Legislature of 1963 enacted Chapter 318 (Chapter 90 of NRS), designed to regulate the public sale of securities intrastate, hereinafter referred to as the “Nevada Securities Act.” This act, then, supplements the purposes of the “Securities Act of 1933” (Title 15, Secs. 77a et seq., USCA) by virtue of which the United States regulates the public sale of securities sold by means of the United States mails, or interstate. The Act of Congress became effective on May 27, 1933.

The Congress provided (Sec. 77c (a)(1)) for an exemption from the requirement of registration with this language:

Any security which, prior to or within sixty days after the enactment of this title, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days.

The exemption provided by Section 3(a)(1) of the Securities Act of 1933 was intended to avoid interfering with offerings of securities which prior to or within 60 days after enactment of the statute had been sold or disposed of by the issuer or made subject of a bona fide offering to the public within the specified time limitations. The qualifying proviso, “this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days,” was described in HR Report No. 85, 73d Congress, 1st Session, p. 14, as meaning that “the exemption does not apply to any redistribution of outstanding issues which would otherwise come within the act.” Both the commission and the courts have followed the legislative interpretation. The commission, In the Matter of Ira Haupt & Company, 23 S.E.C. 589, 599 (1946), held that a “distribution” of a controlling block of (outstanding) stock is a “new offering,” and when made by an underwriter of exemption is inapplicable. See also Securities and Exchange Commission v. A. G. Bellin Securities Corporation, 171 F.Supp. 233 (S.D.N.Y. 1959).

We thus observe that the exemption accorded under federal law has been strictly construed, and that it exists only by reason of the provisions of the statute, and only to the extent clearly intended, by the interpretation placed upon it by the legislative body.

As noted in *Loss Securities Regulation, Second Ed., Vol. 1, p. 559*, the “exemption is clearly inapplicable to new offerings of additional securities of a class outstanding since 1933, or to a reoffering of treasury shares originally sold before the act, or to a secondary distribution of pre-1933 securities by a controlling person \* \* \* This exemption, therefore, has spent its force.” See also *United States, Appellee, v. Benjamin, Howard and Mende, Appellants*, (Docket No. 28, 404) decided by United States Court of Appeals (2d Cir.), February 17, 1964, in which the exemptions given by the act are construed.

#### QUESTION

If a Nevada corporation, on July 1, 1963 (the effective date of Chapter 318), had authorized but unissued shares of stock, may it proceed with the public sale, intrastate, of such authorized but unissued shares, at the present time, without the necessity of registration as provided in the act?

#### ANALYSIS

Section 8 of the Nevada Securities Act provides:

“Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or political subdivision of a government.

Section 15 of the Nevada Securities Act, in par, provides:

It is unlawful for any person to offer or 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 therefore; and
- (c) The administrator has approved such statement.

We find no such exception contained in the Nevada Securities Act similar to that contained in the Securities Act of 1933, or any language which would infer a legislative intent to except a public offering of securities, intrastate, subsequent to July 1, 1963, to the provisions of Chapter 318, Statutes 1963 (Chapter 90 NRS), even in those cases in which the securities were authorized, but never offered for sale, prior to July 1, 1963.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

**134 Corporations—Nonprofit corporation formed and organized under [NRS 81.410](#) through [NRS 84.540](#) cannot by amendment change its entity to that of a profit corporation.**

CARSON CITY, May 5, 1964

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

DEAR MR. KOONTZ: Your office has directed to the Attorney General the question as to whether a nonprofit corporation formed under [NRS 81.410](#) through 81.540 may by amendment change the status of the corporation to a profit corporation.

ANALYSIS

This question was answered in reverse by A.G.O. No. 43 dated April 14, 1955. In that opinion we held that articles of a profit corporation could not be amended so as to change the entity of the corporation to a nonprofit corporation. We refer you to that opinion for a history of the enactment of the profit and nonprofit corporations.

We held in that opinion that if the amendment accomplished fundamental and radical changes by entirely changing the nature and scope of the corporation, it would not be permitted.

In reviewing the provisions under which a nonprofit organization is formed under [NRS 81.410](#) through 81.540, we find that neither through the bylaws nor through the general powers granted the corporation can such a radical change be effected.

CONCLUSION

It is the opinion of this office that a nonprofit corporation organized under [NRS 81.410](#) through [NRS 81.540](#) cannot by amendment change the entity to that of a profit corporation. New articles drafted under those sections of the statutes relating to profit corporations should be filed with the Secretary of State.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**135 Las Vegas Water District—A director appointed to fill a vacancy on the district board should, at the next biennial election, run for a term commensurate with the expiration of his predecessor's term.**

CARSON CITY, May 6, 1964

W. C. RENSHAW, *General Manager, Las Vegas Valley Water District, Box 4427, P.O. Annex, Las Vegas, Nevada*

DEAR MR. RENSHAW: You have directed to this office the following problem and question: A director of the Las Vegas Valley Water Board resigned, and the board in conformity with law, named another person to fill the vacancy. The successor took office and qualified. At the next biennial election in 1962 this director ran and was elected for a 4-year term. His predecessor's term would have ended in 1964. Your question presented is whether a director appointed to fill a vacancy, and who must run at the next biennial election, may run for a 4-year term or for the balance of his predecessor's term.

ANALYSIS

It is clear that the Legislature intended that three directors should be elected for 2 years and four directors elected for 4 years under Chapter 401, Section 1(5.2), Statutes 1957.

Under the method of election set forth three directors would come up for election at one general election and four directors would come up for election at the next general election, thus assuring a continuing group of informed and qualified directors in office.

The settled rule is that where both the duration of the term of an office and the term of its commencement or termination are fixed by Constitution or statute, a person elected or appointed to fill a vacancy in such office holds for the unexpired portion of the term. (43 Am.Jur. 17 Sec. 159, and cases cited.)

That this law is of general application is indicated by Article 17, Section 22 of the Constitution of Nevada, which reads as follows: In case the office of any Justice of the Supreme Court, District Judge or other state officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by the Governor until it shall be supplied at the next general election when it shall be filled by election for the residue of the unexpired term.

The filing by the clerk of a declaration of candidacy for public office is a ministerial act, and the fact that the clerk accepts an application for a 4-year term, when the election should be for a 2-year period for the unexpired term, does not affect the correct term contemplated by the statute.

To rule otherwise in this instance would result in the election of five directors at one election and the election of two directors at the succeeding election, thus destroying the equality of balance sought by the Legislature in the enactment of Chapter 401, Statutes 1957.

#### OPINION

It is therefore the opinion of this office that the director elected at the 1962 election should have been elected to serve for 2 years and, therefore, that his term expires in 1964. This does not deprive such director from running for a 4-year term this year, and will maintain the balance in the directorship of the Las Vegas Valley Water District in accordance with the express desire of the Legislature.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**136 Employment Security Department; Disclosure of Information—[NRS 612.265](#) prohibits the Employment Security Department from disclosing confidential information to the Department of Health and Welfare.**

CARSON CITY, April 27, 1964

MR. BRUCE BARNUM, *Executive Director, Employment Security Department, P.O. Box 602, Carson City, Nevada*

#### STATEMENT OF FACTS

DEAR MR. BARNUM: The Division of Welfare of the Department of Health and welfare has requested a liaison with the Employment Security Department to obtain information on public assistance recipients or applicants, or their liable relatives, from the records of the Employment Security Department.

#### QUESTION



Does [NRS 612.265](#) prohibit the Employment Security Department from disclosing such information to the Division of Welfare of the Department of Health and Welfare?

#### ANALYSIS

[NRS 612.265](#) provides, among other things, as follows:

1. Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this chapter and determination as to the benefit rights of any individual *shall be held confidential and shall not be disclosed or be open to public inspection* in any manner revealing the individual's or employing unit's identity. (Italics supplied.)

3. Subject to such restrictions as the executive director may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Internal Revenue Service of the Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

4. Upon request therefor the executive director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

6. If any employee or member of the board of review or the executive director or any employee of the executive director, in violation of the provisions of this section, makes any disclosure of information obtained from any employing unit or individual in the administration of this chapter, or if any person who has obtained a list of applicants for work, or of claimants or recipients of benefits, under this chapter, shall use or permit the use of such list for any political purpose, he shall be punished by a fine of not less than \$20 nor more than \$200.00, or by imprisonment in the county jail for not more than 90 days, or by both fine and imprisonment.

It is a general rule of construction that where a legislative provision is accompanied by a penalty for a failure to observe it, the provision is mandatory. Cramer's Election Case, 248 Pa. 208, 93 A. 937; Hallanan v. Hager, 136 S.E. 263, citing R.C.L.

The language contained in [NRS 612.265](#) is clearly mandatory, subject to certain exceptions contained in the statute, and forbids public officials and employees of the Employment Security Department from disclosing, under penalty of a misdemeanor, information acquired from an employing unit or individual pursuant to the administration of the Unemployment Compensation Law.

Where exceptions to the operation of a statute are made, the legal presumption is that the Legislature did not intend to save other cases from the operation of the statute. Chicago, M. & St. P. Co. v. Westby, 178 F. 619. Where there is an exception, the inference is a strong one that no other exceptions were intended, and the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted, and excludes all other exceptions. 50 Am.Jur. 455, pp. 455, 456.

The only exceptions to the operation of [NRS 612.265](#) that could possibly have any bearing on the issue in this matter, are contained in subsections 3 and 4. [NRS 612.265\(3\)](#) permits the disclosure of confidential information to those agencies charged with the

administration of an Unemployment Compensation Law or the maintenance of a system of public employment offices, or the Internal Revenue Service of the Department of the Treasury, and [NRS 612.265](#)(4) directs the disclosure of such information to agencies charged with the administration of public works or assistance through public employment. There can be no doubt about the meaning of these words.

In construing a statute words should be given their plain meaning unless to do so would clearly violate the evident spirit of the act. *Ex Parte Zwissig*, [42 Nev. 360](#), 178 P. 20.

Since the Welfare Division of the Department of Health and welfare is not charged with the administration of an Unemployment Compensation law, the maintenance of a public employment office or the administration of public works or assistance through public employment, it does not come within the meaning or application of [NRS 612.265](#), and the Employment Security Department is prohibited from making confidential information available to the Division of Welfare of the Department of Health and Welfare.

In the interpretation of statutes, the legislative intent is all important or a controlling factor. *Johnson v. United States*, 87 F.2d 940, 109 A.L.R. 949; *State ex rel. v. Jack (Wyo.)*, 71 P.2d 917, 112 A.L.R. 161.

While the statute, [NRS 612.265](#), does not disclose the object of legislation, it undoubtedly was to prevent exposure to the public of the names of applicants who are receiving benefits under the auspices of the statute, and to assure employers who bear the burden of contributing to the payment of such benefits that the information they are required to furnish the Employment Security Department concerning employees will be confidential. This is a reasonable objective.

#### CONCLUSION

It is the opinion of the undersigned, based on the foregoing analysis, that [NRS 612.265](#) prohibits the Employment Security Department from disclosing information obtained from any employing unit or individual, pursuant to the administration of the Unemployment Compensation Law, to the Division of Welfare of the Department of Health and Welfare.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By LORIN D. PARRAGUIRRE, *Special Deputy Attorney General*,

*Nevada Employment Security Department*

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**137 The Public Service Commission should enforce the full crew train law (Chapter 176, Statutes 1963) in the absence of legislative fiat or court direction to the contrary.**

CARSON CITY, May 18, 1964

HON. GEORGE ALLARD, *Chairman, Public Service Commission, Carson City, Nevada*

DEAR MR. ALLARD: Under date of April 6, 1964, you received a communication from Edward C. Renwick, General Solicitor of the Union Pacific Railroad Company, in which he advised you that his company considered [NRS 705.390](#) invalid.

[NRS 705.390](#), as amended by Chapter 176, Statutes 1963, reads as follows:

1. It shall be unlawful for any person, firm, company or corporation engaged in the business of common carrier, operating freight and passenger trains, or either or them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through this state, along or over its road or tracks, other than along or over the road or tracks within yard limits:

(a) Any freight or passenger train consisting of two cars or less, exclusive of caboose and engine and tenders, with less than a full crew consisting of not less than four person, to wit, one engineer, one fireman, one conductor, and one brakeman;

(b) Any freight or passenger train of three or more and less than 50 freight, passenger or other cars, exclusive of caboose and engine, with less than a full crew consisting of five persons, to wit, one engineer, one fireman, one conductor and two brakemen; or

(c) Any freight or passenger train of more than 50 freight, passenger or other cars, exclusive of caboose and engine and tender, with less than a full crew, consisting of not less than five persons, to wit, one conductor, one engineer, one fireman and two brakemen.

2. No person employed as a flagman on any railroad in this state on the effective date of this amendatory act shall be discharged or lose his employment by reason of the provisions of this amendatory act. However, whenever a flagman retires, terminates or voluntarily leaves his employment the railroad company need not replace the position so vacated, unless it is to fill a mandatory position under subsection 1.

#### ANALYSIS

Let it be pointed out that the full train crew law originated in 1909 and was amended in 1911 and 1913. At this period of our history firemen were needed to stoke the boilers of steam locomotives and later to fire oil-burning locomotives, but the railroads involved, Southern Pacific and Union Pacific, are now diesel fueled and claim employment of a fireman is unnecessary unless it be for reasons of safety in acting in some other capacity.

In requiring the employment of a fireman the Legislature had reference to a man whose primary function was to maintain the steam pressure. With diesel locomotive that function does not have to be performed.

The railroads state that the argument that firemen are still necessary in order to perform duties other than as engineer in the locomotive cab is answered by the requirement that the head brakeman on a freight train is stationed in the cab at all times while the train is in motion between terminals.

Our Supreme Court in the case of *Western Pacific R.R. v. the State of Nevada*, [69 Nev. 66](#), has indicated the modern trend away from the use of firemen on freight trains. This was an action by the State to receive statutory penalty for the violation of the "full crew law." Justice Merrill held that the full crew statute requiring a fireman among the crew, in light of the purposes for which the statute was enacted and circumstances existing at the time of the enactment, did not require a diesel train crew to contain a fireman when none was otherwise necessary to the performance by the crew of its essential duties for public safety. The lower court was reversed.

The court stated: "To impute to the Legislature an intent to require employment of a fireman in the absence of such duties would in effect be to impute an intent that these duties continue to be performed notwithstanding conditions rendering them wholly unnecessary. In the light of the language used and since the express purpose of the act is public safety this would indeed be an absurd result. In addition, such construction would appear to be so clearly unreasonable as to render the act invalid in exceeding the police power of the state."

The same effect see *Railroad Commission v. Texas and New Orleans R. Co.*, 42 S.W.2d 1091; *Moredick v. Chicago & Northwestern Railway Co.*, 252 N.W. 459; *Bressler v. Chicago and Northwestern Ry. Co.*, 42 N.W.2d 617.

The question was propounded to the Attorney General of Nebraska in 1955 and, in an opinion dated March 18, 1955, he held that the full train crew laws of Nebraska did not apply to trains propelled by diesel motors.

Congress, by Public law 88-108 of the 88th Congress, S. J. Res. 102, enacted August 28, 1963, authorized the submission of disputes involving crew-consist issues to a board of arbitration. It was agreed in the dispute between the railroads and the operating brotherhoods that the decision of the board would be binding on both sides. This step was taken to avoid a nationwide railroad strike.

The board's award makes the actual elimination of jobs subject in most cases to attrition—to the vacating of jobs by the natural processes of retirement, transfer, voluntary quitting, discharge, or death.

The determination that a job is "blankable" will usually mean, not that an employee will be laid off, but only that when it becomes vacant no new employee need be hired to fill it.

The dispute which the railroads and the brotherhoods were unable to settle involved about 90 percent of all railway operations in the United States, so that about 200,000 employees were represented in the dispute. Thus the board, which held public hearings between September 24 and November 2, 1963, a period of 29 days, had full opportunity to become acquainted with the problems confronting both sides.

One of the central points of disagreement concerned the continued use of firemen (sometimes referred to as "helpers") on locomotives such as diesel-electric or electric locomotives, which do not use steam power and on which the work of firing the boilers, therefore, need not be performed.

A second central point of difference concerns the makeup or "consist" of train service crews in road and yard service. This matter is usually regulated, not by national rule, but by a wide variety of local agreements, rules and practices, and, in a number of states, by statute or administrative decision. In this State the regulation is by statute.

It is the carrier's position that many of these regulations are out of date and fail to reflect recent developments which have lightened the workload of the train service crews. They contend that because of the lack of relationship between workload and required crew size many trainmen have little to do.

The railroad organizations, on the other hand, resist, claiming that the increased size and speed of freight trains, the need for rapid switching and transfer operations have added to the work and responsibilities of many train crews and that, in any case, crew size is a matter for the determination and agreement rather than unilateral determination.

The board arrived at a determination that insofar as freight trains are concerned firemen are no longer needed. It set up categories for the gradual release of firemen on such trains as follows:

1. Limited the reduction in jobs by providing that in each fireman seniority district the local chairman shall have the right to designate the engine crews in which the carrier shall be required to continue to use firemen, provided that such crews shall not exceed 10 percent of the freight engine crews nor more than 10 percent of the yard engine crews.

2. That after 37 days following the effective date of the arbitration award carriers would not be required to use firemen on other than steam power in any class of freight service, or in any class of yard service, except as might be necessary to provide jobs for firemen whose employment rights might be retained, provided that no yard locomotive can be operated without a fireman unless and until it is equipped with a deadman control in good operating condition.

3. After 37 days firemen not designated in the 10 percent denominated by the local chairman may be terminated only as follows:

(a) Firemen hired on or after a date 2 years prior to the effective date of the arbitration award provided they receive a lump sum separation allowance as provided in Section 9 of the Washington Job Protection Agreement of May 21, 1936.

(b) Firemen hired prior to a date 2 years prior to the date of the arbitration award whose average monthly earnings have not exceeded \$200 during the 24 full calendar months preceding the award, are entitled to a severance allowance equal to 100 percent of their earnings during the preceding 24 calendar months, or may elect to remain on the seniority lists with the right to such work as they are qualified to perform, and which may become available to them in engine crews used in passenger service and in freight and yard engine crews designated by their local chairman.

(c) Firemen hired prior to a date 2 years prior to the effective date of the award who have not performed service as an engineer or as a fireman since that date may be separated with no severance pay.

(d) All other firemen with less than 10 years seniority on the effective date of the award shall retain their rights to and obligations to protect engine service assignments as provided in the rules in effect as of the day prior to the effective date of the award, unless and until offered by the carrier another comparable job in the same or another seniority district for which they are, or may become, qualified. The offer of another job shall carry with it relocation expenses, the continuation of accumulated seniority rights toward such purposes as vacation and other applicable fringe benefits and guaranteed annual earnings for a period not to exceed 5 years, equal to the total compensation received during the last 12 months in which compensation was received prior to the date of transfer.

(e) Firemen with 10 or more years of seniority as of the effective date of the award, who are not separated from the carrier's payrolls under the provisions of 3(b) and 3(c) above, shall retain their rights to and obligations to protect engine service assignments as provided in rules in effect as of the day preceding the effective date of the arbitration award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working list of firemen by natural attrition.

Thus it can be seen that the reduction of firemen under the arbitration award, which, by the way, the Supreme Court of the United States refused to review, provides for a gradual diminution of firemen on all railroads.

The arbitration board issued as a basis for its findings the following:

1. In the great majority of cases the lack of a fireman to perform the related functions of lookout and signal passing will not endanger safety or impair efficiency because these new functions can be, as they are now, performed by other crew members.
2. A considerable portion of the mechanical duties now performed by the fireman is not absolutely essential to the safety and efficiency of road freight and yard operations. More duties which are essential can be performed by the engineer while the locomotive is in services and by shop maintenance personnel at other times.
3. Relief of the engineer by the fireman in road freight and yard operations is a critical importance only in the even that the engineer suddenly becomes incapacitated by death or illness. In road freight service the usual presence of the head brakeman in the cab obviates the need for such fireman in such an emergency. In yard service the normal lack of a third man in the cab is offset in part by the reduced speed of the locomotive, and will be offset still further by installing a deadman control in all yard engines, which the award requires as a condition precedent to the operation of such a locomotive without a fireman.

The award of the board has been gone into in some detail because under the award and under the case of *Western Pacific R.R. v. Nevada*, [69 Nev. 66](#), it would appear that the role of fireman on freight trains is doomed. But be that as it may, the board points out in 41 L.A. 690 that the procedure set up will not permit individual carriers to immediately stop assigning firemen on 90 percent of the freight engine crews and yard engine crews for the reason, among others, that a number of states by law require the use of firemen in road freight or yard service.

Nevada has such a law in Chapter 705 of NRS as amended last by Chapter 176, Statutes 1963. Under that law trains operated along or over the roads or tracks within yard limits are exempt from compliance with the full crew train law.

Public Law 88-108 creates the arbitration board and directs it in its ultimate aims and purposes, but it does not direct the states having full crew train laws to comply with the findings of the board. Suits have already been filed in Louisiana and California either to enjoin the order of the board or to enforce its directives. These cases will undoubtedly arise in other states and will eventually reach the Supreme Court of the United States.

The award is for a period of 2 years. Such award will in all probability be implemented by appropriate congressional legislation in the interim period.

In the meantime, our Supreme Court in *Western Pacific* has practically invalidated our full crew train law as it existed in 1955. Our Legislature since 1955 has amended the full crew train law by Chapter 176, Statutes 1963, but it is to be noted that such amendment did not in any way change the requirements relating to firemen on such crews.

Were it not for Justice Merrill's decision in *Western Pacific* this office would have no hesitancy in advising the Public Service commission, for the arbitration award does not supplant the statutes in those 13 states having full crew train laws. There is no preemption by federal statute.

Our courts, however, have not had an opportunity to review the actions of a railroad in laying off firemen under the terms of the arbitration award. Despite Justice Merrill's decision, the law is still on our books. The Attorney General, despite any personal opinion he might have, is still charged with the duty of seeing that the laws are enforced as written. (See *State v. Dickerson*, [33 Nev. 540](#).)

#### CONCLUSION

It is, therefore, the opinion of this office that the Public Service Commission should enforce the full crew train law (Chapter 176,) Statutes 1963) in the absence of legislative fiat or court direction to the contrary.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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### **138 Constitutional Law—Loan of credit by State or any of its subdivisions to nonprofit corporation for purposes of financing industries within the State, prohibited by Constitution of Nevada, Art. VIII Sections 9 and 10.**

CARSON CITY, May 19, 1964

MR. ROBERT WARREN, *Director, Nevada Department of Economic Development, Carson City, Nevada*

#### STATEMENT OF FACTS

DEAR MR. WARREN: It has been proposed that a nonprofit corporation known as the Nevada Industrial Development Association be formed, with the express purpose of stimulating industrial development and generally contributing to the economic betterment of the State of Nevada and its citizens. Debt securities in the form of revenue bonds would be issued to finance the purchase of assets to be leased and/or licensed to industries locating within the State. It is pointed out that interest on such securities would be tax exempt according to IRS rulings, provided that each of the following requirements is met, viz.:

(1) The corporation must engage in activities which are essentially public in nature; (2) the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness); (3) the corporate income must not inure to any private person; (4) the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon retirement of such indebtedness; and (5) the corporation must have been approved by the State or a political subdivision thereof, either of which must also have approved the specific obligation issued by the corporation.

#### QUESTION

Is financing for industrial development under this plan, making use of the tax exemption allowable under IRS rulings mentioned, legal in Nevada?

#### ANALYSIS

In perusing the requirements under which the proposed corporation must operate in order that interest on its bonds may be tax exempt under currently effective IRS rulings, numbers 4 and 5 thereof as hereinabove set out, present themselves as of immediate significance in determining this question. It is obvious from the wording of these two requirements that either the State or one or more of its subdivisions must not only approve the corporation involved and the bonds it issues, but must also have a beneficial interest in the corporation until such bonds are retired. This close association between either the State or a subdivision thereof with a corporation having as its principal purpose the promotion of industry within the State and an ultimate financial benefit to the State, creates an interest or relationship which we believe is prohibited by the Constitution of Nevada, specifically Article VIII, the pertinent parts thereof being as follows:

SEC. 9. The state shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

SEC. 10. No county, city, town, or other municipal corporation shall become a stockholder in any joint-stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations.

These sections with reference to loaning the credit of either the State or subdivisions thereof, appear on their face to be an absolute prohibition. Also, the terminology employed makes them self executing so that no action of the Legislature is necessary to make them effective. The term "loan its credit" was not inserted into these sections for any idle purpose but rather for the protection of the State itself and its citizens. Most, if not all state constitutions have similar prohibitions. Furthermore they are strictly adhered to.

A case which reviews many of the decision sin point and which we believe is the law is that of Veterans Welfare Board v. Jordan, Secretary of State, 208 P. 284 (Cal.), annotated in 22 A.L.R. 1515, in which the court said:

\* \* \* the decisions are unanimous upon the proposition that this provision of the constitution, prohibiting the giving or loaning of credit, should be construed liberally to effect its purpose. Such construction would, therefore, prohibit any plan or scheme by which, in substance and effect, the credit of the state is given or loaned, regardless of the particular form the transaction takes.

The Nevada State Supreme Court has never had occasion to define all the various acts or transactions which constitute a loan of the credit of either the State or its subdivisions. Nor do we feel that any such definition is necessary in order to determine the inquiry hereinabove propounded. In our opinion the above facts alone and particularly numbers 4 and 5 of the requirements which must be complied with in order to qualify for income tax exemption on profits, fall within the nature and scope of acts and transactions which, in effect, constitute loaning the credit of the State or its counties.

#### CONCLUSION

We therefore conclude that the proposed means of financing industrial development in Nevada, operated so as to claim income tax exemption under current IRS rulings, is prohibited by the State Constitution. The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**139 Education; School Trustee Election Areas; [NRS 386.200](#) interpreted—When school trustee election areas have boundaries changed and membership increased or decreased, the terms of all presently serving trustees terminate as of the first Monday in January following a general election. Trustees elected at general election following change are elected in accordance with [NRS 386.200\(6\)](#).**

CARSON CITY, May 20, 1964

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

DEAR MR. STETLER: You have directed to this office an inquiry which concerns an interpretation of [NRS 386.200](#), which deals with the creation of trustee election areas within county school districts, the procedure therein to be followed and the election of trustees.

You direct our attention to the fact that on May 8, 1964, your office received a letter and the copy of a resolution passed by the County Commissioners of Mineral County which if given effect would alter the boundaries of the present school trustee election areas and in certain areas change the number of trustees in the areas.

We begin with the premise that under [NRS 386.120](#) seven trustees are to be apportioned among the trustee election areas.

It is also our understanding from your inquiry that provisions 1 through 5 of [NRS 386.200](#) have been complied with.

#### ANALYSIS

There is no question but that the County Commissioners have the right under paragraph 2 of [NRS 386.200](#) to set forth in their petition with particularity the school trustee election areas proposed to be created, the number of trustees to be elected from each such area, and the manner of their nomination and election.

But we now come to the important section (Section 6) which reads as follows:

Upon the creation of school trustee election areas within a county school district the terms of office of all trustees then in office shall expire on the 1st



Monday of January thereafter next following a general election. At the general election held following the creation of school trustee election areas within a county school district, school trustees to represent the odd-numbered school trustee election areas shall be elected for terms of 4 years and school trustees to represent the even-numbered school trustee election areas shall be elected for terms of 2 years. Thereafter, at each general election, the offices of school trustees shall be filled for terms of 4 years in the order in which the terms of office expire.

This is modified to some extent by Section 8 which reads:

School trustee election areas may be altered or abolished, or the number of school trustees representing such areas or the manner of their nomination or election may be changed, in the same manner as herein provided for the creation of school trustee election areas and the election of school trustees.

When these two sections are read together it becomes apparent that there can be no holdover trustees, for under Section 6 of the terms of office of all trustees will expire on the first Monday of January, 1965, so that the procedure to be followed in filling vacancies which will arise at that time is to elect a full slate of seven directors at the 1964 general election.

#### CONCLUSION

As in the original creation of trustee election areas, trustees of the odd-number trustee election areas will be elected for 4-year terms, and those elected in even-numbered areas shall be elected for 2 years. Thereafter at each general election the offices of school trustees shall be filled for 4-year terms in the order in which the terms of office expire.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**140 State Printing—State Boards who deposit their fees in other than the State Treasury, are only entitled to have the State Printing Office print forms, blanks, envelopes, and letterheads, unless exempted from the terms of Chapter 344 NRS by special conditions set forth in the various acts controlling such boards.**

CARSON CITY, May 21, 1964

RAYMOND HELLMAN, *Secretary-Treasurer, State Board of Architecture, 137 Vassar Street, Reno, Nevada*

DEAR MR. HELLMAN: You have addressed to this office a request for an opinion as to whether the State Printer may print a copy of Chapter 623 of the Nevada Revised Statutes, together with rules and regulations and bylaws of the state Board of Architecture.

#### ANALYSIS

Because the answer may be of interest to all boards similarly situated, viz.: receiving funds from licenses and not by appropriation, we issue this formal opinion. [NRS 344.050](#) sets forth the material that should be printed in the State Printing Office and Section 2 thereof reads, as pertinent to your question, "all state \* \* \* boards

\*\*\* required or authorized by law to make reports or to publish circulars, bulletins, printed books, stationery or printed matter of any kind shall have the printing and binding of the same done at the State Printing office at the expense of their respective funds or appropriations.”

Before going further let us determine if there are any items listed in the preceding paragraph required to be published by the law governing architects. A purview of Chapter 623 NRS does not reveal any legislative requirement for any such reports.

[NRS 344.050](#)(3) makes the printing of the following mandatory:

1. Annual register of the University of Nevada.
2. Nevada mining laws.
3. Nevada land laws.
4. Nevada election laws.
5. Nevada official election returns.
6. General corporation laws.
7. Foreign corporation laws.
8. State school laws.
9. Fish and game laws.
10. Pharmacy.
11. List of registered physicians.
12. Insurance laws.
13. Banking laws.
14. Necessary briefs, transcripts, and other legal work for the public service commission.

So that it may be resolved that the printing of the laws on architecture is not one of the mandates placed on the Superintendent of State Printing.

In support of this position [NRS 344.130](#) provides that with the exception of the Nevada Industrial Commission the Superintendent of State Printing is required to receive, print, reproduce, and bind only such matter and materials as may be submitted by those state officers, departments, boards, commissions, institutions, and agencies whose funds are deposited, in whole or in part, in the State Treasury, and paid out on claims as other claims against the State are paid.

The State Board of Architecture by Chapter 117, Statutes 1963, is authorized under Section 8 to deposit the fees in banks or savings and loan associations, and fees so deposited are to be drawn only for the purposes of Chapter 623 NRS. So that the provisions of [NRS 344.130](#) would not authorize printing for the State Board of Architecture.

Under [NRS 344.150](#) the State Printing Office may be required to print forms, blanks, envelopes, and letterheads for the board.

#### CONCLUSION

It is therefore the opinion of this office that the printing of Chapter 633 NRS should not be printed in the State Printing Office; that the printing which may be required of said office are form, blanks, envelopes, and letterheads. All state boards depositing their moneys in other than the State Treasury, unless specifically exempted, are subject to the same rule.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

**141 Motor Vehicles; Dealers—A dealer licensed by the Motor Vehicle Department to sell used cars, in the absence of an instrument executed by or on behalf of the manufacturer certifying that the dealer is an authorized dealer for the make of vehicle concerned, or an instrument executed by or on behalf of a registered new car dealer certifying that the used car dealer is a subdealer or associate of a new car dealer, is in violation of the law in securing and selling new cars. License may be revoked if violation was wilful.**

CARSON CITY, May 22, 1964

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

DEAR MR. SPITZ: You have sought the opinion of this office on two important questions which confront your department.

1. Under the present Nevada statutes covering dealer operations, is a used care dealer licensed to sell used cars operating without authority when he sells new cars; and
2. If the answer to question number 1 is “no” does your department have sufficient grounds to revoke the dealer’s license?

FACTS

You allege that a car dealer, licensed with your department as a used car dealer under [NRS 482.320](#) through [NRS 482.350](#), sold three new cars secured through licensed and authorized new car dealers in California. Your office has refused to issue a Nevada certificate of ownership until the Nevada report of sale form was marked “used.”

ANALYSIS

There seems to be some confusion in the law covering the licensing and sale of motor vehicles ([NRS 482.320](#)-[482.350](#)). A dealer under [NRS 482.020](#) is defined as “any person engaged in the business of buying, offering for sale, selling or exchanging vehicles in this state.” There is no definition for a “used care dealer.”

Under [482.3211](#) it is provided that there shall be special permits for the movement of used vehicles, and under [NRS 482.403](#) provision is made for the transfer of documents on the sale of a used vehicle, so the law contemplates the business of selling used cars.

There is no question but that under the law a dealer may sell both new and used cars, but here we run into the manifesto that in order to sell new cars a dealer license plate will not be issued by the department to any dealer on new vehicles unless the dealer shall first furnish the Motor Vehicle Department an instrument executed by or on behalf of the manufacturer certifying that the dealer is an authorized dealer for the make of vehicle concerned. ([NRS 482.350](#)(1).)

In conformity with this provision, [NRS 482.350](#)(2) provides that a subdealer or associate of the dealer must furnish the department with an instrument executed by or on behalf of a dealer certifying that the subdealer or associate is an authorized associate or subdealer for the make of vehicle concerned.

Ipsa facto if the used car dealer secures from an authorized new car dealer, in this or any other state, new cars for resale, without having furnished the department with an instrument certifying that he is an authorized dealer for the manufacturer of the car sold, or an instrument certifying that he is an associate or subdealer of the dealer authorized by the manufacturer, then there has been a violation of the motor vehicle laws, viz.: [NRS 482.352](#)(e), and the department can revoke his license to operate as a used care dealer.

The reasoning behind this is legally sound. Franchised dealers of the leading makes of automotive vehicles have invested huge sums in business locations and the attendant expenses of setting up show rooms, repair and parts departments, and sales forces. It would be inequitable and unfair to allow used car dealers to invade the new car field with the only expense the purchase and shipment of new cars to their display lots.

## OPINION

It is the opinion of this office that a dealer licensed by the Department of Motor Vehicles to sell used cars is violating the law when he sells new cars, in the absence of filing the certification required by [NRS 482.350\(1\)](#) or [NRS 482.350\(2\)](#).

It is the further opinion of this office that if the violation was wilful, that the license of a dealer licensed to sell used cars may be revoked if he sells new cars without the filing of certificates as hereinbefore set forth.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**142 Insurance—Under [NRS 686.010](#), as amended, sums paid or credited by an insurer to a policyholder as “dividends,” when applied to the purchase of further paid-up insurance, are taxable. A.G.O. No. 81 of November 5, 1963, affirmed.**

CARSON CITY, June 2, 1964

MR. PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*

## STATEMENT OF FACTS

DEAR MR. HAMMEL: Under date of March 19, 1964, you have transmitted to us a brief supplied by the Life Insurance Association of America, which takes issue with the conclusion reached by this department in A.G.O. No. 81 of November 5, 1963. You have asked that we review the brief and the contentions and authorities cited. Courts get the benefit of such research prior to rendering a judgment in a given case or controversy and are greatly benefited by it. In our situation, unhappily, the operation is reversed. We write an opinion, after careful research, with conclusion adverse to an insurer, then, in short order, we receive a brief, greatly extended, which urges a review, and a change of conclusion.

After careful research and consideration of the points and authorities cited by counsel, we are constrained to confirm A.G.O. No. 81, but recite the reasons for confirmation.

## 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

After the release of A.G.O. No. 81 of November 5, 1963, which answered the question in the affirmative, the brief for counsel of the Life Insurance Association of America, in disagreement with the conclusion, raised certain contentions, viz.:

1. The statute taxes premiums. Dividends are not premiums.
2. Taxation of dividends applied to provide paid-up additional insurance is dual taxation.
3. Dividends applied to provide paid-up additional insurance are not taxed in other jurisdictions.

Subsection 1 of [NRS 686.010](#), as amended by Chapter 472, Statutes 1963, p. 1322 taxes “total premium income.” (Italics supplied.)

Counsel argues that a credit of a “dividend” by the insurer in consideration of a grant of further paid-up insurance is not in law a receipt of a premium. Counsel concedes that if the dividend were taken in cash by the policyholder and then applied by him in the purchase of a new policy of paid-up insurance such dividend, now converted to premium, would be taxable. (Brief p. 11.) He argues, that for want of return to the policyholder, and a decision on his part made subsequent to the receipt of the money to convert the money to a premium (he having made such decision at the time of purchase) the money, owned by him, and so applied, does not constitute a “premium.” This is a thin line of distinction.

In *New York Life Insurance Company v. Burbank*, 216 N.W. 742, Justice De Graff, concurring, p. 747, made the distinction adverse to the contention of counsel, with this language:

When a dividend is declared to a policyholder by a mutual company, then that becomes a debt owing by such company to the policyholder, and, until paid, remains a debt. If a policyholder uses that debt as part payment of the premium he is called upon to pay on account of his insurance, it in no way reduces the premium; it only reduces the amount of cash he must pay on that premium. The company receives and retains the same amount of that premium as it would were there no dividend connected with the transaction.

A mere bookkeeping device cannot be accepted as a means to thwart legislative intent. The withholding of a dividend from a policyholder until he pays the balance necessary to make up the full premium is, in effect, no different than when the dividend check is sent to the policyholder, and he then returns it as a part of the cash payment on the premium. In either case the company receives and retains the full amount of the premium, although it is true that the cost of insurance is reduced to the policyholder. The policyholder is entitled to the declared dividend whether or not he pays the next year’s premium on the policy. As said before, the Legislature did not deal with “cost of insurance”; it dealt with premiums solely.

Counsel would be the first to admit that life insurance companies do not issue (certify) further paid-up insurance on a gratis basis, and that this is done only upon the payment or credit of premium. The payment for such further paid-up insurance, received in this indirect manner, by retaining the money owed to the policyholder, and certifying that further insurance has been effected in his behalf upon such money received, therefore constitutes the receipt of a premium by the insurer, which is taxable.

In view of the wording of the statute providing “a tax of 2 percent upon the total premium income, including membership fees, payments on annuities or policy writing fees,” counsel presents the argument that dividends when applied as premiums, cannot, as a matter of statutory construction be included. He argues that “membership fees, payments on annuities or policy writing fees” are enumerated, and therefore dividends when applied as premiums, are designedly excluded. The answer is that dividends when applied as premium fall within the generic term of “total premium income,” whereas “membership fees, payments on annuities or policy writing fees,” as distinguished from premiums, are not within such generic inclusion, and would of necessity be enumerated if there were a legislative intent that they be included.

The attempted distinction in those cases in which the indebtedness existing from the insurer to the policyholder, upon a declaration of dividend, is retained, as a premium upon further insurance, and those cases in which it is forwarded to the policyholder, and by him returned to the insurer as premium upon further paid-up insurance, is illusory and nonexistent.

Counsel argues that taxation upon dividends applied to provide paid-up additional insurance is dual taxation. He asserts, “the fact charges, *in their entirety*.” (Italics supplied.)

In *Northwestern Mutual Life Insurance Co. v. Roberts* (Cal. 1918), 171 p. 313, the court in answer to this same asserting said:

The argument is specious, \* \* \* the truth is that the so-called dividends which these institutions periodically distribute among their members, and which we are herein to define as “return premiums,” do not actually represent the outworking of these theories, and are not in fact limited to such excesses, and do not, in practical effect, result in a return to the membership of these institutions the actual excess in premiums above the cost to each of his insurance. According to the evidence presented in these cases, mutual benefit insurance companies or associations have other sources of income than that of premiums. They derive certain income from forfeitures, surrenders, and lapses; also from the increase in the value of investments in securities or in lands, and from rents and interest on investments and loans, and from annuities. \* \* \* The framers of the constitutional amendment in question drew no distinction between the insurance companies or associations to be affected by the form of taxation it imposes, and evidently, by its general terms, intended that gross premiums received by all insurance companies or associations indifferently should not be deleted by dividends in the levy of the state tax thereon.

Even if such “dividend” were completely a return of excess premium charge, which the authorities agree it is not, when applied as a premium for further paid-up insurance, it does not constitute dual taxation, for the reason that once a dividend is declared by the insurer, the sum represented becomes an indebtedness to the eligible policy holders. *New York Life Insurance Company v. Burbank*, supra. If that indebtedness of the insurer to the eligible policy holders, is discharged by the issuance of further paid-up insurance, such discharge of sums payable by the insurer, then becomes “premium” and under the statute requiring taxation upon “total premium income” becomes taxable.

Lastly, counsel contends that dividends applied to provide paid-up additional insurance are not taxed in other jurisdictions. He cites: *Prudential Insurance Company of America v. Green* (Iowa 1942), 2 N.W. 2d 765, and *Prudential Insurance Company of America v. Kavanaugh* (Colo. 1952), 240 P.2d 508.

The facts are that statutes vary greatly between the states as to the incidence and inclusion under the premium tax statutes. The legislature intent is the controlling criterion. In the *Green* case, supra, the tax was placed upon the “gross amount of premiums received by it for business done.” Held that dividends when applied to provide paid-up additions to the amount of insurance under existing policies, were not taxable. In the *Kavanaugh* case, supra, the tax was placed “on the gross amount of all premiums collected or contracted for on policies or contract of insurance covering property or risks within the state during the year ending December 31st next preceding.” The language of the statute led to the construction that the tax should be applied solely on premiums contracted for in the policy. Holland, justice, entered a strong dissent.

The language of the Nevada statute ([NRS 686.010](#), subsection 1) is not such as to permit an interpretation limiting the taxation basis to sums “contracted for” in the terms of the original policies.

In the *Kavanaugh* case, Justice Holland, in dissent, said:

It is self-evident that when the dividend was applied toward additional insurance, the insurer became liable for this additional insurance, therefore the original policy, together with the increased insurance, could not have been bought

in the first instance for the original premium. What was once a dividend, the property of the insured, finally became a premium or payment for a modified policy of insurance. When received by the company, this money did not go into a dividend or surplus fund, it went into the premium account. For the original premium the company would not have issued the additional paid-up insurance.

In *King v. Aetna Insurance Company* (So. Car. 1932), 167 S.E. 12, the tax was levied upon "total premiums." In Nevada it is levied upon "total premium income." The insurance company was denied the privilege of (1) deducting "dividends" from total premium paid in determining the tax base, and (2) deducting the cost of "reinsurance," for neither of these items was allowed as a deduction, by the provisions of the statute.

Similarly, under Nevada law, the total authorized deduction from the "total premium income" are "return premiums and premiums received for reinsurance on such property or risks."

The Nevada law requires the tax to be collected upon the "total premium income" which as we have shown includes "dividends" when converted to premium payments, as in the hypothetical case.

#### CONCLUSION

The legislature therefore, in our view, intended, by the broad and all inclusive language of the statute to place a tax upon "dividends" when applied by the insurer as premium on paid-up additional insurance. The conclusion reached in A.G.O. No. 81 of November 5, 1963, is confirmed.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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

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**143 Taxation; Mobile Homes—Legislative acts of 1963 redefining terms "mobile homes," "vehicles," and "personal property" removed tax exemption on mobile homes in inventory under provisions of [NRS 482.361](#), subjecting them to taxes as other personal property.**

CARSON CITY, June 5, 1964

MR. JAMES J. NOEL, *Acting Secretary, Nevada Tax Commission, Carson City, Nevada*

DEAR MR. NOEL: Inquiry is made as to whether or not the 1963 Legislature removed the inventory tax exemption on mobile homes, thereby making them subject to local assessment by county assessors.

#### ANALYSIS

Under an act of the Legislature enacted in 1960, being [NRS 482.361](#), dealers are not required to pay any taxes on inventory or individual vehicles which are received or held for sale in the ordinary course of business. This was interpreted to mean house trailers as well as motor vehicles. The Legislature, however, in Section 1, Chapter 217, Statutes 1963, gave house trailers a new designation, viz., "mobile homes," which included "every trailer designed or equipped for living purposes." Then, in enacting Chapter 425, the so-called privilege tax law, the Legislature, in Section 3(2) thereof, defined the term "vehicle" to mean any vehicle required to be registered pursuant to the

provisions of Chapter 482 or 706 of NRS, "except mobile homes as defined in Section 1, Chapter 217, Statutes 1963," as above mentioned.

Obviously, this exception in the definition of vehicles removes mobile homes from the list of inventory property which is tax exempt under the provisions of [NRS 482.361](#).

Chapter 425, Statutes 1963, also redefined personal property in Section 26 thereof by saying, among other things, that it means and includes:

(d) All chattels of every kind and description, *except vehicles as defined in section 3 of this act.*

\* \* \* \* \*

(g) *Any vehicle not included in the definition of vehicle in section 3 of this act.*

\* \* \* \* \*

(k) All property of whatever kind or nature, *except vehicles as defined in section 3 of this act* \* \* \*. (Italics supplied.)

Since the above definitions of personal property except "vehicles," and the further fact that the definition of "vehicles" provided in Section 3(2), Chapter 425, Statutes 1963, excepts "mobile homes," we can only deduct that the Legislature intended to provide, albeit by a rather circuitous procedure, that mobile homes fall within the category and definition of personal property.

Any such homes in inventory being no longer tax exempt under the terms of [NRS 482.361](#), therefore, become taxable personal property pursuant to the provisions of [NRS 361.045](#), which provides:

Except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation.

#### CONCLUSION

In the opinion of this office, the 1963 Legislature, by redefining the terms "mobile homes," "vehicles," and "personal property," removed the tax exemption on mobile homes in inventory and made them subject to assessment and taxation in the same manner as other personal property.

The inquiry is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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**144 Nursery schools are child care facilities as defined by [NRS 424.100](#) and are not private schools as defined by [NRS 394.010](#).**

CARSON CITY, June 5, 1964

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



DEAR MR. STETLER: You have requested of this office an opinion as to whether nursery schools are to be classified under child care facilities as defined in Chapter 409, Statutes 1963, or as private schools under Chapter 394, Nevada Revised Statutes.

#### ANALYSIS

[NRS 424.110](#) (Chapter 409, Statutes 1963) defines child care facility as “any home, private institution or group furnishing care to two or more children under 16 years of age on a temporary or permanent basis during the day or overnight for compensation, but does not include the home of a natural parent or guardian or a public institution.”

Under [NRS 394.010](#), dealing with private schools, school is defined as “any educational institution or class maintained or conducted for the purpose of offering instruction to five or more students at one and the same time or to 25 or more students during any calendar year, the purpose of which is to educate an individual generally or specifically, or to prepare an individual for more advanced study or for an occupation, and includes all schools, colleges, universities and other institutions engaged in such education, except: (a) Schools maintained by the state or any of its political subdivisions and supported by public funds. (b) Schools or school systems for elementary, secondary and higher education operated or conducted by religious organizations. (c) Schools, colleges and universities specifically exempted by [NRS 394.020](#).”

Under [NRS 394.020](#)(d) schools are exempted which are under state or federal supervision.

Under [NRS 424.120](#), child care facilities must be licensed and are, therefore, under state supervision (Department of Health and Welfare) and exempt from the definition of a private school as set forth in [NRS 394.020](#)(d).

The nursery schools take care of children at below grade level as a general rule and are more in the nature of a directional guardianship than an institution devoted to academic instruction.

Under general policy, as well as by statute, a nursery school is a child care facility rather than a private school.

#### CONCLUSION

Nursery schools are child care facilities as defined by [NRS 424.110](#) and are not private schools as defined by [NRS 394.010](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**145 Incorporated Cities; Powers of city councils operating under special charters—  
Caliente city council not authorized under either charter or any other laws to  
execute installment contract for purchase of land for development as a golf  
course and fairgrounds or to make payments on account thereof from city  
funds, except under bond issue voted on and approval of the city’s voters.**

CARSON CITY, June 9, 1964

HON. ROSCOE H. WILKES, *District Attorney, Lincoln County, Pioche, Nevada*

#### STATEMENT OF FACTS

DEAR MR. WILKES: Caliente, Nevada, is an incorporated city pursuant to the provisions of Chapter 289, Statutes 1957. The members of the city council thereof are interested in purchasing a tract of land near the city limits, a portion of which would be

used as a fairground and the remainder as a golf course after necessary improvements. It is proposed that a contract of purchase be entered into between the city and the owner, providing for a down payment and the balance to be paid in installments over a period of years, title to pass to the city upon completion thereof. As an alternative, it is suggested that the city take title upon making the down payment and that it then execute a deed of trust as security for payment of the balance.

#### QUESTION

May the city council and mayor of the incorporated City of Caliente, Nevada, for and on behalf of said city, enter into a purchase-sale contract with a private citizen whereby the city would purchase a quantity of land for a fixed purchase price and which said purchase price would be paid over a period of time (4 or 5 years) in specified installments plus interest?

#### ANALYSIS

Caliente being a special charter city, the laws pertaining to incorporation by general law have no application to its operation (see [NRS 266.005](#)). The powers of its council are limited to what is specifically provided for under the charter. The powers with respect to the purchase of land are set forth in Section 4; Section 19, paragraph 79; and Section 63, paragraph (b) 1. Without doubt, these provisions were intended to empower the city, through its council, to purchase or otherwise acquire land, both within and without the city limits, when the council should decide that they are necessary for public use.

Further powers in connection with lands so purchased or acquired are found in Section 19, paragraph 79, which provides that they may be improved and other things done in connection therewith which natural persons might do. Again in Section 63, paragraph (b) 1, provision is made for constructing, reconstructing, or improving the same, and a similar provision is found in Section 63, paragraph 7(c).

Exercise of these powers is not without certain restrictions, however. Under Section 4, it is provided that the council shall have the right to issue revenue bearing bonds, indicating that a bond issue is necessary in connection with the acquisition or improvement of any lands. Again, under the provisions of Section 63, paragraph (b) 1, the power to issue bonds for land purchases or improvements is set forth, and to the same effect is Section 63, paragraph (c).

It is noted also that Section 19, paragraph 79, prohibits the council from mortgaging, hypothecating, or pledging any property of the city for any purposes. By reason of this provision, the council may not acquire title to property and execute a deed of trust thereon as security for the purchase price.

We now consider whether or not the proposed purchase of land may be effected by execution by the council of a purchase agreement wherein installment payments are to be made over a period and title to be retained by the seller until all payments are made. Under Section 4, the power to enter into any kind of agreement, or do or perform any other necessary act in acquiring land, seems to be implied. And under Section 63, paragraph (b) 7, the council is empowered to make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its express powers.

In our considered opinion, however, any express or implied powers with respect to entering into contracts contained in the charter were never intended to be extended to the purchase of lands under an installment plan. It becomes readily apparent that if the council could purchase expensive tracts of land at will under installment contracts with the payments to be made out of city funds, financial chaos could well result. Money, unbudgeted for, paid out as initial payment on any such purchases is not an operating expense of the city, nor is such expenditure within the scope of the budget as originally planned. It, and all additional installments, are an expense for extraordinary purposes and

require the sanction of the voters in advance of the incurrence thereof. Only through vote of the people after legal notice may this be given.

Although the city charter of Caliente is most liberal, as we read it, nevertheless, its council is limited in its powers with reference to expenditures beyond those commonly required for administering the affairs of the city. Obligations requiring expenses beyond these, unless approved by the voters, may well be questioned. It has been held by the Nevada State Supreme Court that the State (through the Legislature) may enlarge, modify, diminish, or set aside the acts of a municipality without its consent. *Tonopah Sewer & Drainage Co. v. Nye County*, [50 Nev. 173](#).

Even though the Caliente city council is empowered under certain provisions of the city's charter to purchase lands, we believe that the Legislature had within its contemplation, and fully intended, that any such purchases should be made through a bond issue to be voted on by the voters of the city.

#### CONCLUSION

By reason of the foregoing, it is the opinion of this office that no authority exists, either under the Caliente city charter or by reason of any general law, whereby the city council thereof may enter into an installment contract for the purchase of lands for development of a golf course and fairgrounds, or for paying for the same from city funds, unless compliance is first had with applicable law for the voting and approval of a bond issue by the voters.

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy Attorney General*

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#### **146 University of Nevada—University of Nevada has the authority to establish a technical institute program offering courses primarily on a college level.**

Carson City, June 8, 1964

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

DEAR MR. ARMSTRONG: The University of Nevada, particularly through its Division of Statewide Services, has been considering the possibility of developing a technical and vocational institute program for students at the post-high school level, who wish to prepare themselves for positions in such fields as electronics, automated data processing, machine tool design, etc. There is a great need for such programs which could extend to a length of 2 or 3 years beyond high school and the courses offered would be mainly of college level although not all would necessarily qualify for credit toward a baccalaureate degree but rather a certificate which would qualify the individuals for technical jobs in business, industry, and research.

The State Department of Education, pursuant to legislative authorization, has established certain programs in the field of vocational-technical and adult education. The controlling purpose of this education is to qualify people for employment and although high school graduates may attend, the courses are of less than college grade.

The question presented to this office is whether the University of Nevada has the authority to establish a technical institute program when the State Department of Education is conducting programs in the field of vocational-technical and adult education.

## QUESTION

May the University of Nevada establish technical and vocational programs offering courses mainly at a college level?

## ANALYSIS

Article XI, Section 5, of the Nevada Constitution recites:

The Legislature shall have power to establish normal schools, and such different grades of schools, from the primary department to the university, as in their discretion they may deem necessary \* \* \*.

Our first consideration is with vocational-technical and adult education programs.

We are of the opinion that under this section of the Constitution, the Legislature may establish any educational program if deems necessary up to the college level. This includes authority to establish vocational-technical and adult education as presently constituted and controlled by the State Department of Education. As stated in A.G.O. No. 89, dated August 6, 1951, the above-quoted section of the Constitution indicates an "approach and arrival" of authority to establish educational programs. The word "university" denoting the terminus.

An enlightening remark, in more than one way, dealing with this section of the constitution appears in the Nevada Constitutional Debates, at p. 571, as follows:

MR. MCCLINTON: I do not believe there is any gentleman on this floor who has a higher appreciation of the benefits to be derived from a good system of common schools than I have. I had the honor to graduate in the chimney corner, by the fire-light in my father's little, old log cabin, and I feel the want of a polite and classical education. I am willing, therefore, to do all I can to encourage common schools; *all I can for the encouragement of every species of educational improvement, and morality* \* \* \* I believe that education is a proper subject of legislation, but we should merely mark out here a sort of outline of the course which we intend the Legislature to pursue on that subject, and then leave the rest to the wisdom, intelligence, and patriotism of those legislators, who, we may be permitted to presume, will be not only as wise, but as earnest and zealous in the cause of education as we ourselves. (Italics supplied.)

And id. At p. 576:

MR. COLLINS: (A)ll that this body can do, or ought to attempt to do, is to lay down the outlines of a general system, presuming that the legislature will be as much interested, and have as deeply at heart the cause of common schools, as the members of the Convention. The members of the Legislature will have to exercise their best judgment in devising the means of carrying out in detail these general provisions, and they will undoubtedly frame their law with a view to meet any and all \* \* \* difficulties \* \* \*.

The courses given by the State Department of Education are not on a level of those proposed to be offered by the University. Although the nature of the education may be on a post-high school level it is distinct in character from college or university education. The instruction is designed to train people for useful employment on a skilled or semiskilled level rather than educate on a college level.

We recognize the difficulties in determining where one area of education ends and another begins and the fact that there often may be certain kinds of educational overlapping. However, we are of the opinion that the establishment of the proposed

technical institute program is within the authority of the University. It is a separate and distinct program and on a higher educational level than the presently existing vocational-technical and adult education program conducted by the Department of Education. It is designed to provide education on a semiprofessional level and fill an educational hiatus resulting from rapid technological development in industry which has caused widespread changes in industrial occupations.

The program is defined by Dr. J. Patrick Kelly of the University of Nevada as a post-high school institution that educates persons to assist professional personnel in various phases of industry. He states that the program would entail intensive study of subject matter and the objective is to place graduates in the area between the skilled worker and the professional employee. The program differs from regular engineering programs or other courses in the college curriculum, but the difference lies in the subject matter, not the content.

Although this type of education is a product of the 20th century and could hardly have been considered by the framers of the Constitution, it certainly may be conducted by the proper authority. The Constitution announces certain basic principles to serve as the perpetual foundation of the State. We do not believe it was intended to be an obstruction to the healthful development of programs necessitated by changing conditions of society. We believe it is proper to assume that the Constitution is intended to meet and be applied to new conditions and circumstances as they may arise in the course of progress.

As previously indicated, the proposed technical institute program is primarily on a college level. The University is best equipped to handle such programs and University personnel are best qualified to instruct the courses. As such, it is our conclusion that the University is the proper authority to establish and maintain the program.

#### CONCLUSION

University of Nevada has the authority to establish a technical institute program offering courses primarily on a college level.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

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#### **147 Public School Teachers; Salary Reductions for Annuity Premiums—County school district boards of trustees may reduce teachers' salaries for group, tax-deferred annuities, but may not do so for individual policies.**

CARSON CITY, June 17, 1964

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

#### STATEMENT OF FACTS

DEAR MR. STETLER: On January 8, 1964, this office issued an opinion stating that county school district boards of trustees are authorized to make "deductions" from teachers' salaries for group, tax-deferred annuities, provided the plan is on a voluntary basis and written request for the deduction is received from the participating teachers. We are now informed that in order to qualify for the federal income tax benefit, the money used to purchase the annuity must result from a "reduction" instead of a "deduction." We are, accordingly, asked to consider a school board's authority to reduce teachers' salaries

to meet Internal revenue Service requirements. We are also asked for our opinion concerning the authority of a school board to reduce a teacher's salary for individual annuity policies as distinguished from group plans.

#### QUESTIONS

1. May county school district boards of trustees reduce teachers' salaries for group, tax-deferred annuities?
2. May county school district boards of trustees authorize a reduction in a teacher's salary for individual annuity policies as distinguished from group plans?

#### ANALYSIS

The statute with which we are concerned is [NRS 391.150\(2\)](#). It recites:

Boards of trustees are authorized to deduct from teachers' salaries, upon written request of the teachers, moneys for the payment of group insurance of any kind.

Law looks to substance rather than form, and the reductions contemplated are, in substance, practically the same thing as deductions. In order to effectuate legislative intent as expressed in the quoted statute, reductions should be allowed. Accordingly, it is our opinion that school boards may authorize reductions in teachers' salaries for tax-deferred annuities, provided the plan is on a voluntary basis and written request for the reduction is received from participating teachers.

However, the reductions may be made only for group plans, and not individual policies. The explicit statutory authorization is for group plans, and this is not a matter of form. There could be many good reasons why deductions or reductions are to be made only for group plans, such as the work involved in accounting for many individual policies. It is our opinion, therefore, that county school district boards of trustees may not authorize deductions or reductions in teachers' salaries for individual policies as distinguished from group plans.

#### CONCLUSION

County school district boards of trustees may reduce teachers' salaries for group, tax-deferred annuities, but may not do so for individual policies.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By DANIEL R. WALSH, *Deputy Attorney General*

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**148 Social Security; State Board of Contractors—State Board of Contractors is an instrumentality of the State, being a juristic entity whose employees come within purview of the statute qualifying them for social security as employees of a political subdivision of the State.**

CARSON CITY, June 15, 1964

MR. ARTHUR A JOHNSON, JR., *District Manager, Social Security Administration, District Office, 811 Ryland Street, Reno, Nevada*

#### STATEMENT OF FACTS

DEAR MR. JOHNSON: This office is asked to determine the status of employees of the Nevada State Contractors' Board with reference to whether or not coverage under social security extends to them. Specifically, inquiries presented are as hereinafter stated.

#### QUESTIONS

1. Are employees of the State of Nevada, State Contractors' Board, employees of the State of Nevada?
2. Are employees of the State of Nevada, State Contractors' Board, employees of a political subdivision of the State of Nevada?
3. Are employees of the State of Nevada, State Contractors' Board, employees of an agency of the State of Nevada?
4. Are employees of the State of Nevada, State Contractor's Board, employees of an instrumentality of the State of Nevada?

#### ANALYSIS

In A.G.O. No. 72, dated September 23, 1963, almost precisely these same inquiries were passed upon in connection with the status of employees of the Nevada State Board of Pharmacy. There the applicable law was cited and discussed, and the conclusion reached that such employees constituted a coverage group for social security purposes. Inasmuch as we are here concerned with an entirely separate and different instrumentality of the State, it becomes essential that the provisions of the act creating it be analyzed.

The Nevada State Contractors' Board was created by a legislative act enacted in 1941. After several amendments, it is still in effect, being NRS, Chapter 624. Control and enforcement of the act rests with a board of seven members, each appointed by the governor for a 4-year term. The board is empowered to license contractors, adopt bylaws, employ a secretary, conduct hearings, and generally to administer the act. No appropriations are made for its expense of operation by the State and salaries and other administrative expenses are paid from its own funds. The board is required, however, to submit a biennial report to the Governor showing all of its financial transactions for the previous biennium. Furthermore an annual audit of all funds must be submitted to the Legislative Counsel of the State, and all balances in possession of the board's treasurer at any time are subject to legislative disposition. Employees are not carried or listed on the rolls of the State nor are they supervised, controlled, or subject to any rules or regulations governing state employees.

Certainly an organization or entity of this type, although subject to certain accountability to the State, is not an arm or political subdivision of the State as those terms are usually defined. Generally speaking, only such units of government as counties, cities, or townships fall into these categories or status. But the contractors' board is, in our opinion, an instrumentality of the State. That term is well defined in *Unemployment Compensation Commission v. Wachovia Bank and Trust Co.*, 2 S.E.(2d) 592, as follows:

\* \* \*. 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;  
\* \* \*

In [NRS 287.050](#), the Legislature has made provision for the extension of social security to employees of the State and its political subdivisions, when ineligible to participate in the Public Employees Retirement System. And in [NRS 287.100](#), for purposes of participating in the benefits of the statutes pertaining to social security coverage, it is provided in substance that, "political subdivision" includes an instrumentality of the State if such instrumentality is a *juristic entity* which is legally

separate and distinct from the State or subdivision, and when its employees are not by virtue of their relation to such juristic entity, employees of the State or subdivision.

This brings us to a determination of whether the contractors' board is (1) a juristic entity, (2) which is legally separate and distinct from the State, and (3) whether its employees by reason of their relation to such entity, are employees of the State? The term "juristic entity" seems to be a little used or known concept in laws at the State level. Consequently, we have found no suitable definition for it in the state decisions, particularly in connection with or relationship to social security. However, we believe that it was adequately defined for these purposes by a legal opinion by the Regional Attorney for the U.S. Department of Health, Education, and Welfare, dated December 19, 1957, and furnished to the Employment Security Department, State of Nevada. The definition there given is 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.)

Tested by this criterion, we must conclude that the State Contractors' Board is, under the statute creating it, an organization which is separate and distinct from the State itself or any of its political subdivisions, employing, controlling, and paying its own employees and who are in no sense state employees, as performing a function or activity for the State but not in any proprietary capacity, and as having been created by the State and subject to abolishment by the State. It is therefore, in our opinion, a juristic entity and falls within the purview of [NRS 287.050](#) and [NRS 287.100](#) above mentioned for purposes of social security coverage to its employees.

#### CONCLUSION

From the foregoing we conclude that the State Contractors' Board is an instrumentality of the State, being a juristic entity which is distinct and separate from the State and whose employees are not by virtue of their relation to such juristic entity, employees of the State. By reason of applicable state law, said instrumentality is for purposes of social security, classed as a political subdivision and its employees fall within a coverage group under the benefits there provided.

Question number 1 is answered in the negative. In answer to Question number 2, we submit that employees of the State Contractors' Board are for social security purposes only, employee of a political subdivision of the State. Question number 3 is answered in the negative insofar as social security is concerned. Question number 4 is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*



**149 Preliminary Hearing; Interpretation of [NRS 171.405](#)—The word “Interrogatories,” as used in [NRS 171.405\(2\)](#), is used in its generic sense as meaning “containing, expressing, or implying a question,” and not as meaning formal, written interrogatories. Concurrence of district attorney necessary if proceedings reduced to writing, a reporter to be paid with county funds.**

CARSON CITY, June 25, 1964

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

#### STATEMENT OF FACTS

DEAR MR. MARSHALL: You have propounded to this office three questions which deal directly with the preliminary examination before a committing magistrate of one accused of crime.

#### QUESTIONS

1. Does or does not [NRS 171.405\(4\)](#) require the approval of the district attorney before a court reporter may be employed and paid with county funds?
2. What is the meaning of “interrogatories” as used in [NRS 171.405\(2\)](#), and does it require that questions to witnesses must be reduced to writing?
3. Is it a correct statement that the preliminary examination must be conducted by written interrogatories if either part so desires?

#### ANALYSIS

The end to be achieved in criminal cases is a speedy trial, and any barriers placed in the way of an early hearing is a denial of due process and, therefore, runs afoul of constitutional prohibitions.

While Black’s Law Dictionary, Fourth Edition, defines “interrogatories” as formal, written questions used in the judicial examination of a party or a witness, we do not believe that the Legislature used the word in this manner, but in the sense defined in Webster’s New International Dictionary, Second Edition, as “containing, expressing, or implying a question.”

The time consumed in preparing written interrogatories, submitting them to counsel for transmittal to witnesses, waiting for an answer to the interrogatories, having them examined by the witness for corrections, and when corrected sworn to, would, in the opinion of this office, defeat the ends of justice and prolong the date of arraignment in district court beyond a reasonable period.

It is to be remembered that under [NRS 171.405\(10\)](#), the testimony taken and reduced to writing by the reporter may only be used if a witness is sick, out of the State, dead, or when his personal attendance cannot be had in court. The sole purpose, aside from this, is to enable the magistrate to reach a determination as to whether reasonable cause exists to bind the accused over to district court for trial.

If, for example, there were three witnesses present to testify, to take their testimony by written interrogatories would delay a decision by the magistrate far beyond the time contemplated by the Legislature, and postpone the trial so as to raise the constitutional question of lack of a speedy trial.

It is to be remembered that under the statute, the examination of witnesses must be in the presence of the defendant. This in and of itself indicates that the examination is to be conducted in the courtroom. We know of no precedent in Nevada for examining

witnesses at a preliminary hearing by the method of written interrogatories. The procedure has always been to interrogate the witness, allow cross-examination, and have the reporter reduce the proceedings to writing. If it is agreed that the proceedings are to be reduced to narrative form, and such is done, the defendant has a right to review it.

#### CONCLUSIONS

Question 1 is answered in the affirmative, to wit: [NRS 171.405](#)(4) requires the approval of the district attorney before a court reporter may be employed to be paid with county funds.

Question 2: The meaning of “interrogatories,” as used in [NRS 171.405](#)(2), is the generic sense of “questions,” and not formal, written interrogatories. The examination must be reduced to writing, if desired by the magistrate, and upon approval of the district attorney, and may be in narrative form by agreement and compliance with [NRS 171.405](#)(3).

Question 3: This is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**150 Lands, Transfer to Federal Government—Provisions of [NRS 328.030](#) through [328.150](#) and [NRS 328.160](#) through [328.200](#) are to be strictly followed. Transfer of land contrary to these provisions to be ratified and approved by special legislative act.**

CARSON CITY, June 25, 1964

MR. JAMES J. NOEL, *Acting Secretary, Nevada Tax Commission, Carson City, Nevada*

DEAR MR. NOEL: You have made inquiry regarding the transfer of state lands to the federal government. You have asked four questions which we shall delineate separately and answer one at a time.

Question 1: In order to transfer land to the United States, is it necessary that Sections 328.030 through 328.150 of the Nevada Revised Statutes be followed?

Answer: [NRS 328.030](#) provides as follows:

1. The consent of the State of Nevada to the acquisition by the United States of America of any land or water right or interest therein in this state, except lands or water rights located within the boundaries of established and existing national forests, desired for any purpose expressly stated in clause 17 of section 8 of article I of the Constitution of the United States, may be given by concurrence of a majority of the members of the Nevada tax commission, which majority shall include the governor, upon finding that such proposed acquisition and the method thereof and all other matters pertaining thereto are consistent with the best interests of the state and conform to the provisions of [NRS 328.030](#) to [328.150](#), inclusive.

2. The consent of the State of Nevada in accordance with the principles set forth in subsection 1, and subject to the limitations and restrictions of [NRS 328.030](#) to [328.150](#), inclusive, may also be given by concurrence of the majority

of the members of the Nevada tax commission in cases where privately owned or state-owned real property is desired by the United States for reclamation projects, flood control projects, protection of watersheds, rights-of-way for public roads and other purposes. The consent of the State of Nevada to any acquisition pursuant to this subsection shall be subject to and the state does hereby reserve the right of taxation to itself and to its municipal corporations and taxing agencies, and reserves to all persons now or hereafter residing upon such land all political and civil rights, including the right of suffrage.

Article I, Section 8, Clause 17, of the Constitution of the United States reads as follows:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the government of the United States, and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

Therefore, [NRS 328.030](#)(1) covers the transfer of state lands for the specific purposes set forth in Article I, Section 8, Clause 17, as set forth above.

[NRS 328.030](#)(2) refers specifically to the release to the federal government of lands for reclamation projects, flood control projects, protection of watersheds, rights-of-way for public roads, and other purposes.

Therefore, lands or water rights to be used by the United States for any of the specific purposes required in [NRS 328.030](#)(1)(2) would of necessity require compliance with the procedures set forth in [NRS 328.030-328.150](#).

Question 2: Do sections 328.160 et seq. Consist of an exception to, or different method from, the method from, the method prescribed in [NRS 328.030-328.150](#)?

Answer: Yes. The specific items covered in [NRS 328.160](#) are those required by the Department of Defense or the Atomic Energy Commission and consist of lands for use in the erection of bases, forts, magazines, arsenals, dockyards, and other structures needed for defense or Atomic Energy commission purposes as authorized by Act of Congress.

That this act is separate and distinct from [NRS 328.030-328.150](#) is indicated clearly by [NRS 328.200](#), which states that [NRS 328.160-328.200](#) shall be deemed supplementary to [NRS 328.030-328.150](#), inclusive, and for the specific purposes only set forth in [NRS 328.160](#) shall be deemed a repeal of [NRS 328.030-328.150](#), inclusive.

Question 3: If the answer to question 2 is affirmative, is it necessary that the provisions of [NRS 328.030-328.150](#) be followed?

Answer: No. Each act speaks for itself, depending upon the purposes for which the land is to be used.

Question 4: If Chapter 328 has not been followed in the transferring of land to the United States, can this defect be remedied retroactively and, if so, how?

Answer: If the procedures set forth in [NRS 328.030-328.150](#) or [NRS 328.160-328.200](#), depending upon the purpose for which the acquisition was intended, have not been followed, legislative acts ratifying the transfers would have to be enacted.

#### CONCLUSION

Questions 1, 2, and 4, are answered in the affirmative. Question 3 is answered in the negative.

Respectfully submitted,

**151 Nevada State Prison—Prison officials of the Nevada State Prison prohibited from transporting prison inmates into other states for fire-fighting or any other type of labor. Western Interstate Corrections Compact not intended to accomplish this purpose.**

CARSON CITY, June 26, 1964

MR. JACK FOGLIANI, *Warden, Nevada State Prison, P.O. Box 607, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. FOGLIANI: Certain inmates at the Nevada State Prison in Carson City have been assigned to combat forest and brush fires occurring in various areas about the State, and on occasion their services as firefighters have been necessary along the California-Nevada state line which lies in close proximity to the prison.

QUESTIONS

1. Does the Nevada State Prison have legal authority under Chapter 215 NRS or Chapter 418, Statutes 1963, to transport prison inmates into the State of California for the purpose of firefighting or conservation work?
2. If so, does the State of Nevada maintain custody of such inmates under these circumstances?

ANALYSIS

Authority for transporting inmates of the Nevada State Prison into California or any other state for the purposes mentioned in the above inquiries, does not exist by either of the statutes cited in question number 1. Chapter 215 NRS sets out the provisions of what is generally called the “Western Interstate Corrections Compact.” Under Article I thereof, its purpose and policy is outlined as follows:

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Elsewhere in the act, constant use is made of the terms “correction” and “rehabilitation.” We must conclude from the wording of the “purpose and policy” clause, and also the provisions of the compact itself, that it does not authorize, either directly or by implication, the transportation of prisoners into other states for any purpose except those specifically mentioned.

Under [NRS 209.340](#), provision is made for the employment of prisoners of the Nevada State Prison, but a restriction is noted in [NRS 209.475](#), which provides that “the warden may assign prisoners for work on \* \* \* *forest and brush fires anywhere in the state* \* \* \*.” (Italics supplied.)

Chapter 418, Statutes 1963, being [NRS 212.210](#), is inapplicable to the situations raised by the questions hereinabove propounded.

## CONCLUSION

In the opinion of this office the State of Nevada is unauthorized to transport state prison inmates into another state for firefighting or any other type of labor. Question number 1 is answered in the negative. By reason of the foregoing conclusion, question number 2 becomes moot.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By C. B. TAPSCOTT, *Deputy attorney General*

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### **152 Justice of the Peace; Salary and Fees—Board of county commissioners have complete authority to fix compensation of justice of the peace, either by salary, retention of fees, or both, under [NRS 4.040](#)**

CARSON CITY, July 15, 1964

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

DEAR MR. MARSHALL: You have stated in a letter dated July 9, 1964, that the Justice of the Peace of Las Vegas Township performs judicial functions and collects fees as provided in [NRS 4.060](#)(1), and you point out, correctly, that is his duty, on or before the fifth day of each month, to account for and to pay to the county treasurer all fees collected during the preceding month, except fees which he may retain as compensation.

You then proceed to propound these questions:

1. May the commissioners legally establish these categories of fees and regulate the compensation received from them? That is, may the board lawfully decree that the Justice of the Peace of Las Vegas Township shall be entitled to retain as compensation all fees collected from marriage ceremonies, but not to retain the fees collected from civil litigants? Also, not to collect fees in criminal actions?
2. May the commissioners thus lawfully decree that the justice of the peace may retain fees from marriage ceremonies, but that all other fees of whatever nature, arising from civil or criminal litigation, are not to be considered part of his compensation?
3. Or on the other hand, if the justice of the peace is allowed to retain fees for marriage ceremonies, does he automatically have a vested right to demand and thereby receive the other fees which are designated by law, even against the express resolution of the board that he should not retain such other fees?

## ANALYSIS

Let us begin by stating that this opinion refers to all justices of the peace, and not just to the Justice of the Las Vegas Township.

It would appear from a careful study of the statutes involved that the retention of fees by the justice of the peace as compensation is a matter to be determined by the board of county commissioners of the county in which the township is located.

While [NRS 4.060](#) establishes fees to be charged by justices of the peace in all townships, except Reno and Sparks, it does not delineate which fees may be retained as compensation, and which must be accounted for to the county treasurer.

The Legislature, by the enactment of [NRS 4.040](#), placed the salaries or other compensation of justices of the peace under the control of, and at the discretion of, the board of county commissioners. The law reads as follows:

1. The several boards of county commissioners of each county, at the regular meeting in July of any year in which an election of township officers is held, shall fix the minimum compensation of the justices of the peace within their respective townships for the ensuing term, either by state salaries, payable monthly, or by fees, as provided by law, or both, and they may thereafter increase or change such compensation during the term but shall not reduce it below the minimum so established.

2. If it becomes necessary to appoint a justice of the peace at any time, the board of county commissioners in the county in which such appointment is made shall fix the compensation, either by salary or by fees, as provided by law, or both, for the term for which the justice of the peace is appointed.

3. Any action of a board of county commissioners abolishing a salary paid to any justice of the peace heretofore established or fixed by special action of the legislature, and providing for the compensation of such office or officer thereafter by fees alone, or otherwise, shall not be deemed as abolishing such office, it being the express intent of the legislature that in the future the compensation of the several justices of the peace throughout the state be fixed by the boards of county commissioners.

Under [NRS 4.040](#)(1), the commissioners might decide that a minimum compensation of a justice of the peace be set at \$10,000, for example, and provide that certain fees set forth in [NRS 4.060](#) be retained at the rate of \$833.33 1/3 per month as compensation, and that all other fees be accounted for and remitted to the county treasurer. Or they might determine that the justice of the peace be paid a flat salary of \$10,000, for example, from the county treasury and all fees paid be remitted to the county treasurer.

Under [NRS 4.040](#)(3), even an established method of payment may be changed, so long as it does not fall below the minimum set by the board at its regular meeting in July.

#### CONCLUSION

It is, therefore, the opinion of this office that the fee schedule established by [NRS 4.060](#) is to govern. All other facets of question number 1 are answered in the affirmative.

Question number 2 is answered in the affirmative.

Question number 3 is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**153 Elections; Filing of Candidate for Multiple Offices; Interpretation [NRS 281.055](#)—Candidates may file for different offices if only one of the offices is salaried and elective. Candidate cannot hold more than one salaried elective office at same time.**

CARSON CITY, July 20, 1964

HON. WILLIAM J. RAGGIO, *District Attorney, Washoe County, Reno, Nevada*

DEAR MR. RAGGIO: You have advised that a candidate for political office in the forthcoming primaries has filed for the following offices:

1. School Trustee
2. Constable
3. Regent of the University
4. Assemblyman

You request a ruling as to ballot listing for this candidate.

#### ANALYSIS

In 18 Am.Jur. 296, Section 178, it is stated, "There is nothing inherently wrong in a candidate's name appearing upon the ballot in more than one column. Consequently, unless prohibited by statute, his name may appear as many times as he has been nominated."

[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 salaried elective offices above are Assemblyman and constable (minimum set by county commissioners whether by fees or salary under [NRS 2258.040](#)).

The candidate could appear on the ballot in any combination that did not place the two listed jobs together.

It will be noted by [NRS 281.055](#)(1b) that no person can hold more than one salaried elective office at the same time.

Under the formula above set forth the candidate could be elected Assemblyman and member of the Board of Regents, or constable and member of the Board of Regents, but the incompatibility of these jobs due to the express power of the Legislature to provide funds for (1) the University, and (2) salary and/or fees for the constable, the holding of two such jobs would be subject to constitutional challenge.

He could be elected and not subject to challenge if elected (1) Assemblyman and school trustee, (2) constable, school trustee, and member of Board of Regents.

The Legislature should definitely amend this law so that no person can run for more than one office, regardless of whether paid or not.

#### CONCLUSION

It is, therefore, the opinion of this office that the candidate must make a choice in line with the foregoing opinion.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

**154 Utilities; Reimbursement Legislation—Paragraph 3, Chapter 167, Statutes 1963, intended to prevent any change in the terms of outstanding permits originally granted under [NRS 408.955](#) insofar as such permits impose an obligation on the utilities to relocate their facilities at their own expense.**

CARSON CITY, July 23, 1964

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

STATEMENT OF FACTS

DEAR MR. WRIGHT: On November 7, 1963, this office issued A.G.O. No. 86, concerning the constitutionality of Chapter 167, which provided for reimbursement to utilities for the relocation of utility facilities located in or on highways in the federal-aid primary and secondary systems in the interstate system. We are now requested to issue our opinion concerning the application of paragraph 3, Chapter 167, Statutes 1963, which provides that reimbursement shall not apply where a payment would be inconsistent with the terms of a permit issued by the State Engineer under authority of [NRS 408.955](#). In particular, we are asked whether the aforementioned paragraph from the 1963 law was intended to prevent any change in the terms of outstanding permits originally granted under [NRS 408.955](#) insofar as such permits impose an obligation on the utilities to relocate facilities at their own expense. We are informed that all such permits issued imposed this obligation.

QUESTION

Was paragraph 3, Chapter 167, Statutes 1963, intended to prevent any change in the terms of outstanding permits originally granted under [NRS 408.955](#) insofar as such permits impose an obligation on the utilities to relocate their facilities at their own expense?

ANALYSIS

It is our opinion that it was the intent of the Legislature, through the enactment of this law, to prevent any change in the permits issued under the authority of [NRS 408.955](#). The statute is clear and unambiguous, and the cancellation of any obligation originally assumed, or the issuance of new permits not imposing the obligation assumed under the original permits, would obviously be contrary to express legislative directions. This may not be done.

The issuance of this opinion has been delayed for extensive study of the problem involved because of our concern with the possibility that the requirement of paragraph 3, supra, negatives, to a great extent, the purpose of reimbursement legislation and precludes Nevada utilities from participating in the federal program to the same extent as utilities in other states. If our concern is justified, the result of the prohibition against this participation would be that Nevada utilities would bear a cost not assumed by utilities in other states. This cost would be reflected in their rate base and passed on to the consumer. Nevada utility rates would then be proportionately higher than other states because of the requirement in the permit.

However, our study has not disclosed a legally justifiable method, short of corrective legislation, of avoiding the plain and unambiguous terms of a permit issued under authority of [NRS 408.955](#).

CONCLUSION

Paragraph 3, Chapter 167, Statutes 1963, was intended to prevent any change in the terms of outstanding permits originally granted under [NRS 408.955](#) insofar as such permits impose an obligation on the utilities to relocate their facilities at their own expense.



Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
BY DANIEL R. WALSH, *Deputy Attorney General*

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**155 Free Port Law—Foreign corporation which stores its merchandise in Nevada under the provisions of the “Free Port Law” ([NRS 361.160](#) et seq.), and operates under a given manner stated in the question, is not required to qualify to do business in Nevada pursuant to [NRS 80.010](#) et seq.**

CARSON CITY, July 27, 1964

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

#### STATEMENT OF FACTS

DEAR MR. KOONTZ: An out-of-state law firm has proposed to you certain questions in respect to the construction to be placed upon the “Free Port Law” ([NRS 361.160](#) to [361-185](#)), as follows:

#### QUESTIONS

1. Where a foreign corporation enjoys dominion over personal property warehoused in Nevada under [NRS 361.160](#), does that dominion, ownership, control, or possession, result in a “doing business” by said foreign corporation within the State of Nevada rendering said corporation amenable, among other things, to the corporate franchise and annual privilege fees of the State of Nevada?
2. Where a Nevada warehouseman under separate contract breaks bulk of individual shipments received for storage under [NRS 361.160](#) for a foreign corporation, and renders a further service consisting of filling orders, transmitted by the said foreign corporation, wrapping, containerizing, marking, and arranging for out-of-state delivery by common carrier, does such activity by the local warehouseman as an independent contractor under contract with the foreign corporation result in a “doing business” by said foreign corporation within the State of Nevada rendering said corporation amenable, among other things, to the corporate franchise and annual privilege fees of the State of Nevada?

#### ANALYSIS

A similar question was presented on September 9, 1952, which was answered by A.G. O. No. 205 of September 29, 1952. There it was held, under the then existing statute, that since a part of the goods would be stored in small packages and regrouped and reshipped in larger containers, or stored in bulk, repackaged and reshipped, that such change in repackaging would constitute doing business in Nevada, and would require the corporate owner, so functioning, to qualify to do business in Nevada. ([NRS 80.010](#) to [80.240](#))

However, in light of that opinion and perhaps to further liberalize the law, the Legislature of 1955 (Chapter 362) added the following new material: “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. The exemption granted shall be liberally to effect the purposes of this act.” The Legislature of 1961 (Chapter 310) further liberalized the act by adding the following: “or because the property is being held for resale to customers outside the State of Nevada.”

[NRS 361.160](#), as presently existing, therefore, provides:

1 Personal property in transit through this state is personal property, goods, wares and merchandise:

(a) Which is moving in interstate commerce through or over the territory of the State of Nevada; or

(b) Which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward.

Such property is deemed to have acquired no situs in Nevada for purposes of taxation. 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 resale to customers outside the State of Nevada. The exemption granted shall be liberally construed to effect the purposes of [NRS 361.160](#) to [361.185](#), inclusive.

2. Personal property within this state as mentioned in [NRS 361.030](#) and [NRS 361.045](#) to [361.155](#), inclusive, shall not include personal property in transit through this State as defined in this section.

One other section of the statute is pertinent, namely [NRS 361.175](#), which provides the following:

If any such property is reconsigned to a final destination in the State of Nevada, the warehouseman shall file a monthly report with the county assessor of the county in which the warehouse is located, in the form and manner prescribed by the Nevada tax commission. All such property so reconsigned shall be assessed and taxed.

It is, therefore, clear that when the property so stored is later consigned to a consumer in Nevada (or that portion that is so consigned) that the ad valorem tax thereon is payable under [NRS 361.175](#).

Although the financial charge of qualifying for “doing business” in Nevada, under the case law is clearly defined and is an entirely different concept than that of ad valorem taxation, when the attitude of the Legislature is considered in liberalizing the exemption for tax purposes, it appears clear that the Legislature did not contemplate a hidden charge in regard to this privilege, namely a charge for qualifying to do business in Nevada. The Legislature provided for “liberal construction” of the act.

We note also that in the hypothetical case given, the work of repackaging would not be done by an agent of the company, but by a “private contractor.” This type of operation would clearly distinguish the case if the corporation were not otherwise clearly exempt from the necessity of qualifying to do business in Nevada.

#### CONCLUSIONS

Question number 1 is answered in the negative.

Question number 2 is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

**156 Insurance; Retaliatory Tax—Nevada is authorized to tax California insurers, qualified to business in Nevada, upon gross premium income of Nevada risks at the retaliatory rate for the years beginning January 1, 1964, payable in March 1965, and subsequently. [NRS 686.010\(3\)](#) construed.**

CARSON CITY, July 28, 1964

MR. PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. HAMMEL: The Legislature of 1963 enacted Chapter 472 which, inter alia, amended [NRS 686.010](#), by adding subsection 3, which subsection constitutes the so-called “retaliatory tax law.” Except for the retaliatory tax law, all insurers that are subject to the tax, both domestic and foreign, would, under the provisions of subsection 1 of [NRS 686.010](#), be required to pay a tax of 2 percent upon the total premium income of all Nevada risks, less a credit for “return premiums and premiums received for reinsurance on such property or risks.”

Chapter 472, Statutes 1963, was approved on April 26, 1963, which, as stated, contained subsection 3, the “retaliatory tax law,” providing the following:

686.010 (Insurance, annuity companies to pay state tax)

1. \* \* \*

2. \* \* \*

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. \* \* \*

5. \* \* \*

We are concerned hereafter only with the aspect of subsection 3, which concerns the effective date of increased taxes receivable by the State of Nevada, payable by foreign insurers, domestic to California, qualified to do business in Nevada.

It appears that pursuant to the provisions of Section 144/5 of Article XIII of the California Constitution and Section 12256 of the California Revenue and Taxation Code, the rate of taxation imposed upon insurers of California risks, both domestic and foreign, is 2.35 percent of the gross or total premium income. It, therefore, appears that insurers subject to the California tax, domiciled in Nevada, and qualified to do business in California, must pay a tax of 2.35 percent of the gross or total premium income received upon California risks; whereas insurers subject to the tax domiciled in California, and

qualified to do business in Nevada (except for the retaliatory provision) would pay a tax of 2 percent of the total premium income received upon Nevada risks.

The tax of 2 percent is payable under Nevada law to the State of Nevada, for the calendar year preceding, on March 1 of each year, at the time of the filing of the annual financial statement. See: [NRS 686.010](#)(1) and 686.090(1).

The tax of 2.35 percent is payable, partially, under California law, to the State of California for a calendar year, upon earlier quarterly payment dates. See: Section 12251 Revenue and Taxation Code, as amended 1963 Pocket Parts.

#### QUESTION

In respect to an insurer domiciled in California, qualified to do business in Nevada, is there an obligation to pay the State of Nevada the retaliatory tax ([NRS 686.010](#)(3)) of 2.35 percent computed upon the total premium income, derived from such Nevada business, for the calendar year beginning January 1, 1963?

#### ANALYSIS

In view of the fact that Chapter 472, Statutes 1963, was approved April 26, 1963, and before that date there was no “retaliatory tax law” in Nevada, a serious constitutional question would arise if we determine that the higher rate may be applied to a period of months preceding the amendment. However, let us consider it from other aspects.

When (upon what date) is the tax “imposed” upon Nevada insurers doing business in California? The tax exacted in California is held to be a franchise tax, and although payable during one calendar year, the prior year’s earnings constituted the measuring rod to determine the amount of the tax. *Title Insurance and Trust Company v. Franchise Tax Board* (Calif. 1956), 302 P.2d 79.

The tax is “imposed” at the time the premiums are received, under California law. Formerly, it was payable in March of the following year. However, in 1963 the Legislature amended the law in such a manner as to make it partially payable during the calendar year in which imposed. See: Section 12251, Revenue and Taxation Code, as amended 1963.

That such tax is imposed at the time of the receipt by insurer of premiums is shown by the holding in *Carpenter v. Peoples Mutual Life Insurance Company* (Calif. 1937), 74 P.2d 508, in which the insurer being insolvent was placed in the receivership of the California Insurance Commissioner on November 10, 1932. From the date of the appointment of the receiver, there was no further insurance business conducted. Yet the tax was payable upon the business done in 1932, in the year 1933. The tax was imposed when the premiums were received. The court, after discussing the imposition of the tax in the following year, said:

And there is no reason why a tax based upon business done during one year may not be levied and collected in the following year. Payment of the tax may precede the exercise of the privilege or it may follow it, depending upon what system the Legislature chooses to provide; and where, as here, the tax is in proportion to the amount of the business alone, it is both equitable and convenient that it be paid after the conclusion of the year in which the privilege is exercised.

The tax then upon Nevada insurers, qualified in California, for business done in California, during the year 1963, was “imposed” when received by the insurers in 1963, payable, partially in 1963, and partially in 1964.

However, under Nevada law ([NRS 686.010](#)(3)), taxes imposed on Nevada insurers, by the State of California, “after January 1, 1964,” and only after that date, will not permit Nevada to now tax California insurers upon Nevada business done during 1963.

Retaliatory tax laws are “to be strictly construed, executed with care, and not applied in any case that does not fall plainly within the letter of the law.” *Bankers’ Life Co. v. Richardson* (Calif. 1923), 218 P. 586, at 591. See also: *Pacific Mutual Life Insurance Company v. Lowe* (Ill. 1933). 91 A.L.R. 788, at 793; *Retaliatory Legislation*, Section 10352, p. 59, *Insurance Law and Practice—Appleman*.

#### CONCLUSION

The question is answered in the negative. The tax of 2.35 percent (or as modified from time to time under California statutes) may be exacted in March 1965, of California insurers, qualified to do business in Nevada, upon gross premium income from Nevada risks, for the calendar year beginning January 1, 1964.

We understand that some insurers similarly situate to those whose attorneys have presented points and authorities have paid the tax for the calendar year beginning January 1, 1963. As to those that have been taxed under a misinterpretation of the law, a notice and credit should be given, to be reflected against the tax liability due and payable in March 1965.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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#### **157 Unincorporated Towns; Bid Requirements—A board of county commissioners, acting as the board of trustees of an unincorporated town, cannot pay the labor required in the construction of sewage disposal facilities on a “force account basis” without advertising for bids.**

CARSON CITY, July 29, 1964

HON. SANFORD A. BUNCE, *District Attorney, Eureka County, Eureka, Nevada*

#### STATEMENT OF FACTS

DEAR MR. BUNCE: The Board of County Commissioners of Eureka County, Nevada, acting as the Town Board of Trustees of the unincorporated Town of Eureka, Nevada, has for several years last past set aside portions of the county “table tax” for the purpose of installing a sewer system in the Town of Eureka. The board has been unexpectedly notified by the State Board of Health that a sewage disposal facility must be constructed in the near future and finds that the special fund is not sufficient to permit contracting the cost of the system, under the general statutes requiring advertising for bids. The town board believes that if they could proceed to construct the facility by advertising for bids for necessary materials and defray the expense of labor without bids, estimated at a cost between \$3,500 and \$4,000, that the facility could be completed with the money available in the special fund. Our opinion is asked on the following question:

#### QUESTION

Can the Board of County Commissioners of Eureka County, acting as the town board or board of trustees of the unincorporated Town of Eureka, pay the labor required in the construction of said sewage disposal facility and necessary connecting lines on a “force account basis” without advertising for bids in conjunction there with irrespective of the general practices and statutes governing same?

#### ANALYSIS

[NRS 244.315](#)(1) provides, in part, that “in letting 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 \* \* \*.”

It is our opinion that the cost of labor is subject to this statutory bid requirement to the same extent as the cost of materials. The statute relates to contracts of any kind, character, and description and is clear and unambiguous in its terms. Labor cost is part of the cost of the whole project, and we can only conclude that the bid requirement cannot be circumvented by doing indirectly that which cannot be accomplished directly.

#### CONCLUSION

A board of county commissioners, acting as the board of trustees of an unincorporated town, cannot pay the labor required in the construction of sewage disposal facilities on a “force account basis” without advertising for bids.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By DANIEL R. WALSH, *Deputy Attorney General*

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**158 Marlette Lake Water System—The opinion discusses legislative intent (Chapter 463, Statutes 1963) as to the fixing of contract water rates, in the supplying of water by the system to the public utility companies of Carson City and Virginia City.**

CARSON CITY, July 29, 1964

MR. HOWARD E. BARRETT, *Director, Department of Administration, Carson City, Nevada*

#### STATEMENT OF FACTS

DEAR MR. BARRETT: The Legislature of 1963 enacted Chapter 462, which provided for the purchase by the State of certain lands therein described, and water rights of the Marlette Water Company, for the price of \$1,650,000, payable by the issuance of its general obligation coupon bonds, to be of content therein provided. The provisions of this chapter were executed by the officers therein empowered and the State of Nevada is now the owner of the system. The system prior to the purchase supplied, and now supplies, water to the state government and to the private utilities which sell domestic water in the cities of Carson City and Virginia City.

The Legislature of 1963 also enacted Chapter 463, which provided very generally for the administration of the Marlette Lake Water System. The existing contracts for the supplying of water to the public utility systems of the Carson City and Virginia City communities contain provisions for renegotiation of price. The Department of Administration (Chapter 463, Statutes 1963, Section 2(3)) is designated as the state agency to supervise and administer the functions of the Marlette Lake water system.

#### QUESTION

The question now arises as to the legislative intent respecting the fiscal administration of the system. More specifically, did the Legislature intend the three users of the system to pay (or be charged as a matter of bookkeeping) an amount that would pay the annual cost of operation plus the interest on the bonded indebtedness?

## ANALYSIS

To make the question scope more clear, we should keep in mind that of the three present users one is the owner, and any equitable computation would make allowance for the proportion of consumption by each of the three. For example, the State might be using 35 percent, the Carson City private utility 50 percent, and the Virginia City private utility 15 percent. (These figures have not been supplied as correct, or even as an estimate, but are set out here only to illustrate a point.) Whatever the correct figures are, as a matter of equity, should be worked out as a preliminary basis of computation. For the reason here set out, we have used the expression “as a matter of bookkeeping.”

Just what was intended as an amount objective to be reflected in the water rate of the two public utilities is far from clear. However, certain guidelines are present. Section 2(2), Chapter 463, Statutes 1963, in part provides: “The purposes of Marlette Lake water system are: \* \* \* (e) To sell water under *equitable and fiscally sound contractual arrangements.*” (Italics supplied.)

Sections 4 and 5 of this act provide:

Sec.4. 1. The Marlette Lake water system working capital fund is hereby created in the state treasury. Such fund shall not revert to the general fund nor shall it be transferred.

2. The Marlette Lake water system working capital fund shall be used for the:

(a) Deposit of revenue resulting from the sale of water and any other receipts.

(b) Payment of costs of operation in accordance with the provisions of chapter 353 NRS.

3. At the end of each fiscal year, the state controller is directed to transfer the difference between revenue received and costs of operation paid out during the fiscal year to the consolidated bond interest and redemption fund to reduce the ad valorem tax necessary for amortization of payment of interest on the general obligation bonds of the State of Nevada issued to acquire the Marlette Lake water system. When such bond principal and interest have been fully paid any excess of revenue over costs of operation shall be transferred by the state controller to the general fund in the state treasury at the close of business at the end of each fiscal year.

Sec. 5. There is hereby appropriated from the general fund in the state treasury to the Marlette Lake water system working capital fund the sum of \$25,000.

From these two sections of the act certain conclusions may be reached as regards legislative intent, viz:

1. That the Legislature intended the income from the two public utility companies (not including any allowance for the use of water by the State) to be more than adequate annually to discharge all costs of operation, thus to permit the excess of income above costs of operation to be transferred to the consolidated bond interest and redemption fund. It was intended that this excess should reduce the tax necessary to the discharge of the obligation, both principal and interest, of the bonded indebtedness. Thus as a minimum it was intended that the income from these two public utility companies would more than cover the annual cost of operation of the system. This constitutes the first guideline.

2. The second clue to intent is contained in Section 2(2)(e), in that the Department of Administration should sell the water “under equitable and fiscally sound contractual arrangements.” As to what constitutes an equitable and fiscally sound contractual arrangement, as to each utility, the price that was contracted by Marlette Lake Company of the Carson City utility prior to the state purchase of the system, affords some

basis of comparison. Similarly the price that was paid by the Carson City utility prior to the state purchase, by comparison, affords a clue as to what contract would be equitable as regards the Virginia City utility. Finally, the anticipated sum of income from the metered consumption of both utilities was expected by the Legislature to exceed the annual cost of operation of the Marlette Lake water system.

3. We feel that another clue to legislative intent is implicit in the provisions of the statute. An "equitable and fiscally sound contractual arrangement" with the two utility companies that purchase the water from the state as the owner should be accorded a rate (not necessarily the same rate for each) which rate (or a similar rate) should be applied to the metered consumption by the state (for bookkeeping purposes) and the resultant bookkeeping income should be sufficient to pay the annual costs of operation plus the annual bookkeeping cost of depreciation of the system. What we have said is that the Legislature clearly intended that once the system is paid for, and bonds matured, paid and retired, the cost of supplying water to the domestic users of Carson City and Virginia City should not be a burden upon the taxpayers of the state.

#### CONCLUSION

The Legislature did not provide that the cash income from the sale of water to the two public utilities should be enough to pay the annual interest on the bonded indebtedness, but did not provide that the contracts for the sale of water should be "equitable and fiscally sound" and did provide that the gross income from the two contracts should be enough to pay the annual costs of operation of the system and that the sums above costs of operation should be transferred to the consolidated bond interest and redemption fund annually to thus reduce the sums necessary to be appropriated for the servicing of said bonded indebtedness.

It is also clear that the Legislature intended charges to be made by the Department of Administration of these two utilities in amounts compatible with the above tests, and that lesser charges would place the Director of the Department of Administration and the Public Service Commission of Nevada, when the former reports the operation to the Legislature, in a position of serious criticism. The residents of Elko and Clark (and other distant) counties should not be required (through the state tax contribution) to contribute moneys for the supplying of domestic water to the residents of Carson City and Virginia City.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**159 In the absence of having been a resident of Nevada at the time of entering the service, a veteran filing for exemption must have been a resident of Nevada for the 3 years immediately preceding December 31, 1963.**

CARSON CITY, July 30, 1964

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

Attention: Philip M. Marfisi, Deputy.

DEAR MR. MCDANIEL: You have directed to this office an inquiry as to a correct interpretation of [NRS 361.090\(1\)](#), which reads as follows:



The property, to the extent of \$1,000 assessed valuation, of any actual bona fide resident of the State of Nevada who was such a resident for a period of more than 3 years before December 31, 1963, or who was such a resident at the time his or her entry into the Armed Forces of the United States, who has served a minimum of 90 days on active duty, who was assigned to active duty at some time between April 21, 1898, and June 15, 1903, or between April 6, 1917, and November 11, 1918, or between December 7, 1941 and December 31, 1946, or between June 25, 1950 and January 31, 1955, and who received, upon severance from service, an honorable discharge or certificate of satisfactory service from the Armed Forces of the United States, or who, having so served, is still serving in the Armed Forces of the United States, shall be exempt from taxation.

You are especially interested in that portion of the law which reads “who was such a resident for a period of more than 3 years before December 31, 1963.”

#### ANALYSIS

The purpose of the amendment was to prevent nonresidents of Nevada from coming into our State, remaining a short time, and then claiming the veteran’s exemption. Under the law a veteran can file who was a resident at the time he entered the service, or, being a veteran, has indicated his intent to become a Nevada citizen by remaining in Nevada for the 3 years immediately preceding December 31, 1963.

#### CONCLUSION

It is, therefore, the opinion of this office that, in the absence of having been a resident of Nevada at the time of entering the service, a veteran filing for exemption must have been a resident of Nevada for the 3 years immediately preceding December 31, 1963.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**160 Taxation—Statutes providing tax exemptions to widows and orphans, totally blind persons, and veterans strictly construed and interpreted as allowing only one exemption, under each pertinent statute, to each eligible claimant within any 12-month period.**

CARSON CITY, August 12, 1964

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

#### STATEMENT OF FACTS

DEAR MR. BILBRAY: A tax exemption of \$1,000 to widows and orphans, \$3,000 to the totally blind, and \$1,000 to veterans is allowed under the provisions of [NRS 361.080](#), [361.085](#) and 361,090, respectively. It is suggested that, because of taxation of motor vehicles on a calendar year basis, and of other property on a fiscal year basis, two tax exemptions under any of these statutes within an 18-month period, might be possible. An example is that of a taxpayer who was eligible for an exemption under one of these statutes at the beginning of the fiscal year on July 1, 1963, and whose only taxable property was an automobile. This was not licensed until March 1964, at which time a tax

exemption was applied for and allowed. In June 1964, he purchased a mobile home, which became taxable for the fiscal year commencing July 1, 1964. Prior to August 1, 1964, he filed the affidavit required by law and claimed an exemption under the same statute on the mobile home for the said fiscal year. If this is allowed when his 1964-65 fiscal year taxes become due on July 1, 1965, this taxpayer will have received two tax exemptions under the same statute within a period of 18 months. It is pointed out that the same result would be possible if this taxpayer had acquired real property after March 1964, in which case, the county assessor would be required to allow this second exemption when claimed on the secured tax roll for the fiscal year ending June 30, 1965.

#### QUESTION

Is it legally permissible, under existing tax exemption statutes, for a taxpayer to be allowed the authorized statutory exemption upon each of two dates separated by a period of less than 12 months?

#### ANALYSIS

We believe that the problem posed by this question is one of administration rather than one made insoluble by reason of unworkable laws. Prior to enactment of the so-called vehicle privilege tax statute in 1963, being [NRS 371.010](#) to [371.230](#), motor vehicles were subject to an ad valorem tax, bases upon the fiscal year, extending from July 1 of one year to and including June 30 of the following year. Consequently, the adoption of the calendar year basis, viz, January 1 to and including December 31 of the same year, for the taxation of motor vehicles as is provided for under the 1963 act, established a separate and distinct period for taxation of this class of property as opposed to the fiscal year basis in the taxation of all other property. The overlapping of these two periods has undoubtedly created some confusion to county assessors about the State. In view, however, of A.G.O. No. 108, dated February 5, 1964, expressing the view that the vehicle privilege tax statute is discriminatory and, therefore, of doubtful constitutionality, it will likely come before the next Legislature for modification or repeal.

Certain definite requirements are necessary in order for a taxpayer to qualify for the allowable exemption under each of the exemption statutes here under discussion. Application for the exemption under each is made by filing of an annual affidavit with the county assessor, showing that the claimant possesses all the eligibility requirements. (See [NRS 361.080](#), [361.085](#), and [361.090\(3\)\(4\)](#).) Because of possible changed circumstances and conditions since a previous filing, it is of the utmost importance that the affidavit be filed annually. Otherwise, the county assessor would be unable to determine which taxpayers are qualified or which ones continue to be qualified each year. Conceivably, a taxpayer could qualify for the allowable exemption under any one, two, or even all three of the above-cited statutes. Furthermore, the total authorized exemption, whether it results from a claim made pursuant to one or more of these statutes, may be allocated to the payment of taxes becoming due on different classes of property, provided the entire sum is applied within one annual period.

In requiring a claimant for any of the allowable tax exemptions to file an annual affidavit, the Legislature evidenced an intent to restrict the taxpayer to only one benefit each year under each statute. This is true, whether the claim is made during the calendar or the fiscal year. Our conclusion finds support in the general rule of statutory interpretation that all exemption statutes must be strictly construed against those claiming their benefits. Also, since taxation of property is the rule, and exemption thereof the exception, the Legislature is presumed to have intended no broader extension of the allowable exemption than is specifically provided for. By reason of this rule and the presumed legislative intent, in the case where a taxpayer licenses his automobile in March and claims, and is allowed, a tax exemption for the calendar year, as was done in the example set out in the facts, he has then received all the benefits provided for in the statute under which he claims, for a full year period. The fact that this period overlaps

with the fiscal year period, for which he is taxed on a newly acquired mobile home, or possibly real property, cannot enlarge or otherwise modify his allowable exemption under any of these statutes.

Since the county assessor collects personal property taxes only ([NRS 36.505](#)), and the county treasurer, as ex officio tax receiver, receives taxes for property on the secured tax roll ([NRS 361.475](#)), these two officers should make available to each other their respective records of all tax exemptions allowed under the exemption statutes hereinabove mentioned. This system would provide assurance that no claimant would be allowed an exemption under any statute more often than once within a 12-month period.

#### CONCLUSION

It is the opinion of this office that whether a tax exemption, under either or all of the Nevada tax exemption statutes, is claimed for the calendar year on motor vehicles, or for the fiscal year on other property, the claimant is entitled to the total authorized exemption only one during the 12-month period in which he makes his claim.

The question propounded is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*

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**161 Hospitals, County—The Boards of County Commissioners of Ormsby and Douglas counties, or either of them, have not been authorized to accept a gift and obligation of support of the Carson-Tahoe Hospital, nor to submit any pertinent questions to the electors. The acceptance involves a contingent fiscal obligation, the conditions of which require enabling legislation.**

CARSON CITY, August 6, 1964

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

#### STATEMENT OF FACTS

DEAR MR. STOKES: The Carson-Tahoe Hospital Association was formed as a nonprofit corporation, under the laws of the State of Nevada, on December 23, 1954. Its articles of incorporation have been amended a number of times and last amended on July 16, 1964.

The hospital has had its financial troubles. The amendment of July 16, 1964, provides that the trustees may liquidate the corporation and after the payment of the corporate debts, dispose of the remaining funds and property by gift to: (1) Ormsby County, or (2) the State of Nevada, or (3) "such public or quasi-public district or entity of combination of entities or hospital corporation organized under the laws of the State of Nevada, which shall include the said County of Ormsby, and the purpose of which is to provide hospital service for the geographical area of the said Ormsby County \* \* \*."

Pursuant to this amendment, overtures have been made to the County Commissioners of the Counties of Douglas and Ormsby, that the counties named take the physical hospital property as a gift and administer it for the benefit of the two counties named. The county commissioners of the two counties have met jointly and have passed a resolution favoring placing the question on the ballot for the November 1964 general election. The possibility of Ormsby County taking title to the property and administering it alone is also presented for consideration.

## QUESTIONS

1. Is it necessary, under the above facts, in order that Ormsby and Douglas counties be authorized to accept the proposed gift of hospital facilities, to place the question on the ballot to be determined by the electors?
2. If said gift may be accepted by the board or boards of county commissioners, would they be authorized, without the necessity of a petition or election, to appoint a board of hospital trustees as provided in [NRS Chapter 450](#), or otherwise, to operate and maintain said facilities as a county hospital?
3. Assuming an affirmative answer to question number 2, what is the authority of the board or boards of county commissioners to budget and expend such funds as may be necessary, and levy a tax therefor, for the maintenance and operation of the county hospital?
4. If a petition and election are deemed necessary, and in view of the fact that no bond issue or tax levy is currently contemplated, what would be the question to be voted upon by the electors at the general election?

## ANALYSIS

It will be noted that under the amendment of July 16, 1964, provision has not been made for Douglas county to take the hospital title and operation alone. Provision is made for Ormsby County to take it alone or to join with another or other counties in accepting the title and responsibility of operation.

It will also be kept in mind that for a county or counties to accept the title to the hospital facilities and incur the duty of maintaining a hospital facility constitutes the acceptance of a contingent obligation. That is, the taxpayers may be required to contribute to the cost of maintenance.

Under Chapter 450 of NRS, entitled "County Hospitals", provision is made for a petition for the establishment of a county hospital ([NRS 450.030](#) and [450.040](#)), and for an election (either general or special) upon the question of the establishment of such hospital and the issuance and sale of bonds, the proceeds to be used in defraying the cost. However, there is no provision in this chapter, or elsewhere insofar as we have discovered, for the acceptance of a gift of a hospital, together with the burden of supporting it, either by a county alone or by two counties in conjunction, either by affirmative vote of the electors resident of the area concerned, or by the county commissioners, without the necessity of obtaining such affirmative vote.

Under the well-established legal doctrine that county commissioners have only such powers as are expressly conferred upon them by law, including implied powers reasonably necessary to carry into operation the powers expressly conferred, we are clearly of the opinion that the county commissioners are not authorized to provide for an election of this question, or to proceed without an election. *First National Bank of San Francisco v. Nye County*, [38 Nev. 123](#), 145 P. 932; *State v. Boerlin*, [30 Nev. 473](#), 98 P. 402; *State v. McBride*, [31 Nev. 57](#), 99 P. 705; *Office Specialty Manufacturing Company v. Washoe County*, [24 Nev. 359](#), 55 P. 222; *State ex rel. King v. Lothrop*, [55 Nev. 405](#), 36 P.2d 355.

We are persuaded that this conclusion is correct by reflecting upon certain inescapable questions that would exist if we determined otherwise, viz:

In the absence of an enabling statute, how are the county commissioners to determine upon what basis there is to be a sharing of the contingent financial liability?

How could they determine the manner in which there is to be a sharing of governmental authority over the hospital?

How could they determine the manner in which the hospital patients from the two counties would be entitled to preference in admission, or entitled to preference as to rates as between local patients and those admitted that may reside elsewhere?

How could they determine the manner of financing against the ever present hazard of deficits in operation, and the sums reasonably necessary to be raised and carried in the budgets to cover such anticipated deficits?

In short, the authority to deal with such problems has not been granted to the boards of county commissioners of either county, nor may such power be inferred, nor is there any authority to submit any such matters to the people in an election.

The Legislature alone is authorized and equipped to explore all facets of the problem and to grant the authority, and the manner of its exercise, by which the rights and responsibilities of the interested counties may be clearly defined.

The boards of county commissioners perhaps should meet again jointly and, in light of this opinion, should determine what type of authority they desire to have conferred by the Legislature, and should communicate their request for definite enabling legislation to their legislative delegation, for the consideration of the Legislature to convene in January 1965.

In light of these conclusions, the questions propounded have become moot.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**162 Public Employees' Retirement Board, with the concurrence of the State Board of Finance, could change investment counselors provided that those comprising the firm were not engaged as brokers or dealers in securities in one form or another and have no pecuniary interest in such business.**

CARSON CITY, August 13, 1964

MR. KENNETH BUCK, *Executive Secretary, Public Employees' Retirement Board, Carson City, Nevada*

DEAR MR. BUCK: You have forwarded to this office for analysis and opinion a proposal by a firm to assume the duties of investment counselors as provided for in [NRS 286.680](#)(1), which reads as follows:

Notwithstanding the provisions of Chapter 355 of NRS or of any other law the board may invest and reinvest the moneys in its funds as provided in [NRS 286.690](#) to [286.800](#), inclusive, and may employ investment counsel for such purpose. The provisions of [NRS 286.680](#) to [286.800](#), inclusive, shall not be deemed to prevent the board from making investments in accordance with the provisions of Chapter 355 of NRS.

Four of the officers or directors of the proposed investment counselors hold positions as follows: (1) manager of a branch office of a national brokerage firm dealing in securities, (2) an executive vice president of a bank who is responsible for the investment of \$1.7 billion in securities, (3) a vice president and general manager of a savings and loan institution, and (4) the president of a firm which deals in financial investments including the presumed sale of securities.

Your question is whether an application by a firm including the foregoing members is eligible under the law to become investment counselors for the Public Employees' Retirement Board.

## ANALYSIS

The Legislature, in its infinite wisdom, foresaw the danger of placing the funds of the Public Employees' Retirement system in the hands of any firm or persons that could in any way be designated as brokers or dealers in securities, or as having a direct pecuniary interest in such business. [NRS 286.680](#)(2) reads as follows:

No person, firm, or corporation engaged in business as a broker or dealer in securities or having a direct pecuniary interest in any such business shall be eligible for employment as investment counsel for the board.

Black's Law Dictionary, 4th Edition, defines a broker as one who deals in securities for others. *White v. Financial Guarantee Corporation*, 56 P.2d 550-553. "Securities" are defined in Black as evidences of debts or of property.

Under this definition, and with a realistic approach to the service rendered by brokerage firms, the only person above-named who could be classed as both a broker and a dealer is the manager of the branch office of the national brokerage firm.

A dealer is defined in Black as one who buys to sell. *Commonwealth v. Lutz*, 130 A. 410. Under this definition the executive vice president of the bank responsible for the investment of \$1.7 billion in bonds could presumably be a dealer if the bonds are purchased by the bank for resale.

If the vice president of the savings and loan institution deals in mortgages, he presumably might be a dealer, and the same is true of the president of a firm which deals in financial investments through the purchase and sale of securities. These are matters to be closely looked into by the Public Employees' Retirement Board and the State Board of Finance, as provided in [NRS 286.680](#)(3).

The investment and control of a sum approximating \$46 million, upon which the employees of this State must depend in most instances for future security, should most certainly be in the hands of a firm with a broad and extensive background in the investment field. It was clearly the intent of the Legislature that the sole and only business of such a firm should be in making investments showing a safe return to the Public Employees' Retirement Fund, and indicating prior years of service in such a business, whether it be in Nevada or elsewhere.

## CONCLUSION

It is, therefore, the opinion of this office that the Public Employees' Retirement Board, with the concurrence of the State Board of Finance, could change investment counselors provided that those comprising the firm were not engaged as brokers or dealers in securities in one form or another and have no pecuniary interest in such business.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**163 Modifying A.G.O. No. 161—County can accept gift of hospital and facilities if sanctioned by separate vote of registered voters of participating counties.**

CARSON CITY, August 13, 1964

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

DEAR MR. STOKES: You have called to the attention of the Attorney General A.G.O. No. 161, written by Chief Assistant Attorney General D. W. Priest, which in effect held that because no specific power was given to county commissioners to accept as a gift a hospital and its facilities, that such gift could not be accepted. You have asked me to review this opinion.

#### ANALYSIS

The board of trustees of the Carson-Tahoe Hospital have been granted by amendment to its articles of incorporation the power to dispose by gift of the hospital and its facilities to one or more political subdivisions of the State.

The situation, as we review it, is that unless this gift can be accepted, Ormsby and Douglas counties will be without the services of a general hospital. This we feel would be adverse to the public welfare, and thus, if the gift can be legally accepted, it would not fall on constitutional grounds.

If the hospital can be accepted the County Commissioners of Ormsby and Douglas counties, acting in concert, could, under [NRS 450.070](#), appoint a board of hospital trustees to serve until the following general election when such trustees would be elected in accordance with the statute.

If the electors can vote on a bond issue to establish such a hospital ([NRS 450.030](#)), we cannot fathom why they could not vote to accept a hospital with no bonded indebtedness, subject only to a tax to support such hospital in the future.

While it is true that no specific authority is given to county commissioners to accept the gift of a hospital, [NRS 244.195](#) reads as follows:

The board of county commissioners shall have power and jurisdiction in their respective counties to do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred on the board.

This broad power, we feel, extends to the acceptance, as a gift, of a hospital and its facilities under the general welfare doctrine, provided it is approved by the people.

There can be no question but that the taxpayers of Ormsby and Douglas counties could not have this additional tax burden imposed upon them without their consent, and that, therefore, the question of accepting the gift must be acquiesced in by a majority of the voters of both counties at the next general election.

#### CONCLUSION

It is, therefore, the opinion of this office that A.G.O. No. 161, dated August 6, 1964, be modified so as to permit the contiguous Counties of Ormsby and Douglas to acquire, by gift, the property and facilities of the Carson-Tahoe Hospital upon a majority vote of the electors of both counties accepting such gift.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**164 Motor Vehicles—Distribution by discount house of circulars advertising motor vehicles for sale at reduced prices is an offer to sell, and therefore, in violation of [NRS 207.250](#) unless the discount house is a dealer or manufacturer licensed as such under Chapter 482 of NRS.**

CARSON CITY, August 19, 1964

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

DEAR MR. MARSHALL: You have directed to this office an inquiry as to whether a discount house, through an advertising circular, can offer automobiles at discounts ranging in amounts of from \$300 to \$1,000 less than retail price, without being licensed as a dealer or salesman under Nevada law.

You state that your office charged the firm with a violation of [NRS 207.250](#), which reads as follows:

1. It is unlawful for any person, firm, company, or corporation to sell, offer to sell, or display for sale any motor vehicle unless such person, firm, company, or corporation is either:
  - (a) The legal or registered owner of such vehicle;
  - (b) A reposessor of such vehicle, selling the vehicle on a bid basis; or
  - (c) A manufacturer or dealer licensed under the provisions of Chapter 482 of NRS.
2. The provisions of this section do not apply to any executor, administrator, sheriff or other person who sells a motor vehicle pursuant to powers or duties granted or imposed by law.
3. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

#### ANALYSIS

It will be noted that under the law it is unlawful for any person, firm, company or corporation to sell, *offer to sell*, or display for sale *any* motor vehicle unless such person, firm, company or corporation meets the requirements of [NRS 207.250](#).

We cannot but feel that the circular distributed is an *offer to sell* motor vehicles. The question then arises as to whether the discount house meets the exceptions set forth in the law. It clearly cannot be held to be the legal or registered owner of such vehicle. It is not a reposessor, nor is it a manufacturer or dealer licensed under the provisions of Chapter 482 of NRS.

The Legislature protects all dealers of motor vehicles by attempting to insure that no advantage will attach to one that does not attach to another. Dealers who enter into agreements with discount houses would, because of an increased volume of sales, be able to reduce the retail price of their cars, so that dealers not connected with the discount house would be unable to meet the competitive price.

#### CONCLUSION

It is, therefore, the opinion of this office that the circular distributed by the discount house is an offer to sell, and that said discount house, not being a manufacturer or dealer licensed under the provisions of Chapter 482 of NRS, is in violation of [NRS 207.250](#).

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**165 Nevada Industrial Commission—Where Legislature fails to make appropriation for payment of Nevada industrial insurance for coverage of persons serving without compensation as members of Eldorado Advisory**



**Group, a state agency, payment thereof may not lawfully be made from any other state funds, and Industrial Commission required to continue insurance in effect, deferring receipt of premium payment until Legislature may make appropriation for that purpose.**

CARSON CITY, August 21, 1964

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*

Attention: Wm. J. Crowell, Esq., Counsel

#### STATEMENT OF FACTS

GENTLEMEN: The Eldorado Valley Advisory Board was created in 1957 by legislative enactment and is now cited as [NRS 321.420](#). It consists of 12 members appointed by the Governor from certain county and city officials of Clark County, two representatives at large, and one from organized labor. Its purpose is to act as an advisory body to the Colorado River Commission in connection with the development of Eldorado Valley, located in Clark County, Nevada, and all members serve without compensation.

Payment of premiums for Nevada industrial insurance coverage was provided for by direct legislative appropriation for the period from July 1, 1959, to July 1, 1961, based upon an annual statement prepared by the Legislative Auditor (Chapter 146, Section 1 (2), Statutes 1959). Under this plan, the appropriation made covered the payments falling due over the preceding 2-year period. After appropriating the amount due for the period between July 1, 1959, and July 1, 1961, the Legislature at the 1961 Session changed the plan of making these payments. The law was amended so as to require each board, commission, department, agency, or bureau of the State to budget for these premiums in the same manner as other expenses are budgeted for, and to pay them out of moneys appropriated therefor. ([NRS 616.079\(2\)](#))

Since July 1, 1961, no premiums have been paid by the group and it is now in arrears in the amount of \$578.09, which it refuses to pay upon the ground of certain statutory prohibitions which are hereinafter discussed. This situation has given rise to questions substantially as follows:

#### QUESTIONS

1. Does the Eldorado Advisor Group have authority to expend moneys received through legislative appropriation for payment of premiums incurred for insurance coverage of its members with the Nevada Industrial Commission?
2. If these premiums are not paid, is the Nevada Industrial Commission authorized to refuse coverage to members of the group?

#### ANALYSIS

The provisions of the Nevada Industrial Insurance Act are made applicable, compulsory, and obligatory, to and upon the State, counties, and cities, and their political subdivisions, by reason of [NRS 616.275](#), which reads as follows:

Where the state, county, municipal corporation, school district, a city under special charter and commission form of government, or a contractor under the state, county, municipal corporation, school district, or a city under special charter and commission form of government, is the employer, the terms, covenants, conditions and provisions of this chapter for the payment of premiums to the state insurance fund and the accident benefit fund, for the payment of compensation and the amount thereof, for such injury sustained by an employee of such employer, shall be conclusive, compulsory and obligatory upon both

employer and employee without regard to the number of persons in the service of any such employer.

For purposes of the act, all persons appointed as members of boards, agencies, etc., serving without compensation, are defined nevertheless as employees of the State and deemed as receiving a wage of \$250 per month ([NRS 616.079\(1\)](#)). This section, in paragraph 2, also makes provision as to the method of paying premiums for industrial insurance coverage on all such employees. Following is the text of the statute in these matters:

1. Members of state departments, boards, commissions, agencies or bureaus appointed by the governor, the legislature or other statutory authority who serve without compensation, and the members of the state board of education and the members of the board of regents of the University of Nevada, 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.

2. For the fiscal year commencing July 1, 1961, and for each fiscal year thereafter, each such state department, board, commission, agency or bureau and the state department of education and the board of regents of the University of Nevada shall budget for such premiums in the same manner as other expenditures are budgeted for, and shall pay such premiums out of moneys appropriated therefor in the manner provided in [NRS 616.405](#) to the extent that such provisions are applicable.

It must first be determined whether or not the term “group” as used in the body designated as “Eldorado Valley Advisory Group” falls into the same category as commissions, boards, departments, agencies, and bureaus. Although not specifically enumerated among them in paragraph 1 of the above section, we have no hesitation nevertheless in finding that it comes within this classification. We base this upon the fact that its member are appointed by the Governor, they serve without compensation and the group performs functions on behalf of the State similar to those carried on by those bodies which are specifically enumerated. Being a state agency, this group must be included within the benefits and protection of industrial insurance the same as other agencies of the State.

In paragraph 2 of the above quoted section, the method for making payments of industrial insurance premiums on members of these agencies is set forth. It is there specifically provided that such premiums be paid out of moneys appropriated for that purpose. However, in the case of the Eldorado Valley Advisory Group, no moneys have been appropriated for that purpose since July 1, 1961, all of which has created the problems hereinabove propounded. The Nevada Industrial Commission, because of this situation, finds itself confronted with a legislative mandate to provide insurance coverage to the members of this group, while the group itself faces another mandate that it pay the premiums therefor. We look to moneys appropriated to the group for other purposes for a possible solution to this dilemma.

In creating the group in 1957, the Legislature set up a trust fund in the amount of \$7,500, known as the Eldorado Valley Development Fund. Under the law as then enacted, the provisions of which now appear as [NRS 321.460\(2\)](#), none of the moneys of the fund shall be used for any purpose other than to acquire land and to carry on engineering, planning studies and surveys in connection with development of the valley. It is obvious that there is no authorization in this section permitting payment of these premiums from this fund. In addition to the prohibition which the Legislature imposed in the expenditure

of moneys appropriated for this fund, [NRS 353.255A](#)(1) requires that all appropriations be specifically applied. This section provides as follows:

The sums appropriated for the various branches of expenditure in the public service of the state shall be applied solely to the objects for which they are respectively made, and for no others.

We turn next to the possibility of these premiums being paid out of the General Fund. It becomes immediately apparent that this course is prohibited by Article IV, Sec. 19, Constitution of Nevada, which reads as follows:

No money shall be drawn from the treasury but in consequence of appropriations made by law.

This section of the State Constitution has been expounded by the Nevada State Supreme Court in several cases where payment of a claim was sought when no appropriation had been made for the purpose for which it was incurred. See: *State v. LaGrave*, [23 Nev. 25](#); *State v. Eggers*, [35 Nev. 250](#); and *State v. Eggers*, [29 Nev. 469](#). In the latter case, the Legislature had, by statute, created the State Industrial and Publicity Commission, with the provisions that the chairman receive \$2,500 annually as salary, and that the members should be paid necessary mileage and traveling expenses, all payable out of the General Fund. The court held that salaries of public officials being in a fixed sum are payable out of the General Fund without appropriation therefor as a necessity in the continuance of the state government, but that traveling expenses, with no maximum limit, do not fall into the category of such necessity and that, therefore, their payment was unauthorized by reason of the above-quoted section of the Constitution.

Although it is made mandatory under the provisions of [NRS 616.079](#)(2) that Eldorado Valley Advisory Group, along with other state agencies whose members serve without compensation, budget for and pay premiums for industrial insurance coverage on its members, this becomes an impossibility when no moneys have been appropriated for that purpose. For this reason it would be a travesty of justice to invoke [NRS 616.660](#), making it a misdemeanor and fixing a penalty for an official of that group to fail to pay such premiums.

We find no legal method whereby these premiums may be paid from any state funds. May their payment, then, be held in abeyance, or deferred, until moneys have been appropriated for that purpose? If this is done, it would in effect constitute the incurrence of an obligation for which funds have not been appropriated. Under the provisions of [NRS 353.260](#)(2) deficiency spending is made unlawful. That section reads:

It is unlawful for any state officer, commissioner, head of any department or employee of this state to bind, or attempt to bind, the State of Nevada or any fund or department thereof in any amount excess of the specific amount provided by law, or in any other manner than that provided by law, for any purpose whatever

Despite this restriction, however, we are of the opinion that inasmuch as the Legislature made industrial insurance coverage for members of the Eldorado Valley Advisory Group mandatory, but made no appropriation therefor, it intended to make appropriations for this purpose after the incurrence of the expense, viz., at some future session. That is exactly what was done under the plan for premium payments in the 1959 statute. By so doing the Legislature made the method of payment of industrial insurance premiums by state agencies an exception to the above-quoted statute. At present this group's insurance premiums have remained unpaid since July 1, 1961, during which time coverage on its members has been kept in effect. A continuance of this situation until the

next session of the Legislature, when the matter may be remedied by proper action, can produce no irremediable results. This would appear to be a practical solution for the situation before us and, as well, it would carry out what appears to have been the legislative intent.

While there is nothing contained in the industrial insurance act requiring the Nevada Industrial Commission to extend credit to or defer payment of premiums due from another state agency, neither does the act prohibit such action. By doing so, the commission is enabled to comply with the legislative mandate that industrial coverage be provided this group, even though receipt of premium payments is deferred. In our opinion, the statutes require this course of action by the commission under this situation.

In arriving at the above solution to the problems here under discussion, we do so with the view that each statute hereinabove discussed must be given full effect if possible, keeping in mind, however, a rule of statutory interpretation which may well be invoked. It is stated in *Ferro v. Bargo*, [37 Nev. 139](#), as follows:

In construing or applying the provisions of any statute, the purpose or object of the statute should ever be kept in mind, and a construction or application should be avoided which sacrifices substance to a mere matter of form.

It should also be added that, in view of the statutory provisions pertinent hereto, the above solution must be confined to only those situations where state agencies are involved. Nothing herein stated is intended to apply to any circumstances or situations involving private interests or persons.

#### CONCLUSION

From the foregoing this office concludes the following:

1. Applicable statutes require that the Eldorado Valley Advisory Group, as well as other state agencies whose members serve without compensation, pay premiums on industrial insurance coverage for their members from legislative appropriations made for that purpose. Since the only moneys presently appropriated to this group created a trust fund which is limited to expenditures for specific purposes and which do not include insurance premium payments, no part of this fund may be spent therefor by or on behalf of the group. This inquiry is answered in the negative.

2. Since the Nevada Industrial Insurance Act makes coverage of members of the Eldorado Valley Advisory Group mandatory, the Nevada Industrial Commission is without authority to refuse such coverage under the circumstances hereinabove set forth. This question is also answered in the negative, with direction to apply to the next Legislature for remedial action.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*

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**166 Sales and Use Tax—Returnable containers used by Nevada bottlers in the distribution of soft drinks in returnable bottles to retailers are not subject to the use tax imposed by Chapter 372 of Nevada Revised Statutes.**

CARSON CITY, August 21, 1964

HON. WILLIAM J. RAGGIO, *District Attorney, Washoe County, Reno, Nevada*

DEAR MR. RAGGIO You have requested of this office an opinion as to whether the use tax applies to returnable containers in which returnable soft drink bottles, with their contents, are placed for delivery to retailers.

We feel that this question was answered by A.G.O. No. 163, dated June 7, 1960. There the question was whether returnable bottles purchased by Nevada bottlers from out-of-state sources were subject to the use tax under Chapter 372 NRS. The learned Attorney General held, and rightly so, that they were not.

The facts as disclosed to us in the present instance are as follows: Nevada bottlers in the distribution of soft drinks in returnable bottles are compelled to use boxes which hold securely a given number of bottles. These containers are returnable to the bottlers for reuse.

#### ANALYSIS

[NRS 372.290](#) reads as follows:

1. There are exempted from the taxes imposed by this chapter the gross receipts from sales of, and the storage, use or other consumption in this state of:

(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter.

(c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

2. As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

We feel that boxes in which filled bottles are delivered to the retailer, and which are used merely for convenience, and which are to be returned to the bottler, clearly come within the exemption set forth in (c) above.

The Tax Commission itself in Ruling 31 (in effect since May 1955) defines returnable containers as, "Containers of a kind customarily returned by the buyers of the contents for reuse by the packers, bottlers or sellers of the commodities therein."

#### CONCLUSION

In line with the well-reasoned A.G.O. No. 163 of June 7, 1960, and in line with the sales and use tax law itself, as well as the supporting definition of the Tax Commission, it is the opinion of this office that returnable containers used by Nevada bottlers for delivering bottled goods to retailers are exempt, under Chapter 372 NRS, from the use tax.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**167 Marlette Water System—Opinion deals with: (1) supervisory and administrative jurisdiction over system by Department of Administration, (2) Lack of authority over system by the Public Service Commission of Nevada,**

**and (3) Proposed provisions of contract for sale of water by system to Virginia City Water Company.**

CARSON CITY, August 24, 1964

MR. HOWARD E. BARRETT, *Director, Department of Administration, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BARRETT: A proposed contract was prepared by this department on April 17, 1964, regulating the sale of water by the system to the Virginia City Water Company, hereinafter referred to as the "Water Company," which was submitted to the Water Company by the Director of Administration for its study prior to execution. Counsel of the Water Company have objected in writing to certain of the provisions of the proposed contract. We shall hereafter deal with the specific objections of counsel:

QUESTIONS — ANALYSIS AND CONCLUSIONS

(a) Counsel suggests: "Subparagraph 1(b) should be deleted in its entirety." We quote the provision as follows:

The rights of the Water Company hereunder to receive water from the State, by its Marlette Lake Water System are subject to the further limitations of availability of water and capacity of the system to transport the quantity of water required under the terms hereof. The Water Company hereby agrees to accept the State's determination of the availability of water and the capacity of the system to transport it.

The system should not seriously consider the deletion of this paragraph. The State bought the system because of State needs (*Marlette Lake Company v. Sawyer*, [79 Nev. 334](#)), and in any event if water is available for the State, it will also be available for the Water Company, unless the line may break down or become damaged or inoperative in the lines from Lakeview Hill to Six Mile Reservoir. The State cannot and will not neglect its needs in this respect and its needs and the system improvements are identical to the needs and system improvements of the Water Company. We oppose this deletion as suggested by counsel.

(b) Counsel suggests: "The last sentence of paragraph 2 commencing on line 27, page 4, should be deleted in its entirety."

We quote the provision as follows:

The Water Company waives any objection or claim of damages to the discontinuance of the flow of water under its contract, occasioned by the necessity of repair or replacement service.

This paragraph is important to the Marlette Lake Water System in that it affords a shield against nuisance litigation (without legal merit in fact) that might be commenced against the State in its operation of the system in proprietary capacity. The provisions of the paragraph are entirely reasonable in that if repairs and replacements of the system are required to be made, an interruption in the flow of water would be an inescapable result as to the availability of water to the municipal utility serving Carson City and as to the availability of water to the state government.

In this respect, however, we should keep in mind that the water company has the Six Mile Reservoir. The Marlette Lake Water System conveys water to the reservoir only. The Water Company maintains the reservoir and the conduit line to the community of Virginia City. Assuming that it becomes necessary to discontinue the supply of water to

the reservoir for a number of hours, for repair and replacement service, it does not follow that the Water Company would be in any respect injured or inconvenienced, for it could then draw upon its reservoir. The utility serving Carson City, as well as the state government, might be injured by a temporary discontinuance of the flow of water, but not the Water Company. The Water Company can safely agree to this provision. The system cannot safely agree to its deletion. We oppose the deletion of this provision.

(c) Counsel objects to the arbitration provision contained in paragraph 6 commencing at line 21, page 5, and ending with line 13, page 6.

This provision is quoted as follows:

If the State and Water Company, upon the matters contained in said proposal, are unable to agree, a Board of Arbitration shall be appointed to review the item or items upon which an agreement has not been reached. The Board of Arbitration shall consist of three members, composed in the following manner:

(a) One member shall be appointed by the Department of Administration of the State Government.

(b) One member shall be appointed by the Water Company.

(c) One member shall be appointed by the Public Service Commission of the State of Nevada.

The member appointed by the Public Service Commission of the State of Nevada shall preside over the deliberations of the said Board as its Chairman, and the decision of the majority of the Board shall be final. In such deliberations the length of the contract as well as the price to be charged for water, on a metered basis, under the provisions hereof, shall be determined, taking into consideration all relevant factors.

In the event a Board of Arbitration is established under the provisions of this paragraph, if necessary, the term of the within contract shall be enlarged beyond the date July 1st 1967, and until the final determination has been reached by such Board.

In objecting to the quoted portions respecting a board of arbitration, counsel states the position of the Water Company as follows:

In the connection it is our position that in any event, whether the parties disagree or not, the whole matter comes within the jurisdiction of the Public Service Commission, and the addition of the arbitration board would merely add another administrative step to an already cumbersome and fully regulated situation.

In this conclusion of counsel we are in complete disagreement, it being our viewpoint that the Public Service Commission of Nevada has no jurisdiction in the premises, except such as is specifically provided (if any) by the provisions of Chapters 462, 463, and 465, Statutes 1963, for the reasons following:

(1) The Marlette Lake statutes providing for purchase (Chapter 462), for administration (Chapter 463), and for engineering (Chapter 465), were all passed in the Legislative Session of 1963, and any statutes affecting the Public Service Commission granting powers of supervision over the Marlette Lake Water System would, of necessity, have been enacted by the Legislature of 1963 or the Special Session of 1964. We do not find any statutes of 1963 or 1964 (or elsewhere) in which the Public Service Commission of Nevada has been granted any administrative control or supervisory jurisdiction over the Marlette Lake Water System. See: Chapters 476, 424, 373, 475, 474, 36, 163, 237, 420, and 297 of 1963 Statutes; also Chapter 8, Statutes 1964.

Neither do the statutes directly affecting the Marlette Lake Water System, so far as we are able to determine, grant any powers of supervision or administrative control to the Public Service Commission of Nevada.

(2) The Marlette Lake Water System is not a public utility within the meaning of [NRS 312.040](#)(7), 704.020, or 704.675. The Marlette Lake Water System will merely sell water, at wholesale, to the private utilities that serve Carson City and Virginia City. The price charged by the system will be a reasonable charge, pursuant to statute, reflecting the quantity used by the three users (including the State) and reflecting the capital investment and cost of maintenance. In this respect the Public Service Commission of Nevada has no jurisdiction. The price paid for the water, at wholesale, by the two utilities, together with capital costs and costs of operation, including replacement and repair, will be reflected, under the supervision of the Public Service Commission of Nevada in rates to be fixed, and altered from time to time, as exacted from the ultimate consumer.

(3) The Marlette Lake Water System has specific provisions for its administration (Chapter 463, Statutes 1963) which do not contain provisions for participation by the Public Service Commission of Nevada.

(4) As a matter of statutory construction, when specific statutes are in conflict with general statutes, the statutes specifically regulating a concept or procedure will prevail over the general, particularly when the statute of specific application is of later date.

(5) The powers of the Department of Administration in the supervision and administration of the Marlette Lake Water System are of statutory origin as are the powers (and existence) of the Public Service Commission of Nevada affecting other matters. Neither agency has constitutional status. The legislative intent in the matter is, therefore, controlling, the Legislature being at liberty to abolish either agency or to fully regulate its powers, duties, and obligations. The legislative intent in this case, which is perfectly clear, that the Marlette Lake Water System is to be supervised and administered by the Department of Administration is, therefore, controlling, and leaves ground for the partial conflicting participation of another agency. See: Chapter 463, Statutes 1963, Section 2(3). See also: King v. Regents, [65 Nev. 533](#), 200 P.2d 221. The arbitration provisions should stand.

Chapter 463, Section 2(3) provides:

The department of administration is designated as the state agency to *supervise and administer* the functions of the Marlette Lake Water System. (Italics supplied.)

(d) Counsel urges that the second sentence of paragraph 8, page 6, of the proposed contract should be deleted in its entirety. The portion suggested to be deleted provides as follows:

The State will use its best efforts to provide the Water Company with water free from contamination but cannot guarantee or warrant the purity of such water; and the Water Company hereby waives and relinquishes any and all claims against the State that might arise out of or in connection with the purity of the water sold or to be sold under the terms and provisions of this contract; and the Water Company hereby indemnifies and holds harmless the State against liability to any person or persons to whom the Water Company may sell and deliver such water.

This provision is important to the administration of the Marlette Lake Water System as a shield against nuisance litigation, and should stand. We have in mind also that the chlorination of water, if and when necessary, will be entirely a concern of the retailer, namely, the Water Company. We also have in mind that the water sold to the



Water Company will be of the same quality and purity (except for possible differences in chlorination) as that consumed by the State and that sold to the Carson City utility. We have in mind the fact that ample opportunity to contaminate the water will exist after it is delivered by the State to the Six Mile Reservoir. The State sees no necessity to get involved in such a controversy, for under the facts it is hardly conceivable that the State could have a judgment against it, on the theory of impurity of the water sold and consumed, and should not be annoyed by nuisance litigation in this respect. The provision quoted should stand.

(e) Counsel suggests the rewording of paragraph 12 of the contract to read as follows:

Nothing contained herein, shall be construed in such a manner as to require the construction of further or enlarged facilities of such system by the State in the administration of the Marlette Lake System to the end that more water may be made available to the Water Company. In this respect the parties agree that any such enlargements to the said system shall be undertaken entirely at the discretion of the State, both as to timing and as to the projects, improvements, and/or enlargements.

The meaning is not changed and the language is somewhat more brief and improved. We have no objection to the substitution.

Lastly, you have inquired about the request of the Water Company that the "target date" (a prearranged date for the execution of the contract) be changed from August 15 to September 30, 1964. I think that we must reluctantly agree to the request. However, if delays continue, and if you are convinced that there is a lack of sincere effort to meet a schedule, it may become necessary to call the entire matter to the attention of the Legislature and/or when contract is signed make the same retroactive, with the rate fixed to be collectible as of an earlier, definite date.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**168 Unincorporated Cities and Towns—County commissioners, as governing body of unincorporated cities and towns in their respective counties, are not empowered to regulate speed of trains passing through such towns.**

CARSON CITY, August 25, 1964

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

DEAR MR. HOLDEN: You have requested an opinion from this office as to the extent of the power of a town operating under the Unincorporated Town Act to regulate the speed of trains passing through such town.

**ANALYSIS**

The act governing unincorporated cities and towns is set forth in Chapter 269 of NRS. There, it is provided that the boards of county commissioners shall have jurisdiction of the affairs of any such city or town within their respective counties. The powers vested in county commissioners in this respect are clearly specified and embrace:

(1) licensing and regulation of professions, trades, and businesses; (2) providing for public health and safety; police protection; fire protection; public improvements; and the regulation of vehicular traffic upon the streets and alleys of such towns. None of these statutory powers includes that of regulating the speed of trains passing through a town, nor does any statute imply such power.

A rule, cited so often as to become elementary, is that the powers of county commissioners can be no broader than those delegated to them by the Legislature. *Sadler v. Board of Commissioners Eureka County*, [15 Nev. 39](#); *State ex rel. King v. Lathrop*, [55 Nev. 405](#).

#### CONCLUSION

In view of the above authorities, this office can draw no other conclusion than that county commissioners in exercising their jurisdiction over the affairs of unincorporated cities and towns within their respective counties, have no power to limit or regulate the speed of trains passing through such towns.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. B. TAPSCOTT, *Deputy Attorney General*

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**169 Public Libraries—Newly established county library districts may, under [NRS 379.080](#), embrace all or any portion of a county not within an already existing public library district of some type.**

CARSON CITY, August 28, 1964

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

#### STATEMENT OF FACTS

DEAR MRS. HEYER: Within the confines of Clark County, Nevada, five public libraries now exist. They are: (1) The Las Vegas Library, (2) North Las Vegas Municipal Library, (3) Henderson District Library, (4) Boulder City Library, and (5) Clark County Educational District No. 1 Library. The remainder of the county, or all that portion not embraced within a district served by the above libraries, is not served with any regular library facilities.

#### QUESTION

May a county library district be established which will include all that portion of Clark County not embraced within any existing public library districts?

#### ANALYSIS

Under the statutes some four different types of public libraries are provided for. Although five libraries have been established in Clark County, a considerable portion of the county remains outside any regularly established library district. The provisions of [NRS 379.080](#) apply in the formation of a county library district. It reads as follows:

1. Whenever in any county a petition or petitions praying for the formation of a county library district and the establishment of a free public library therein and setting forth the boundaries of the proposed library district, certified by the district judge of any judicial district as being signed by a majority of the

taxpayers or by taxpayers representing a majority of the taxable property in the proposed county library district, as shown by the last preceding assessment roll of the county, shall be presented to the board of county commissioners of the county in which the territory of the proposed county library district is situated, accompanied by an affidavit or affidavits of one or more of the signers thereof that the signatures thereto are genuine, the board of county commissioners shall, within 10 days after the petition or petitions are so presented:

(a) Order the creation of the county library district and the establishment of a free public library therein; and

(b) Levy a tax upon all taxable property in the county library district of not less than 5 cents nor more than 15 cents on each \$100 valuation of taxable property therein for the purpose of creating a fund to be known as the library fund.

2. Each year thereafter, at the time and in the manner other taxes are levied, the board of county commissioners shall levy a tax upon such property for such purpose of not more than 15 cents on each \$100 valuation thereof.

Since this section provides for establishing this type of district upon petition setting forth the boundaries of the proposed district, we believe that it was the intent of the Legislature that it could include any portion or all of the county not already included within some other library district. This would not conflict in any way with already existing library districts insofar as taxation, administrative functions, or service are concerned. On the contrary, such library district would fulfill the needs of all portions of the county without the boundaries of those already established.

The area to be included in a newly formed county library district may, under the above statute, be selected by the petitioners for such district. Only such areas or portion of the county as are already included in a public library district need be excepted. Any overlapping into an already established district would impose a double tax on taxpayers residing therein. While the above statute does not specifically prohibit such overlapping, it is the opinion of this office, nevertheless, that the statute impliedly enjoins such from being done.

#### CONCLUSION

In our opinion, the statute above quoted permits the establishment of a county library district so as to embrace all portions of a county not included within an already existing public library district of some type.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*

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**170 Clarified by A.G.O. No. 173—Mobile Homes; Inventory Tax—Inventory tax payable on July 1 assessment and on cost to dealer basis. Camper trailers are vehicles and not mobile homes.**

CARSON CITY, September 10, 1964

HON. WILLIAM RAGGIO, *District Attorney, Washoe County, Reno, Nevada*

DEAR MR. RAGGIO: You have propounded to this office three questions with regard to the collection of taxes on mobile homes.

1. Is there a distinction between “mobile homes” and “camper trailers”? Should the latter be declared in inventory or handled as motor vehicles for taxation purposes?
2. What is the effective inventory date on mobile homes?
3. Are vehicles to be taxed at dealers’ cost or at retail sales price?

#### ANALYSIS

We believe that camper trailers are units placed on truck beds, or manufactured so as to become an integral part of the motor vehicle, so as to provide shelter, sleeping, and cooking accommodations and as such are taxable as vehicles.

Mobile homes having been put in the category of personal property are taxable on the same date as other property, to wit, on July 1. The assessors are going to have to gradually adjust to this date, if they have not already done so.

The third question must be answered so as to avoid confusion and with the premise in view that the retail price of mobile homes depends upon trade-in values, fluctuation in price due to economic factors, etc. The only fair valuation for purpose of inventory would be the cost to the dealer.

#### CONCLUSION

The foregoing guidelines are therefore effective in clarifying A.G.O. No. 143, dated June 5, 1964.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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#### **171 State Personnel Division; Probationary Employees—A probationary employee who is terminated during period of probationary employment not entitled to hearing before Personnel Advisory Commission.**

CARSON CITY, September 16, 1964

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

DEAR MR. BARRETT: You have directed to this office certain facts as follows: An individual was hired by the State Prison Warden on August 1, 1963, on a provisional basis. On September 13, 1963, he was put on probationary status. The probationary status for correctional officers has been set by the Personnel Advisory Commission at 1 year, to run from the date of the provisional appointment.

Prior to the end of the probationary period the State Prison officials filed a request with the Personnel Department to place the individual on permanent status. This was not accomplished because prior to the end of the probationary period, which was to terminate on July 31, 1964, the prison rescinded the action and requested termination. The probationary employee was then released on July 30, 1964, based on information received about the employee which had not been available, or made available, during the preliminary examination and the earlier stages of his probationary employment.

Bases on these facts, you project the following questions:

1. Does a nonpermanent employee have a right to a hearing before the Personnel Advisory Commission on matters affecting his discharge from state service?
2. Was the individual in this case a permanent employee or was he a probationary employee?

## ANALYSIS

In order to arrive at a determination we must first examine the statutes and the rules and regulations which are applicable in a case of this kind.

Webster defines the word “probation” as “a period of trial — as to engage a person on probation”.

[NRS 284.060](#) provides that the Personnel Advisory Commission shall prescribe rules and regulations for its own management and government. But it must be clear that these rules and regulations cannot supersede or amend legislative statutes without the consent of the Legislature.

Let us then look at that section of Nevada Revised Statutes which governs probationary appointments. [NRS 284.290](#) reads as follows:

1. All original competitive appointments to and promotions within the classified service shall be for a fixed probationary period of 6 months, except that a longer period not exceeding 1 year may be established for classes of positions in which the nature of the work requires a longer period for proper evaluation of performance.
2. Dismissals or demotions may be made at any time during the probationary period in accordance with rules and regulations established by the chief.
3. Prior to the end of the probationary period and in accordance with rules and regulations established by the chief, the appointing authority shall notify the chief in writing whether or not the probationer is a satisfactory employee and should receive the status of a permanent appointee.

A year having been established as the probationary period for correctional officers, Section 2 of [NRS 284.290](#) comes into play and the employee may be dismissed or demoted at any time during the probationary period in accordance with rules and regulations established by the chief, or in short, by Mr. Gartner of the Division of Personnel.

All that is necessary in order to terminate the employee is a written communication (as set forth in Section 3) to the chief of the division that the employee is not a satisfactory employee and should not receive the status of a permanent employee.

Rule VII-A of the rules and regulations of the Personnel Advisory Commission closely follows the statutory provision, except that it sets out that performance reports shall be filed with the State Personnel Division at the end of the third, and eighth, and eleventh months.

Not only is rejection of an unsatisfactory employee provided for by statute, but Rule VII-D of the rules and regulations of the Personnel Advisory Commission make it the duty of the employer to terminate him if his conduct, capacity, moral responsibility, integrity, or work performance is found to be unsatisfactory in any or all of these categories.

This right of trial and rejection was wisely included in the law, because the Legislature foresaw that before a state official or department could be saddled permanently with an employee there should be a period for evaluation and reevaluation. Without this safeguard, incompetent, maladjusted, or immoral persons might achieve permanent status with the resultant delay in removing him from public service.

It matters not a whit whether the determination to get rid of a probationary employee arises at the beginning or at the end of his probationary employment. Background material justifying denial of permanent status might not come to the attention of the employer until the last day of the probationary period.

Which brings us down to the question of whether a probationary appointee may request a hearing before the Personnel Advisory Commission when his services are terminated during the probationary period.

[NRS 284.385](#) (1)(a) provides that an employer may dismiss or demote any *permanent* classified employee when he considers that the good of the public service will be served thereby, and [NRS 284.390](#) provides for the appellate procedure in such cases. Nowhere in the statute ([NRS Chapter 284](#)) is there any provision for appeal by a probationary employee. Clearly, the Legislature did not intend to impose on a state official the burden of having to account for a dismissal of a probationary employee.

This is not inconsistent with Rule XV-B of the rules and regulations of the Personnel Advisory Commission, which reads as follows:

Any applicant or eligible person who feels himself aggrieved by the action of the State Personnel Division may appeal to the Personnel Advisory Commission. Any such appeal shall be filed in writing with the Division within 30 calendar days. Such person shall have the right to be heard at reasonable length, at the earliest mutually agreed upon regular meeting of the Commission.

It will be noted that this appeal is open only to those aggrieved by an action of the State Personnel Division. In the case cited there has been no action by the State Personnel Division by which the probationary employee could find himself aggrieved. The action of the employer in dismissing the employee was not the action of the Personnel Division, and under the law they could not place on permanent status a person not recommended for such status by the employer.

But to carry the matter a step further—even if the Personnel Division had taken some affirmative action to terminate the employee, Rule XV-B would have to bow to the will of the Legislature as expressed clearly by the statutes heretofore referred to.

#### CONCLUSION

It is therefore the opinion of this office that a probationary employee who is terminated during the period of his probationary employment does not have a right to a hearing before the Personnel Advisory Commission, and that an employer, even though he has recommended permanent status prior to the termination of the probationary period to determine that his prior recommendation was incorrect and to terminate the services of such probationary employee.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**172 Insurance; Fraternal Benefit Societies—Nonprofit corporation desiring to escape the supervisory jurisdiction of the Insurance Commissioner, as well as taxation of its total premium income, in the sale of insurance to its members, when organized as a religious association, must strictly comply with the provisions of [NRS 688.575](#), (1), (d).**

CARSON CITY, September 29, 1964

MR. PAUL A. HAMMEL, *Insurance Commissioner, State of Nevada, Carson City, Nevada*

Attention: Mr. John H. Herbert, Chief Deputy Insurance Commissioner

STATEMENT OF FACTS

DEAR MR. HAMMEL: Counsel propose to create a nonprofit corporation under the sponsorship of a well-known church and propose to provide to those members of the church who subscribe for it insurance coverage for a death benefit of not more than \$400 and for disability benefits of more than \$350 to any one person in any 1 year.

Counsel urge that it may do this under pertinent law and be totally exempt from taxation of premiums, as well as exempt from the administrative supervision of the Department of Insurance of the State of Nevada.

#### QUESTION

May a nonprofit corporation formed under the sponsorship of a religious body, for the benefit of certain of its members that may apply, issue insurance coverage of not to exceed \$400 for death benefit and in excess of \$350 for disability benefits and thus place itself beyond the administrative supervision of the insurance department of the State of Nevada and all other provisions of the insurance laws of the State?

Stated otherwise, perhaps more clearly, may such a corporation so formed and so operating claim the benefits of no taxation on premiums and no supervision of the Insurance Department, despite the fact that it exceeds in its disability benefits the maximum amount of \$350 provided by [NRS 688.575](#)(1)(d)?

#### ANALYSIS

The 1963 Legislature enacted Chapter 157, a complete code in respect to the functioning of fraternal benefit societies as respects authorized insurance coverage of such members under the sponsorship of the fraternity. In Sections 1 to 57, inclusive, of the 1963 Act ([NRS 688.015](#) to [688.565](#), inclusive) the manner of operation of such "Fraternal Benefit Societies" under the supervision of the commissioner, is minutely provided, with the provision that ([NRS 688.565](#)) such societies so operating shall be exempt from all provisions of the insurance laws, except as provided in said chapter. This section provides:

688.565 (Societies exempt from other insurance laws)

Except as provided in this chapter, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

It will thus be seen that so long as a fraternal benefit society operates under the supervision of the commissioner, as provided in [NRS 688.015](#) to [688.565](#), inclusive, it does escape the impact of the total premium income levy of 2 percent as provided in [NRS 686.010](#), and enjoys certain other immunities not relevant here.

The qualifications to qualify as a "Fraternal Benefit Society" are under [NRS 688.025](#) clearly provided and require that such society "operate on a lodge system with ritualistic form of work."

[NRS 688.155](#) having reference to fraternal benefit societies provides:

688.185 (Benefits)

1. A society authorized to do business in this state may provide for the payment of:
  - (a) Death benefits in any form;
  - (b) Endowment benefits;
  - (c) Annuity benefits;
  - (d) Temporary or permanent disability benefits as a result of disease or accident;

(e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident; and

(f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of \$300.

2. Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

3. The officers and members of the supreme, grand or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

[NRS 688.575](#) provides:

688.575 (Exemption of certain societies)

1. Nothing contained in this chapter shall be construed to affect or apply to:

(a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than \$350 to any person in any 1 year, or both; or

(d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than \$400 or for disability benefits of not more than \$350 to any one person in any 1 year, or both.

2. Any society or association described in paragraphs (c) or (d) of subsection 1 which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in paragraph (d) of subsection 1 which has more than 1,000 members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

3. No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in paragraph (b) of subsection 1, shall give or allow, or promise to give or allow, to any person any compensation for procuring new members.

4. Every society which provides for benefits in case of death or disability resulting solely from accident and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all of the applicable provisions and regulations of this chapter, except that the provisions thereof relating to medical examination, valuations of benefit certificates and incontestability shall not apply to such society.

5. The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

6. Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this State.



As we understand the contention of counsel, he does not propose to create a "Fraternal Benefit Society" as defined and limited under the provisions of [NRS 688.015](#) to [688.565](#), inclusive, but proposes to create a nonprofit corporation, taking its insured persons from its church group, and would claim complete exemption of administrative control and taxation under the provisions of [NRS 588.575\(1\)\(d\)](#), but not be obligated to limit its disability benefits to \$350 per one person in any 1 year. Counsel claims this to be the correct interpretation by reason of [NRS 688.185](#). Counsel urges that [NRS 688.575\(1\)\(d\)](#) is to be construed in light of [NRS 688.185](#), which latter provision does not place any limitation in the amounts that may be insured as "disability benefits."

There are at least three reasons which impel this office to disagree with the contentions of counsel, viz:

1. [NRS 688.575](#) as a preface to the exemptions that follow, provides "nothing contained in this chapter shall be construed to affect or apply to," then follows, among others the religious society exemption. We are thereby forbidden to take the provisions of [NRS 688.185](#) and apply them in the construction of [NRS 688.575](#).
2. [NRS 688.575](#) constitutes an exemption, i.e., an exception to the administrative jurisdiction and control of the Insurance Department and as such must be strictly construed, to include no more than clearly intended by the Legislature.
3. [NRS 688.575](#), subsection 6, clearly accords those purely religious, charitable, or benevolent associations, that operate under the restrictions provided, exemptions from the levy of 2 percent upon the total premium income. Exemptions from taxation are to be strictly construed.

#### CONCLUSION

It follows, from the foregoing, that the question must be answered in the negative. If counsel is to claim the benefits mentioned and provided by the provisions of [NRS 688.575](#), for the nonprofit church corporation that he proposes to create, he must strictly adhere to the requirements and specifications of said section.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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### **173 Motor Vehicle Department—Clarifies A.G.O. No. 170 by defining camper trailers, as distinguished from mobile homes.**

CARSON CITY, October 1, 1964

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

DEAR MR. SPITZ: You have requested this office to distinguish more clearly between camper trailers and mobile homes as such distinction relates to A.G.O. No. 170 dated September 10, 1964.

In our analysis we defined camper trailers as units placed on truck beds, or manufactured so as to become an integral part of the motor vehicle.

We did not mean, nor did we include, separate units, which while used for camping, are towed by an automobile or truck. These units are, of course, to be classified as mobile homes.

In all other aspects, A.G.O. No. 170 is controlling.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**174 University of Nevada—Minor Moroccan in the United States on a student visa, even though a ward or foster son of Nevada residents at whose home he resided for approximately 2 years, not entitled to attend University of Nevada tuition free.**

CARSON CITY, October 6, 1964

MR. JACK SHIRLEY, *Director, Admissions and Registrar, University of Nevada, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. SHIRLEY: We understand that Danny Ouaou, a minor citizen of Morocco, entered the United States under a student visa, valid for the period June 21, 1963, to June 21, 1967. The visa was granted under the guardianship of B. C. Deatherage, Commander, USN, who is presently stationed at the U.S. Naval Auxiliary Station, Fallon, Nevada. Said minor attended the Fallon High School during the 1963-64 school year, graduating in June, 1964. From the information presented, it is indicated that he has, since entry into the United States, made his home with Commander Deatherage and his wife, and that he has frequently been referred to by them as their foster son. No documentary evidence has been furnished this office that he has ever been adopted by them or that either of them or any other person has ever been appointed his legal guardian.

Upon entering the University of Nevada for the 1964 fall semester, the Deatherages contend that he is entitled to attend tuition free, it being pointed out that they have been residents of Nevada since 1958, and that they plan to continue such residence upon Commander Deatherage's retirement in approximately 1 year.

QUESTION

Is a minor citizen of a foreign country, on a student visa, who makes his home with a family claiming Nevada as its residence, entitled as either a ward or foster son of said family, to attend the University of Nevada tuition free?

ANALYSIS

Under [NRS 396.540\(2\)](#), the Board of Regents of the University of Nevada is empowered to fix tuition charges for students at the University and at Nevada Southern, but tuition shall be free to:

- (a) All students whose families are bona fide residents of the State of Nevada; and
- (b) All students whose families reside outside of the State of Nevada, providing such students have themselves been bona fide residents of the State of Nevada for at least 6 months prior to their matriculation at the university;...

Even though the family with whom this student has made his home for approximately the past 2 years may be bona fide residents of Nevada, nevertheless, the student may not qualify for tuition exemption at the University of Nevada under paragraph (a) above because he is not a member of said family. To constitute one a member of a family, it is necessary that the status be acquired either through birth,

intermarriage, or adoption. 35 CJS 937. A family association by reason of guardian and ward or foster-parent and foster-child will not create a family relationship because no legal liability devolves personally upon the guardian or the foster parent to provide support for the ward or foster child.

Neither may this student qualify for free tuition under paragraph (b) above by reason of having been himself a resident of Nevada for more than 6 months because of the limitation his student visa imposes upon him. He is in the United States for the limited purpose of being a student in some institution of learning, and nothing else. His visa rights do not extend to nor entitle him to the rights and privileges of a citizen. Even if he had immigration status within the country and prepared for citizenship after the expiration of the time required in the country, he would still not be entitled to all privileges as a citizen until all requirements for such could be satisfied.

While it is a commendable thing that an American family is willing to bring a Moroccan boy into their home and treat him as a member of the family, the statutes nevertheless make no provision for free tuition at the University of Nevada in such cases. The above-quoted sections appear to be exclusive for a determination of this situation and must therefore control.

#### CONCLUSION

It is the opinion of this office that a foreigner in the United States pursuant to a student visa is within such limitations by reason thereof that he is not entitled to attend the University of Nevada tuition free, even though he may be the ward or foster son of a Nevada resident or residents who are sponsoring his education and at whose home he resided for approximately 2 years before enrollment at the University of Nevada.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*

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#### **175 State Board of Education; Issuance or Renewal of Teaching Certificates of Diplomas—Where rule or regulation adopted by State Board of Education conflicts with act passed by the Legislature, the legislative act prevails.**

CARSON CITY, October 6, 1964

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

DEAR MR. STETLER: You have directed to this office an inquiry dated October 5, 1964, concerning certain conflicts between rules and regulations adopted by the State Board of Education and certain specific provisions of the statutes.

#### ANALYSIS

Under [NRS 385.090](#) the board is authorized to revise existing rules and regulations governing the issuance and renewal of teachers' certificates, and pursuant to such authority adopted Regulation C which reads as follows:

##### C. High School Professional Certificate.

The high school certificate is valid in the junior or senior high school from grade 7 through grade 12.

A graduate holding a bachelor's degree from a college or university accredited by either a national or regional accreditation association will be granted a High School Professional Certificate, valid for 5 years, provided he has completed a minimum of 18 semester hours of credit in professional education in the secondary field including 4 hours of supervised teaching on the high school level. This certificate will be renewable for a period of 5 years upon the presentation to the certification office of 6 semester hours of credit earned during the life of the certificate or the last renewal period. Two years of successful teaching experience in public high schools will be accepted in lieu of the required hours in a supervised teaching course.

Holders of a master's degree who possess the basic educational requirements for the High School Professional Certificate, listed in the foregoing paragraphs, will be granted a High School Professional Certificate provided they have completed 2 years of successful teaching experience. This certificate will be valid for 6 years and renewable upon presentation of 3 semester hours of credit earned during the life of the certificate, or the last renewal period.

[NRS 385.080](#) reads as follows:

The board shall have power to adopt rules and regulations not inconsistent with the constitution and laws of the State of Nevada for its own government and which are proper or necessary for the execution of the powers and duties conferred upon it by law; provided:

1. That any change made by the state board of education, by which the required scholarship, training or experience of any teacher for any certificate or diploma is increased, shall be announced when made, and shall not be effective before 3 months from the date when such change is announced; and
2. That such change or changes, when made, shall not affect certificates or diplomas then in force.

It is therefore apparent that the Legislature intended to protect or defend the position of teachers holding certificates or diplomas in force at the time any change was made by the board in regulations then in force and effect. In other words, such regulations could not be retroactive and in fact postpone the effective date of the regulation for a period of 3 months from the date of its announcement.

#### CONCLUSION

It is therefore the opinion of this office that new rules and regulations affecting the issuance or renewal of teachers' certificates or diplomas are not effective as to teachers holding certificates or diplomas at the time of the issuance of the regulation, nor effective as to teachers issued new certificates or diplomas, or renewal certificates or diplomas during the 3 months immediately succeeding the adoption of the new rule or regulation.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**176 Fire Protection District—Opinion deals with the manner of determination by election board, of real property ownership within the proposed district, by which the right to vote upon the creation of the district is determined. [NRS 474.100](#) construed.**

CARSON CITY, October 14, 1964

HON. ROSCOE H. WILKES, *District Attorney, Lincoln County, Pioche, Nevada*

STATEMENT OF FACTS

DEAR MR. WILKES: Preliminary legal requirements have been met to permit the appearance on the ballot, in the general election of November 3, 1964, of whether or not Pahranaagat Valley of Lincoln County shall create a fire protection district under the provisions of Chapter 474 of NRS.

[NRS 474.100](#) in respect to the persons authorized to vote upon this question, in part provides:

474.100 (1) Holders of title or evidence of title to lands within the district, and no others, shall be qualified and entitled to vote either in person or by proxy at any election held by such district.

In your conversation with us you have pointed out that real property is frequently held, as to the official record of ownership, in the name of the husband alone, and yet under the community property laws the wife will be seized of a present vested interest. Or the converse could be true. Or the party seeking to vote might be the purchaser or real property lying within the district, and at the time of election the deed would still be held in escrow. Other situations were discussed by you in which the right to vote upon this question, under the statute quoted might be in doubt. You are called upon to delineate the rules of procedure by which regular voters of such area may be segregated as to the right under the statute to vote upon this question.

QUESTION

What procedure should be followed, in advice by the district attorney to the involved election board, in respect to the segregation of the duly registered voters, and the grant or denial of permission to such voters to vote upon the creation of the proposed fire protection district?

OPINION

We are of the opinion that this statutory provision ([NRS 474.100-1](#)) should be construed in such manner as to sparingly deny the right to vote upon this question. To state it otherwise, when there is doubt as to the right to vote upon this question, the doubt should be resolved in favor of the voter, and the ballot upon this question should be supplied by the board to the voter. We think that the board should not be required to look up records of title, or otherwise take upon itself powers of judicial determination. The board is vested with administrative power, but not powers of discretion or judicial determination. Since spouses have a community of interest we are not so much concerned with the record title or evidence of title, as between the spouses. If either spouse has title or evidence of title, it should be good. Accordingly, we recommend that an affidavit form be made available to the election board that is involved, in substantially the following form:

STATE OF NEVADA            }  
  } ss  
COUNTY OF LINCOLN        }

The undersigned duly registered elector of Lincoln County, State of Nevada, being first duly sworn, deposes and says:

That affiant is the holder, or spouse of the holder, of title or evidence of title to lands lying within the proposed Fire Protection District.

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Subscribed and Sworn to before me  
this 3rd day of November, 1964.

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Notary Public or Deputy County  
Clerk of the County of Lincoln,  
State of Nevada  
(SEAL)

#### CONCLUSION

Upon the duly registered elector taking the affidavit proposed or an affidavit in substantially similar form, and filing it with the election board that is concerned, we are of the opinion that the elector should be supplied with the ballot which would permit him or her to vote upon the question of the creation of the fire protection district.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**177 Child Welfare—Testimony of doctor as to child abuse admissible over objection of parents or custodian accused of mistreatment. Report should be made to juvenile court. Physician not liable personally if he reports only as to condition of child.**

CARSON CITY, October 15, 1964

MR. D. N. O'CALLAGHAN, *Director, Department of Health and Welfare, Carson City, Nevada*

DEAR MR. O'CALLAGHAN: You have directed a letter to this office in which you ask three questions:

1. Is the testimony of a physician who treats the injuries of an abused child admissible over the objection of the child's parent or other custodian accused of the mistreatment?
2. In what manner, and to whom, should the physician report evidence that a child who was examined by him appears to have been mistreated?
3. Is the physician subject to personal liability if a report of physical mistreatment is made to authorities concerned with child welfare?

#### ANALYSIS

One of the most heinous offenses known to civilized society is the beating of helpless children so as to cause hospitalization, medical treatment, or permanent injury. This offense is also one of the most difficult to discover. The parents, of course, conceal it, and the children, through a great sense of fear, are reluctant to reveal it.

In many instances the only person who can ascertain if a child has been beaten is the medical doctor to whom the child is taken when the nature of its injuries are such as to necessitate medical treatment.

Any law enforcement official is vitally concerned with instances of child abuse, known to the medical profession as the "battered child syndrome," but doctors have been loath to bring these cases to light for two reasons: (1) because of a strong sense of ethical obligation which tends to lead to the belief that the relationship between those who bring the child in and the doctor is privileged, and (2) the reluctance to expose themselves to avoidable litigation.

The Attorney General of Kansas recently attacked this problem by advising the medical profession of that state that the testimony of a doctor in such cases is admissible over the objection of the child's parent or other custodian accused of mistreatment. He also advised that the physician should report evidence that a child has been mistreated directly to the juvenile court.

General Ferguson answered the question as to personal liability of the examiner, and reporting doctor, by advising that there was no liability if the physician reports only as to the condition of the child examined.

#### CONCLUSION

We would answer your three questions in the same manner and, in addition, would suggest legislation at the 1965 Session of the Legislature which would require physicians, nurses, and hospitals or infirmaries, to report instances of suspected child abuse and to provide them with immunity from liability for so reporting.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**178 Public Schools; Pupils—Parents or guardians of public school pupils who live in isolated communities, who send their children to school of an adjoining state, with the consent and approval of the county board of school trustees, are not required under [NRS 392.350](#), as a condition to receiving financial assistance, to send their children to the public school which lies nearest to their Nevada residence. See also: A.G.O. No. 128 of November 23, 1955, rendered under the stature prior to amendment in present form**

CARSON CITY, October 20, 1964

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

#### STATEMENT OF FACTS

DEAR MR. STETLER: Transportation of school pupils at public expense is provided by Section 392.300 of NRS and subsequent sections.

[NRS 392.350](#) provides:

392.350 (Payment of cost of food and lodging of pupil at place convenient to school.)

1. When the daily transportation of a pupil is not practical or economical, the board of trustees, in lieu of furnishing transportation, may pay to the parents or guardian of the pupil an amount of money not to exceed \$3 per school attendance day to assist the parents or guardian in defraying the cost of board, lodging, and subsistence of the pupil in a city or town, having a public school, in this state *or in an adjoining state*. If such public school is in an adjoining county, or in an adjoining state, costs for tuition and transportation or for tuition and subsistence

shall not exceed the per pupil costs for tuition and transportation of tuition and subsistence in the nearest public school in Nevada.

2. Payment of money in lieu of furnishing transportation may be made only if:

(a) The guardian or parents have been residents of the area for a period of time set by the board of trustees; and

(b) The state department of education approves. (Italics supplied.)

#### QUESTION

If, in a given case, it is impractical or not economically feasible for Nevada school pupils to be transported from their Nevada home to a Nevada public school and the parents or guardian of such children elect to send them to a public school in an adjoining state, is it a condition precedent to the allowance of money under [NRS 392.350](#) that such children be sent to the public school in such adjoining state which lies nearest to their Nevada residence?

#### ANALYSIS

We will assume that the qualifying conditions set forth in subsection 2 of [NRS 392.350](#) are met, in the case under review, or any case that may hereafter arise. We will also assume that the board of trustees of the county of Nevada residence of the school children are in accord that under the circumstances the children must be sent to a public school of an adjoining state. The amount that is allowable is in such case determined by the local board of trustees, by computations to be made by them, under the limitations of the statute, and in no case to exceed the maximum sum provided.

The sole question here to be resolved is whether or not the statutory allowance should be denied if the parents or guardian elect to send the child to a school in the adjoining state, which is not the nearest school. The statute does not limit the discretion of the parents. To read such a limitation into the statute is to divest the parents of the right and privilege of planning for the child's education and welfare (while away from home) in their consideration of all of the circumstances which they alone best comprehend.

To read such a limitation into the statute would effect no economy as to the costs or sums to be laid out by the Nevada board of trustees, for the computation under the statute does not reflect this item.

Under an earlier statute (Chapter 306, Statutes 1953) other conclusions were reached. See A.G.O. No. 128 of November 23, 1955. However, [NRS 392.350](#) was amended by Chapter 36, Statutes 1961, adding the language "or in an adjoining state," which results in the conclusion hereinafter set out.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**179 Public Officers; Boards of County Hospital Trustees—Vacancy on county hospital board occurring subsequent to the last primary election and also after the first Wednesday in October must be filled through appointment by the board of county commissioners of the county concerned, and the**



**appointee holds office until his successor is elected and qualified at the next general election following a primary election.**

CARSON CITY, October 21, 1964

HON. GRANT DAVIS, *District Attorney, Churchill County, Fallon, Nevada*

STATEMENT OF FACTS

DEAR MR. DAVIS: A member of the Churchill County Hospital Board whose term would have expired at the end of 1966, died on October 14, 1964. In connection with making an appointment to fill the vacancy several questions have arisen, chief of which are as follows:

1. Are the County Commissioners of Churchill County required to make such an appointment prior to the general election in November?
2. If no appointment is made by the county commissioners until after the general election, will an appointment made at that time be valid for the balance of the deceased member's term?
3. Due to the unusual circumstances present in this case, should there be a special election held after the general election?

ANALYSIS

We are first concerned with whether or not there is any statutory provision for placing the name of a nominee for this vacant office on the general election ballot. Under the election laws, [NRS 293.165\(2\)](#), such provision is made which appears to be applicable to all public offices, including that of a county hospital trustee. However, it is of no avail here because, under [NRS 293.165\(3\)](#), the procedure there required must be followed before 5 p.m. of the first Wednesday of October. Undoubtedly this time limit was set to allow sufficient time for the printing of ballots before the general election. It becomes obvious that under these sections of this statute a nominee may not go on the general election ballot for an office which becomes vacant after the above-mentioned deadline.

Since a nominee may not go on the ballot for the general election in November, the necessity exists for an appointment to be made to fill the vacancy on the Churchill County Hospital Board. Provision is made for such under [NRS 450.110](#), reading as follows:

Vacancies in the board of hospital trustees occasioned by resignations, removals or otherwise shall be reported to the board or boards of county commissioners and shall be filled in the same manner as the original appointments. Appointees shall hold office until the next following general election in the usual manner.

The provisions of this section are clear and unequivocal, calling for the filling of a vacancy on a county hospital board in the same manner as an original appointment in such cases is made. Original appointments on such boards are made pursuant to [NRS 450.070](#), the pertinent parts of which provide that appointed trustees shall (1) "be chosen from the citizens at large with reference to their fitness for office," and (2) "be residents of the counties concerned \* \* \*." This section also makes it clear that appointees shall hold office until the next following *general election in the usual manner*. The italicized words, in our opinion, impose a certain requirement which, in the case here cannot be met before the general election of 1964. A general election in the usual manner presupposes a previous primary election. This cannot occur until the 1966 elections, and any person appointed to fill a vacancy under this section holds office until that date.

The statute is silent as to when the appointment must be made, but we see nothing in the law requiring that it be made before the 1964 general election date. The appointment may be made at any time after election by the incumbent board of county commissioners or may even be postponed until the newly elected commissioners take office.

#### CONCLUSION

For the foregoing reasons, this office concludes:

1. That the Board of County Commissioners of Churchill County is not required to fill the vacancy existing on the Churchill County Hospital Board prior to the 1964 general election, but may fill the same within a reasonable time thereafter.
2. Any appointment made by the county commissioners of said county in filling the vacancy in question will be effective until the general election in 1966 when the appointee's successor is elected and qualifies for office.
3. There is no necessity here for a special election to fill this vacancy. We believe that the method for filling vacancies of this type in the method provided for by the Legislature is not only ample but exclusive as well.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*

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**180 Banks and Banking—The manners in which banks chartered under state law are to receive their working capital are provided by statutory provisions, which provisions are exclusive; these statutes containing precise protective devices as to such capital reflect a legislative intent to fully treat the subject matter, precluding administrative permission to obtain working capital in other manners. [NRS 661.010](#), [661.020](#) and [662.050](#) construed.**

CARSON CITY, October 23, 1964

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

#### STATEMENT OF FACTS

DEAR MR. ROBISON: Under the provisions of [NRS 661.011](#), minimum requirements as regards capital and surplus for the chartering of a state bank are provided.

Under [NRS 661.020](#) provision is made for the continuing minimum ratio of equity capital to deposit liability. This equity capital including "paid-up capital, together with the surplus, undivided profits and reserves for losses" must at all times be not less than 6 percent of the total deposit liability.

[NRS 661.020](#) provides:

661.020 (Paid-up capital, surplus, undivided profits and reserves for losses: Percentage of total deposit liability as determined by superintendent of banks.)

1. The paid-up capital, together with the surplus, undivided profits and reserves for losses of any state bank, shall, subject to the limitation of [NRS 661.010](#), be at least 6 percent of the total deposit liability of the bank as may be determined by the superintendent of banks. In determining the amount of paid-up capital, surplus, undivided profits and reserves for losses that shall be required,

the superintendent of banks shall give due consideration to the character and liquidity of the assets of the bank and to the standards, regarding capital requirements, established by other state and federal banking supervising agencies.

2. The superintendent of banks shall, for the purpose of determining capital requirements for any state bank, include capital, surplus, undivided profits and any reserve for losses, and may include as capital 6 percent of the par value of all United States Government bonds owned by the bank.

3. In no case shall the aggregate amount of capital and surplus as hereby determined equal an amount which is less than 6 percent of the deposit liability.

4. The deposit liability for the purposes of this section shall be the average of daily deposit liabilities for a period of 60 days.

5. Nothing in this section shall be deemed to prohibit the acceptance of deposits by any bank while it is proceeding expeditiously, as determined by the superintendent of banks, to comply herewith.

[NRS 662.050](#) provides the manner and conditions of a bank of state charter acquiring further debt, additional to the capital which we have denominated “equity capital,” the limitations thereon as to permissible amounts and permission is given to collateral security that may be pledged upon such loans.

[NRS 662.050](#) provides:

662.050 (Borrowing of money authorized; limitations on hypothecation.)

1. No bank shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security or otherwise; but any bank may secure funds deposited with such bank by the United States, the State of Nevada, or a political subdivision of this state by pledging acceptable assets of the bank as collateral security.

2. Any bank may borrow money for temporary purposes, not to exceed the amount of its paid-up capital and surplus, and *may* pledge any of its assets as collateral security therefor.

3. With the written consent of the superintendent of banks and the state board of finance in each instance, a bank may borrow to the amount of 50 percent in excess of its paid-up capital and surplus, and pledge assets of the bank as collateral security therefor. Any indebtedness, however, contracted in excess of the amount limited herein shall be null and void in its entirety. (Italics supplied.)

#### QUESTION

Is the State Superintendent of Banks authorized to permit a bank of state charter to augment its capital structure through the sale of senior subordinated debenture bonds, the proceeds of such bonds at all times to be supplementary to and not included in the equity capital required by the provisions of [NRS 661.020](#)?

#### ANALYSIS

We understand that the “senior subordinated debenture bonds” would clearly provide, to make clear and specific the contract, that in the event of liquidation of the bank, the depositors, both commercial and savings, as well as all secured creditors would be senior, or that is of prior preference, to share in the assets of the bank, and that such debenture bonds would represent a general obligation or indebtedness of the bank, with due dates to be advanced only by receivership or involuntary liquidation.

We understand also that such debenture bonds, if issued, would not be issued pursuant to the provisions of [NRS 662.050](#), and in an amount representing a ratio to paid-up capital and surplus, as therein provided. Such would be issued in amounts not limited by the provisions of this section.

We are informed that the proceeds of the sale of such debenture bonds would provide an additional protection to bank depositors by reason of the subordination feature. Also that the proceeds would not be included as a part of the 6 percent “equity capital” as required under [NRS 661.020](#). Nor would the proceeds be included in the sum constituting “deposit liability” as provided in [NRS 661.020\(4\)](#).

We are also informed that under Federal Reserve Board regulations the national banks are held to a higher ratio of equity capital to deposit liability than 6 percent, and that although the Federal Reserve Board, in cases in which the bank of state charter is a member of the Federal Reserve System, is without power to revoke membership for this reason, it does assert certain controls over state member banks, e.g., refusal to approve the founding of additional branches.

Banking is an industry coupled with a public interest, upon which the Legislature has broad powers in the protection of the public. It is within the memory of all persons who were near adulthood at the time of the great depression that failing banks were, and can be, the cause of untold hardship. Accordingly, banking regulations, in the protection of the public, have by legislative wisdom and solicitude, become more strict and rigid. In the construction of such statutes we look to that which is specifically permitted and not to specific prohibitions.

The Legislature by the three statutes cited ([NRS 661.010](#), [661.020](#), and [662.050](#)) has provided the manner in which a bank of state charter is authorized to receive its capital. [NRS 662.050](#) provides a manner and maximum amount of money to be obtained by such bank by loans to the bank. Under this section loans to the bank are limited by the ratios provided and the provision permits security to be given for such loans, but does not require it. As to such loans the amount is limited, and yet the debenture bonds (not contemplated by the Legislature and not authorized in any way or manner) would not be issued under the limitations contained in [NRS 662.050](#).

We are clearly of the opinion that the doctrine of inclusion unius est exclusio alterius applies here, and that the manner of receiving capital and working funds as recited in these sections is exclusive. Who can say that if the Legislature later provides for the issuance of debenture bonds by state banks, that it will not surround their issuance with restrictions and protective safeguards not at present contained in the law. For the Legislature is not solely concerned with the protection of depositors. The Legislature is also interested and concerned about the protection that the State should accord to uninformed investors. See Chapter 318, Statutes 1963, page 584. If this conclusion is thought to occasion undue hardship to state banks, the answer is it is of short duration, for the Legislature will convene in regular session in less than 3 months. It is there that this question should be resolved. Neither should the legislative process and orderly control of such matters be confused or ensnared by interpretations of this office, by enlargement of powers, upon doubtful statutory authority.

#### CONCLUSION

The question is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**181 Nevada State Personnel Department—An employee of the State who holds a position in the classified service and who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States**

**Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Nevada National Guard, who receives orders to report for service from a responsible authority within those services, must be granted leave, subject to the rule concerning compensation set forth in [NRS 284.370](#).**

CARSON CITY, October 28, 1964

MR. IRVIN GARTNER, *State Personnel Administrator, Carson City, Nevada*

DEAR MR. GARTNER: You have requested an opinion from this office as to an interpretation of [NRS 284.370](#), which reads as follows:

284.370. Leaves of absence for military training duty. Any person holding a position in the classified service who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve or the Nevada National Guard shall be relieved from his duties, upon request, to serve under orders on training duty without loss of his regular compensation for a period not to exceed 15 working days in any 1 calendar year. Any such absence shall not be deemed to be such employee's annual vacation provided for by law.

#### ANALYSIS

In order to arrive at a determination it is necessary to relate facts attendant upon the request. An employee of the State of Nevada received military orders under date of March 10, 1964, and April 8, 1964, issued by the Headquarters of the XV U.S. Army Corps, Presidio, San Francisco, California, to report to Adjutant General School, Fort Benjamin Harrison, Indianapolis, Indiana, not later than June 21, 1964.

The immediate superiors of the state employee refused to grant leave for the purpose of complying with such orders. The employee nevertheless obeyed the orders and upon return to the place of her employment, was advised that her services had been terminated.

The Department of Personnel sustained the dismissal under authority of Rule IX(G)1 of the Personnel Rules and Regulations, which provides: "Absence without leave \* \* \* for five consecutive working days is an automatic resignation from state service."

The department's action was based on the fact that the leave taken was in addition to the employee's annual summer field training, which training, under [NRS 284.370](#), may be allowed without loss of compensation.

The Universal Military and Service Act, as amended, and the Reserve Forces Act of 1955, impose upon members of the Reserve certain obligations, including those of responding to official orders issued by responsible military authorities.

The orders preceded the annual field training requirement and thus, we feel, the department had no right to terminate the state employee prior to the issue of further leave arising.

Neither do we feel that the application for leave, pursuant to orders from responsible military authorities, should have been denied. The phrase, "shall be relieved from his duties, upon request, to serve under orders on training duty \* \* \*" is mandatory. To deny an employee this right in view of the plain language of the law, is an arbitrary abuse of power, and contrary to the established cooperation between the arms of the federal government and the State of Nevada.

Neither could a rule of the Personnel Department (Rule IX(G)1) contravene the express words of a statute. [NRS 284.370](#) is controlling despite Rule IX(G)1 of the Rules and Regulations of the State Personnel Board.

## CONCLUSION

It is therefore the opinion of this office that an employee of the State who holds a position in the classified service and who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marines Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Nevada National Guard, who receives orders to report for service from a responsible authority within those services, must be granted leave, subject to the rule concerning compensation set forth in [NRS 284.370](#).

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**182 Elections—One who is a qualified elector, who has not been affiliated with one of the major political parties, who affiliates by registration with one of such parties prior to a primary election, but subsequent to a preceding primary election, is not disqualified to file as a candidate for election as a member of one of the major political parties.**

CARSON CITY, October 29, 1964

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

DEAR MR. STOKES: You have requested an opinion from this office as to whether one who has had no party affiliation but has been a qualified elector since 1958, can, prior to the 1964 primary election but subsequent to the preceding primary election, affiliate with one of the major political parties and file as a candidate of said party for political office.

## ANALYSIS

While this question or questions of similar import have not reached the Supreme Court of Nevada, the district courts have held in two instances that to deny a person who files as an independent candidate for public office prior to the forthcoming primary but subsequent to the preceding, the right to so file because he was previously registered as a Democrat or Republican is unconstitutional. This would seem to indicate that the 1965 Legislature must change [NRS 293.176](#) and this office will so recommend.

The case cited by your office, in view of the attitude of our State courts, would be even stronger in favor of the candidate than those decided heretofore. If a candidate has had no prior political party affiliation, it is difficult to arrive at a determination that he has changed his party affiliation in contravention of the statute.

## CONCLUSION

It is the opinion of this office that one who is a qualified elector, who has not been affiliated with one of the major political parties, who affiliates by registration with one of such parties prior to a primary election, but subsequent to a preceding primary election, is not disqualified to file as a candidate for election as a member of one of the major political parties.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**183 Insurance—The State has the power to provide, effective as to foreign insurers, such conditions for admission as it may determine. In the absence of admission of such insurers, Nevada contracts of insurance (except “surplus line”) are illegal and unauthorized. [NRS 683.010](#) et seq. construed.**

CARSON CITY, November, 2 1964

MR. NEIL D. HUMPHREY, *Vice President—Finance, University of Nevada, Reno, Nevada*

#### STATEMENT OF FACTS

DEAR MR. HUMPHREY: The Teachers Insurance and Annuity Association of America, hereinafter referred to herein as “TIAA”, a non-profit corporation, is domiciled in the State of New York. With the exception of West Virginia, the State of New York is the only state in which TIAA is licensed. TIAA issues group policies of insurance covering instructors in institutions of higher learning, both life and accident and health, through their sponsorship of the employing institutions, which institutions through their fiscal agents, effect payroll deductions or payroll reductions in behalf of such instructors who may elect to accept such insurance, as the agent of the insureds, transmit premiums from time to time to the insurer, accept the delivery of policies, through the mails, communicate from time to time with the insurer in respect to the persons covered, and benefits thought to be payable to insureds, and otherwise serve the functions of a local agent in the normal insurance practices.

TIAA employs no agents, all transactions respecting the insurance coverage being conducted by the employing institutions, in behalf of the insureds and the insurer, through the mails directly to the insurer. TIAA as formerly stated has not qualified to do business in Nevada, and does not pay a tax upon the “total premium income” pursuant to the provisions of [NRS 686.010](#)(1).

The Board of Regents of the University of Nevada manifests an interest or disposition to enter an appropriate resolution authorizing its fiscal vice president to enter into such an arrangement with TIAA, and to effect payroll deductions in behalf of instructors who may elect to accept the protection of such insurance, upon the approval of this manner of operation by the Attorney General’s Department.

#### QUESTION

Is the University of Nevada legally authorized to approve a program of insurance, with payroll deductions, from Nevada domiciliaries employed by such institution, in the manner proposed by TIAA?

#### ANALYSIS

[NRS 683.010](#) et seq. provides that certain qualified foreign or alien insurance companies may be permitted to do business in Nevada. These sections provide the qualification for admission and the manner in which these qualifications may be certified to the Insurance Commissioner. When the conditions for the issuance of a license are met ([NRS 683.040](#)), the commissioner shall issue the license, ([NRS 683.060](#)). In the absence of a current and valid license, issued pursuant to Chapter 683 of NRS, a foreign or alien company is not authorized to do business in Nevada. [NRS 686.270](#)(1) provides:

No person, firm or corporation in Nevada shall, in any manner, represent any company not authorized to do business in this state in the solicitation or

writing of insurance in this state except as provided in [NRS 686.270](#) to [686.380](#), inclusive.

The sections cited (686.270-686.380) permit insurance sale in Nevada by nonadmitted insurers in the sale of “surplus line” insurance. TIAA does not contend that the insurance here offered constitutes “surplus line” insurance.

However, by its brief, TIAA does contend (1) that the fiscal agent of the University of Nevada, in this operation, would not serve as its agent, but would serve as the agent of the employer and the insureds, and (2) that the place of contracting would be New York and not Nevada, and hence, under landmark authorities delineating the limitations upon state power to regulate contracts of insurance, Nevada is powerless to preclude the operation, regulate the company in any way or manner, or collect its tax.

There is some authority for the first contention. In *Boseman v. Connecticut General Life Insurance Company*, 301 U.S., 196, the court said:

When procuring the policy, obtaining applications of employees, taking payroll deduction orders, reporting changes in the insured groups, paying premiums and generally in doing whatever may serve to obtain and keep the insurance in force, employers act not as agents of the insurer but for their employees or for themselves.

We shall not labor a disputation of this contention, however, the second contention is not sound by reason of the distinguishing characteristics of the cases cited to the case under review.

A state does have the authority to prohibit foreign insurance companies from doing business within its limits: In *Allgeyer v. Louisiana*, 165 U.S. 578, 17 S.Ct. 427, L.Ed. 832, the court said:

There is no doubt of the power of the state to prohibit foreign insurance companies from doing business within its limits. The state can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and unless the conditions be complied with the prohibition is absolute.

However, we are met with the contention that under the McCarran-Ferguson Act (15 U.S.C.A. Section 1012) and the construction placed thereon by the house report and by Senator McCarran the proposed contract and the administrative supervision of TIAA will be beyond the reach of the State of Nevada. It, therefore, becomes necessary to briefly recite the background of the McCarran-Ferguson Act.

By a long line of decisions the Supreme Court had ruled for many years that the business of insurance, conducted interstate, was not commerce and was not within the competency of the Congress to regulate under the commerce clause.

On June 5, 1944, the Supreme Court ruled in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440, that the modern business of insurance was “interstate commerce” and, therefore, subject to regulation by the Congress of the United States.

Promptly thereafter the Congress passed the McCarran-Ferguson Act, the intent of the legislation having been explained by the Report of the House of Representatives, and by Senator McCarran. See *State Board of Insurance v. Todd Shipyard Corporation*, 82 S.Ct. 1380, 370 U.S. 403, at page 1383 of 82 S.Ct. Reports. The results of the interpretation given by the sponsors of the act were adopted in the *Todd Shipyard* case, and are the present law, that “we give to the states no more powers than they previously had, and we take none from them.” We may, therefore, conclude and the court so held (*Todd Shipyard*) that the law existing prior to the *South-Eastern Underwriters* case respecting the powers of the states to regulate insurance contracts by foreign insurers,



with all of the limitations previously existing, was reinstated. We now turn to an examination of what that law was, and now is.

It is the contention of TIAA that under the authority of *Allgeyer v. Louisiana*, 165 U.S. 578, 17 S.Ct. 427, 41 L.Ed. 832; *St. Louis Cotton Compress v. Arkansas*, 260 U.S. 346, 43 S.Ct. 125, 67 L.Ed. 297; *Boseman v. Connecticut General Life Insurance Co.*, 301 U.S. 196; and *State Board of Insurance v Todd Shipyard Corporation*, 82 S.Ct.1380, 370 U.S. 451; the contract in the instant case, if permitted, would be entered into in the State of New York, and hence would be beyond the power of the State of Nevada to regulate, supervise, or tax.

Re: *Allgeyer v. Louisiana* (March 1, 1897)

An insurance contract had previously been made and to be performed in the State of New York. Pursuant to the provisions of the contract a letter was written by E. Allgeyer and Company to the insurer, notifying the insurer of a shipment of cotton (then present in Louisiana) to be made on the high seas, and sought to be insured for the contemplated transportation. The letter of notification was “the performance of an act rendered necessary by the provisions of the contract already made between the parties outside of the state. It was a mere notification that the contract already in existence would attach to that particular property.”

The court held that the contract was made in the State of New York, to be performed in the State of New York, and that the corporation could not be deprived of the “liberty” to enter into a valid contract in another state, by the provisions of a statute of Louisiana, which “liberty” was protected by the equal protection clause of the Fourteenth Amendment. The statute of Louisiana fixing a penalty upon entering into such a contract, if entered into within another state (valid where executed), was totally ineffectual.

Re: *St. Louis Cotton Compress Co. v. Arkansas* (December 1922)

A statute of the State of Arkansas placed a tax of 5 percent upon the gross premium paid by plaintiff in error (petitioner in certiorari) to nonadmitted insurers. Suit was brought by the state alleging such a contract. The answer alleged that the policies were contracted for, delivered, and paid for in St. Louis, Missouri, the domicile of the insurer.

Demurrer was filed to the answer. The trial court overruled the demurrer, holding in effect that if competent evidence supported the answer, it would constitute a complete defense. The Supreme Court (state) sustained it. Judgment went for the plaintiff, and the corporation petitioned for review.

The Supreme Court of the United States reversed, holding that a contract entered into in a sister state, contracted for, delivered, and paid for in such sister state, was beyond the power of Arkansas to reach by taxation.

Re: *Boseman v. Connecticut General Life Insurance Company*  
(April 1927)

Plaintiff, a citizen of Texas, brought suit in Texas against Connecticut General Life Insurance Company, a corporation domiciled in Connecticut, to recover \$4,000, claiming liability for permanent total disability under a group policy of insurance issued in Pennsylvania to the Gulf Oil Corporation, which at an earlier date had been the employer of plaintiff. Under the terms of the policy the disabled workman was required to give notice to the insurer of such disability within 60 days of the termination of his employment. Such provision was concededly valid under Pennsylvania law. Texas law provided that any provision of a contract of insurance requiring notice of disability to be given in less than 90 days from the date of employment separation was void.

Notice of disability having been given more than 90 days after the date of employment separation, the question of the place of entry into the contract became vital, which in turn would determine whether the provisions of the contract of the provisions of the Texas statute should control.

The court, having found that the policy was applied for, delivered, and first premium paid in Pennsylvania, concluded that the contract was a contract of Pennsylvania, and controlled by its law. The Supreme Court affirmed the circuit court of appeals. The court said:

Final agreement between defendant and the oil corporation for execution and delivery of the policy was reached in Pennsylvania. On or about the same day defendant accepted the application; it signed the policy in Connecticut and issued and delivered it to the oil corporation in Pennsylvania. In that state the oil corporation paid the binding premium required by the policy. None of the negotiations for the policy and no act done for its execution or delivery took place in Texas or in any state other than Pennsylvania and Connecticut.

Re: State Board of Insurance v. Todd Shipyard Corporation  
(June 1962)

Todd Shipyard Corporation is domiciled in the State of New York. (See 340 S.W.2d 339, Court of Civil Appeals.)

Plaintiff sued in the District Court of Travis County to recover taxes paid under protest. A statute of Texas provided that any person who shall buy insurance covering a Texas risk, other than through a Texas licensed insurance agent, shall pay to the state gross premium tax of 5 percent thereon. Todd Shipyard paid the tax under protest.

The District Court of Travis County gave judgment for plaintiff. The court of civil appeals affirmed (340 S.W.2d 339). The Supreme Court of Texas denied review upon application for a writ of error (343 S.W.2d 241). The Supreme Court of the United States entered an order allowing review and, upon review, affirmed the judgment of the court of civil appeals.

Todd Shipyard has its principal place of business and domicile in New York City. It maintains shipyards where it builds and repairs ships in New Jersey, Louisiana, Texas, California, Washington, and South America.

Under stipulated facts it was developed that the two insurers involved were domiciled in London, England. Neither was authorized to do business in Texas. Todd owned real and personal property in the State of Texas of value exceeding \$900,000 upon which it had placed the insurance contracts with a nonadmitted insurer.

Each of the insurance policies made the basis of the taxes claimed by Texas was contracted for, delivered, and paid for in New York City, New York. Adjustment of losses is made by Todd's agent in New York. Neither underwriter has ever solicited Todd's business in Texas. All transactions involving Todd's coverage are handled by Todd's agent, Mr. Ed Costello, in New York. All losses are payable in New York City and all losses have in fact been so paid. The court said:

All decisions relative to the purchase of insurance and renewal of insurance, the extent and amount of the coverage, the selection of insurers and confirmation of insurance contracts are made by Mr. Ed Costello in New York City acting for Todd Shipyard Corporation, and not in Texas.

From the facts the courts found the contract to be a New York contract and the provisions thereof could not be reached by legislative enactments of the State of Texas.

But for the theory that the place of contracting would in this case be New York, which theory TIAA appears to have adopted, TIAA would concede that the Legislature of

Nevada would have broad scope in the regulation of its admission and regulation of its business upon Nevada risks after admission. Such is indeed the law. *Osborn v. Ozlin*, 310 U.S. 53, 60 S.Ct. 758, 84 L.Ed. 1074; *Hoopeston Canning Co. v. Cullen*, 318 U.S. 313, 63 S.Ct. 602, 87 L.Ed. 777.

There can be no doubt but that if the procedure proposed were permitted in this case, the place of contracting would be Nevada. *State Board of Insurance v. Todd Shipyard Corporation* (Texas 1960), 340 S.W.2d 339; *State Board of Insurance v. Todd Shipyard Corporation* (June 1962), 82 S.Ct. 1380, 370 U.S. 403. The negotiations prior to the formation of the contract, the execution and acceptance of the contract (policy), the payment of premiums thereon, the persons insured, the communications in respect to persons covered as well as in respect to individual liability, would all emanate from Nevada. Such would make it a Nevada contract and place the impact of Nevada insurance laws upon the insurer. *Mutual Life Insurance Company v. Hill*, 193 U.S. 551, 24 S.Ct. 538, 48 L.Ed. 788. (Cited with approval in *Connecticut General Life Insurance Co. v. Boseman*, 84 R.2d 701.)

Neither would a provision in the proposed contract that it be construed as if executed in the State of New York be controlling, for such provisions have the force and effect desired by the insurer only when not in conflict with the law of the place of contract formation. *Equitable Life Assurance Society v. Clements*, 140 U.S. 226, 232, 35 L.Ed. 497, 500, 11 S.Ct.Rep. 822.

If this manner of operation could be approved in Nevada, almost all insurers, covering Nevada exposures (both persons and property) being domiciled elsewhere, could immunize themselves to the supervisory jurisdiction of the Nevada Insurance Department and could avoid the impact of the Nevada tax law upon "total premium income."

If this manner of operation were approved, it would effect an exemption from taxation. Exemptions from taxation are to be strictly construed, including no more within the sweep of special privilege than the Legislature clearly intended.

#### CONCLUSION

The question propounded is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**184 County Commissioners; Contracts Let Through Bid—Slight variations between description of an item in the bid and that contained in the specifications not sufficient to disqualify the bid where the price bid is the lowest submitted. Correction or alteration of description of an item in bid to correspond to that in specification justified when done without increasing amount of bid.**

CARSON CITY, November 23, 1964

HON. JOHN CHRISLAW, *District Attorney of Douglas County, Minden, Nevada*

#### STATEMENT OF FACTS

The Board of County Commissioners of Douglas County, State of Nevada, in giving notice calling for bids for the furnishing of police cars for use by the county sheriff's office, set out specifications for certain equipment, including five 7.10 x 15, 4

ply or equal, tires with 5-inch rims for each car, this being the size for 1964 model cars, but which unknown to the board had been redesignated by tire manufacturers as 8.15 x 15 for 1965 models. Of the two bids submitted, the higher bid offered to furnish tires of the size called for in the specifications, viz, 7.10 x 15, while the lower one offered to furnish 7.35 x 15 tires. Upon opening the bids, the board permitted the low bidder to correct his bid so as to offer to furnish 8.15 x 15 tires instead, and thereafter accepted the same by unanimous vote. Several questions have arisen as to the legality of this procedure, most pertinent of these being substantially as follows:

#### QUESTIONS

1. Was the action of the board in permitting the change or correction by the lower bidder permissible so as to create a legal contract by accepting said bid?
2. Is the board liable in damages to the higher bidder by permitting the lower bidder to alter or correct his bid with respect to tire size and thereafter awarding him the contract, instead of awarding it to the higher bidder?
- 3..If the board should now rescind its action and award the contract to the higher bidder, will it run the risk of incurring damages for breach of contract to the lower bidder?

#### ANALYSIS

The letting of all county contracts exceeding \$1,000 is, with certain exceptions as are specifically stated in the statutes, governed by the provisions of [NRS 244.315](#). Chief of these is the requirement that all such contracts must be let to the lowest responsible bidder. Nothing is contained in this section, or any other that we find, which applies to alterations, corrections, or changes in bids submitted. Such matters are treated in general law laid down by the courts and text writers.

Generally, public officers have no authority to make or allow material or substantial changes in the terms of any contract after the bids are in. Such a course would prevent real competition, and lead to favoritism and fraud being adopted usually in order to make an award to a particular bidder possible. 38 LRA (NS) 600, and numerous authorities there cited. However, this rule has not been established as ironclad but has been given certain elasticity by the courts.

A leading case which seems clearly to resolve the questions before us is that of *Pascoe v. Barlum*, a Michigan decision made in 1929, and cited as 247 Mich. 243; 224 N.W. 506, being annotated in 65 ALR 833. There, the lowest bidder in submitting his bid for furnishing street cars to the City of Detroit had offered to deliver within 3 1/2 months instead of 90 days as called for in the specifications. The court held that despite this variation, the action of the city in accepting the bid was legal, it being pointed out that a variation from the specification will not destroy the competitive character of a bid unless it affects the amount of the bid by giving the bidder an advantage of benefit not enjoyed by other bidders, and especially since the variation in time could have no effect on the price. The court went on to define "lowest responsible bidder" as one who is responsible and lowest in price on the advertised basis.

Other authorities have given the rule broader application by stating that while no contract may validly be entered into by a county which involves a wide departure from the specifications, nevertheless the county commissioners may construe the language of a bid if it needs interpretation, and may waive defects in the form of a bid, where such waiver works no prejudice to the rights of the public. 10 CJS 1022.

And another authority commenting on this situation holds that readvertising for bids is not necessitated by a slight variance between the advertised specifications and the proposed formal contract, by reason of incidental changes therein, and also that when the bid does not exactly correspond with the specifications, a change may be allowed so that it will correspond, and then it may be accepted. 43 Am.Jur. 790.

We do not find such variation between the contents of the lower bid and the specifications in the situation presented by the hereinabove stated facts as would prevent a determination of the applicable law from the authorities above discussed. It appears that both bidders were responsible, but that the question as to which was lower was made to depend entirely upon the amount quoted in each bid. The fact that the lower bidder was permitted to correct or alter his bid with respect to the size of tires to be furnished so as to correspond with what the board had in mind, but which it had erroneously described, certainly works no disadvantage to the public when the price bid remains the same. Under the facts here, even had the higher bidder wished to correct the tire sizes designated in his bid from 7.10 x 15 to 8.15 x 15, so as to correspond with the size intended by the board, his bid would continue to be the higher of the two submitted so that the lower bid would still prevail.

CONCLUSION

In view of what we find to be controlling authorities, this office makes the following conclusions:

In permitting the lower bidder to alter or correct the tire sizes or designations in his bid, he was not being given an advantage over the higher bidder or gaining anything which would work a hardship or financial loss to the public. In fact, this was but a clarification of the tire designations which gave assurance to the board that it was getting what the specifications called for. Not only was it justified in letting the contract to the lower bidder, but it was required by law to do so because he was the lowest responsible bidder. This question is answered in the affirmative.

Question number 2 is answered in the negative.

Question number 3 is answered in the affirmative.

Respectfully submitted,  
 HARVEY DICKERSON, *Attorney General*  
 By C. B. TAPSCOTT, *Deputy Attorney General*

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**185 Schools; Business and Trade School Licenses—An institution licensed as a trade school but proposing to offer business courses must apply for a license to operate a business school and submit an additional \$5,000 surety bond.**

CARSON CITY, November 23, 1964

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

STATEMENT OF FACTS

The Department of Education licensed a private trade school under Chapter 394 of NRS to train checkers and stockmen for supermarkets. The school offers a course 90 hours in length for a \$180 tuition charge and has posted a \$5,000 surety bond as required by law for this activity. The school now proposes to offer the following additional courses which are equivalent to those given in a standard business college.

	Length of course	Tuition
1. PBX operator .....	45 hours	\$90
2. Typing .....	54 hours	150
3. General office.....	240 hours	210
4. Office machines.....	54 hours	110

5. Bank teller training.....	90 hours	180
6. IBM (tentative).....	240 hours	210

You ask the following questions:

1. Is the trade school required to submit a new application as a business school in order to teach the listed courses?
2. If the answer to the first question is affirmative, is an additional \$5,000 bond required?

#### ANALYSIS

Both questions are answered in the affirmative. Although the school is presently licensed and operating as a trade school it is proposing to teach courses in an area in which it is not licensed. It must apply for a license as a business school to teach these courses even though it has a present license to conduct activities as a trade school. Such an application would be made pursuant to [NRS 394.380](#) and [394.390](#) which require an accompanying \$5,000 surety bond for the expanded operation.

#### CONCLUSION

An institution licensed as a trade school but proposing to offer business courses must apply for a license to operate as a business school and submit an additional \$5,000 surety bond.

Respectfully submitted,  
 HARVEY DICKERSON, *Attorney General*  
 By DANIEL R. WALSH, *Deputy Attorney General*

**186 Public Schools; Physical Education—A chiropractor licensed by the State Chiropractic Board is classified a physician under state law and a public school student may be excused from physical education classes upon a request in writing from such a physician.**

CARSON CITY, December 3, 1964

R. W. WARBURTON, D.C., *Secretary-Treasurer, Nevada Board of Chiropractic Examiners, 329 North Sierra Street, Reno, Nevada*

#### STATEMENT OF FACTS

DEAR DR. WARBURTON: A chiropractor has sent a letter to a public school requesting that a student be excused from all types of physical education upon the basis that the student has an upper back and shoulder syndrome resulting from an injury and that continued participation in the physical education program could cause further injury. The school has refused to accept the request and you ask our opinion on the following question.

#### QUESTION

May a public school student be excused from physical education courses upon a written request from a chiropractor?

#### ANALYSIS

Public school regulations and state law provide that a student may be excused from attendance upon a writing from a physician. The term “physician” is not limited to medical doctors and any person classified as a physician under state law is authorized to make such a request. [NRS 634.120](#) classifies chiropractors as “Chiropractic Physicians” and as such brings this group within the term “physician.” A person licensed by the State Chiropractic Board, therefore, is a physician and authorized to make a written request that a student be excused from attendance of physical education courses in public schools.

#### CONCLUSION

A chiropractor licensed by the State Chiropractic Board is classified a physician under state law and a public school student may be excused from physical education classes upon a request in writing from such a physician.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By DANIEL R. WALSH, *Deputy Attorney General*

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**187 Social Security—Employees of the State Board of Registered Professional Engineers are qualified for insurance coverage under the provisions of the Social Security Act, Old Age and Survivors Program (Title 42 USCA, Section 418) and are unable to qualify for membership of the Public Employees’ Retirement System of the State of Nevada (Chapter 286 of NRS).  
See: A.G.O. No. 72 of September 23, 1963, and A.G.O. No. 148 of June 15, 1964.**

CARSON CITY, December 7, 1964

MR. ARTHUR A. JOHNSON, JR., *District Manager, Social Security Administration, District Office, P.O. Box 1009, Reno, Nevada*

#### STATEMENT OF FACTS

DEAR MR. JOHNSON: Your inquiry of recent date raises certain pertinent questions, bearing upon whether or not employees of the State Board of Registered Professional Engineers (Chapter 625 of NRS) are eligible for coverage under the Federal Social Security Act for Old Age and Survivors Insurance.

#### QUESTIONS

1. Are employees of the State Board of Registered Professional Engineers employees of the State of Nevada?
2. Are employees of the State Board of Registered Professional Engineers employees of a political subdivision of the State of Nevada?
3. Are employees of the State Board of Registered Professional Engineers employees of an agency of the State of Nevada?
4. Are employees of the State Board of Registered Professional Engineers employees of an instrumentality of the State of Nevada?

#### ANALYSIS

My learned associates have recently passed upon similar questions appertaining to other entities established under Nevada laws, which were well researched and

documented opinions and which, for reasons hereinafter briefly mentioned, are applicable here.

In A.G.O. No. 72 of September 23, 1963, it was concluded that the employees of the State Board of Pharmacy could legally be included and covered under the OASI Program of the Social Security Act (Title 42 USCA, Section 418).

In A.G.O. No. 148 of June 15, 1964, it was concluded that the employees of the State Board of Contractors could legally be included and covered under the OASI Program of the Social Security Act.

Reference is made to those opinions in respect to the detailed analysis and distinguishing characteristics of each of the said boards under consideration.

Chapter 625 of NRS created the autonomous entity entitled "State Board of Registered Professional Engineers" and provides for the powers delegated to such board and the manner in which such powers are to be exercised.

Among other things, the board may make bylaws and rules for its government and for the exercise of the delegated powers ([NRS 625.140](#)), may maintain its funds and checking account separate from the funds of the State Treasury (625.150), may examine its prospective licenses (625.190, 625.200), may license and exact a fee therefor (625.210, 625.220), may revoke or suspend licenses (625.460), and may in other important particulars regulate the profession.

This board, as in the case of the other boards considered in the cited opinions, receives its funds entirely from the profession that is regulated and receives no appropriation from the Legislature; neither may its funds revert (accrue) to the State Treasury (625.150, 625.160).

Although differences do exist in the powers, duties and government of this board and the powers, duties, and government of the other boards previously considered, we do not detect any significant changes or such as would modify the conclusions previously reached.

The employees of the State Board of Registered Professional Engineers are, in our opinion, not qualified for membership in the Public Employees' Retirement System of the State of Nevada ([NRS Chapter 286](#)).

#### CONCLUSION

1. Question number 1 is answered in the negative.
2. Question number 2 is answered in the negative, with the qualification that they may be considered employees of a political subdivision of the State of Nevada for purposes of Social Security coverage only.
3. Question number 3 is answered in the negative insofar as the right of such individuals to be covered under a state retirement system is concerned.
4. Question number 4 is answered in the affirmative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**188 Federal Military Bases Within State—When land within State acquired by U.S. government for base site without consent or cession of jurisdiction thereto by the State, such jurisdiction remains in State, with the limitation that it be exercised without interference or handicap to the purposes for which base was acquired. Enforcement of state law governing dispensing optician's license against one practicing profession of dispensing optician as a**



**concessionaire at Nellis Air Force Base post exchange, not within this limitation and, therefore, unauthorized.**

CARSON CITY, December 9, 1964

MR. VICTOR ISAACSON, *Secretary, State Board of Dispensing Opticians, 134 South Fourth Street, Las Vegas, Nevada*

#### STATEMENT OF FACTS

DEAR MR. ISAACSON: Nellis Air Force Base, located near Las Vegas in Clark County, Nevada, is presently and has been for several years operated as one of the advanced flight training centers of the U.S. Air Force. Originally established and owned as a municipal project by the City of Las Vegas, it was with the beginning of World War II and for several years thereafter operated jointly with the federal government and called McCarran Field and Gunnery Range. Following the war it was conveyed by the city of Las Vegas to the federal government, with right of reversion to the city in case its use as an air base is ever discontinued, and at which time it was enlarged and given its present name.

Among the facilities carried on for the benefit of the base personnel of the field, including both members of the armed forces and civilian employees, is a post exchange through which a concession has been obtained by a dispensing optician who is engaged in ophthalmic dispensing and kindred activities related thereto.

#### QUESTION

Is a dispensing optician operating as a post exchange concessionaire at an Air Force base located within the State, subject to the provisions of [NRS 637.090](#) requiring a license for engaging in or practicing this profession?

#### ANALYSIS

[NRS 637.090](#) provides:

No person shall engage in the practice of dispensing optician, nor shall any person manage a business engaged in ophthalmic dispensing, without first securing a certificate issued as provided by this chapter.

Were we dealing here with a dispensing optician having no connection with a military base, it would be obvious from the above section that a license would be required to authorize his practice within the State. But the question propounded embraces a broader scope than that contemplated in said section, thereby necessitating the examination of other laws and applicable adjudications.

The U.S. Constitution expressly confers upon Congress the power to exercise "exclusive legislation" over all places purchased by the consent of the legislature of the state where the place shall be, for the location of forts, magazines, arsenals, dockyards, and other needful buildings. (Art. 1, Sec. 8, Cl. 17, U.S. Const.)

The term "exclusive legislation" as therein used is almost universally held to be synonymous with that of "exclusive jurisdiction." *Johnson v. Morrill* (Cal.), 126 P.2d 873; *Chaney v. Chaney* (N.M.), 201 P.2d 782; *State v. Blair* (Ala.), 191 Kso. 237. "Other needful buildings" has been defined as embracing whatever structures are found to be necessary in the performance of the functions of the federal government. 91 C.J.S. 17; *James v. Dravo Contracting Co.*, 302 U.S. 134. Without doubt, the term embraces a U.S. air base.

The law appears to be well settled that a state, in giving its consent to the acquisition of lands by the federal government, may cede over exclusive jurisdiction to the U.S., or it may reserve certain powers so as to establish concurrent jurisdiction between the state in which the land is located and the U.S. government. A thorough

search of the Nevada Statutes reveals that in the late twenties and early thirties when the federal government began on a noticeable scale to acquire areas of land within the State for federal uses, the State Legislature usually consented to the acquisition by special act and ceded jurisdiction under some one of these plans. It also appears that no uniform plan as to what rights and powers were reserved to the State was followed until after World War II. In 1947 the Legislature passed the first general act for the acquisition of state-controlled lands by the federal government. This was superseded by the act of 1960, now appearing as Chapter 328 in NRS.

Where consent to acquisition has been given, the extent of power to be exercised by each governmental sovereignty is usually well defined. A complexing question arises, however, when acquisition has been for federal purposes without legislative consent of the State and where there has been no cession of jurisdiction from the State to the U.S. government. Such appears to be the situation with reference to Nellis Air Force Base. A thorough search of the statutes, resolutions and other acts of the Nevada Legislature fails to show that any consent to acquisition of the base was ever given or that a cession was made of the State's jurisdiction over its area. Neither was such consent and cession effected by reason of any retroactive clause in the general act of 1960 hereinabove mentioned.

We come next to a consideration of the jurisdictional status of this base under these conditions. It seems to be well recognized law that acquisition by the U.S. of land within a state, unsupported by either the consent of the State Legislature or an express cession of jurisdiction from the state, leaves territorial jurisdiction of such land in the state courts, and under such conditions the state may exercise its taxing and police powers. (54 Am.Jur. 599; U.S. v. McGowan, 89 F.2d 201.) However, this rule is not without limitations. These powers may be exercised only if they don't interfere with the carrying out of the federal purposes, and state laws must give way where their enforcement would handicap efforts to carry out such purposes. 91 C.J.S. 16; James v. Dravo Contracting Co., 302 U.S. 134, Anno. 114 A.L.R. 318; Olsen v. McPartlin, 105 F.Supp. 561; Rainier Natl. Park Co. v. Martin, 23 F.Supp. 60; Johnson v. Morrill, 126 P.2d 873; Murphy Corp. v. Fontenot, 73 So.2d 180; State ex rel. Board Com. (Valley county) v. Bruce, 69 P.2d 97.

The courts have been even more specific and held that when consent and cession of jurisdiction are lacking, buildings erected upon lands thus acquired are free from any state interference as would impair their effective use for the purposes for which the lands were acquired. U.S. v. Unzenta, 281 U.S. 138; Ft. Leavenworth R. R. Co. v. Lowe, 114 U.S. 525.

Still another line of authorities is to the effect that under such situation, a state is without power to tax the means and instrumentalities which the federal government employs to carry out its proper functions. 33 Am.Jur. 334 and cases there cited. Even this statement of the law requires further refinement before it may serve as a definite guide in solving our immediate problem. We believe that "instrumentalities" is the key word to a solution.

Numerous cases have held that government instrumentalities include military post exchanges. 53 C.J.S. 557; U.S. v. Query, 37 F.Supp. 972, 121 F.2d 631, 316 U.S. 486. The latter is a leading case on this particular aspect of our problem, and held that the imposition of a state license, privilege, occupation, sales, use, or excise tax on these instrumentalities by the state is void.

The functions of a military post exchange are many and varied and include the furnishing of many needs to military personnel not ordinarily supplied by the federal government. Some of these needs, such as eye glasses and other incidentals, are necessities which circumstances prevent such personnel from obtaining, or at least make it difficult for them to obtain, off base. Under these conditions, the services of a concessionaire oculist as measured by the cases in point would appear to be a necessary part of and properly associated with the functions and purposes of a PX. Any attempt to

tax or license the activities of such instrumentality or persons performing services in connection therewith, would, in the opinion of this office, be an interference with or a handicap upon the purposes for which the military base was acquired. We believe the authorities well support this view.

Apparently the Nevada Legislature has adopted the same view as is evidenced by the fact that it has seen fit to declare state licensing laws inapplicable to certain trades and professions (which do not include dispensing opticians) when carried on or practiced upon public lands of the U.S. It is also significant that state laws providing for taxes on gas, sales, fuel oil, property, and certain other items are likewise declared inapplicable to or upon such lands and the business activities thereon. These exemptions indicate the legislative policy with reference to the taxing or licensing of enterprises performed or practiced upon government lands. Such lands would, of course, include the Nellis Air Force Base with which we are here concerned.

#### CONCLUSION

By reason of the foregoing authorities, this office concludes that although the State of Nevada has jurisdiction over Nellis Air Force Base by reason of having never expressly or by implication consented to its acquisition by the U.S. or ceded its jurisdiction thereto, nevertheless, neither the state nor any of its agencies is authorized to exercise any jurisdiction which interferes with or handicaps the functions of the federal government in carrying out the purposes for which the base was acquired. Requiring a license from a concessionaire practicing the profession of dispensing optician as a function of the base post exchange would constitute such interference or handicap.

The question hereinabove stated is answered in the negative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*

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**189 Collection Agencies—A company which indirectly solicits the payment of debts by requesting the debtor to forward payment to the creditor, and used cards which threaten loss of credit, at the same time collecting a fee from the creditor, is a collection agency within the definition of Nevada statutes and should therefore be bonded and pay a license fee.**

CARSON CITY, December 10, 1964

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

You have directed to this office an inquiry as to whether a company which solicits the payment of debts directly to creditors, using a series of cards which threaten (1) loss of credit rating, (2) telephone calls to suppliers if the bill is not paid, and (3) the retention of an attorney to sue the debtor, falls within the definition of a collection agency as defined in Chapter 649 NRS, and should be licensed and bonded.

#### ANALYSIS

[NRS 649.010](#) defines a claim as:

649.010 "Claim" defined. As used in this chapter, "claim" means any obligation for the payment of money or its equivalent arising in the usual course of any business or professional occupation.

[NRS 649.020](#) defines a collection agency as including all persons who engage directly *or indirectly*, as a primary or *secondary* object, business or pursuit, the collection of or the solicitation of payment of a claim. (Italics supplied.)

Webster in defining the word "indirect" states, "not leading to an aim or result by the plainest course or method or by obvious means."

The company designated by you is assuring the collection of debts by a method not leading to payment by the obvious means of a collection agency.

The word "secondary" is defined by Webster as, "immediately derived from or dependent on that which is original or primary."

Under these definitions the circuitous route followed by the company in securing the payment of debts does not take them outside the definition of a collection agency.

#### CONCLUSION

It is the opinion of this office that a company which indirectly solicits the payment of debts by requesting the debtor to forward payment to the creditor, and uses cards which threaten loss of credit, at the same time collecting a fee from the creditor, is a collection agency within the definition of Nevada statutes and should therefore be bonded and pay a license fee.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**190 Wage Claims; State Labor Commissioner—It is beyond the power of the district attorneys to compel the State Labor Commissioner to justify his determination that a wage claimant is financially unable to employ counsel, and that once determination has been made and the case submitted to the district attorneys, they are compelled to prosecute such cases within 45 days after demand, oral or written, by the commissioner, unless excused from so doing by order out of a duly constituted court of competent jurisdiction.**

CARSON CITY, December 18, 1964

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

DEAR MR. COMBS: You have set forth the following facts in a letter dated December 1, 1964. The district attorney of one of Nevada's counties has designated eight questions which must be answered by claimant to your office before he will follow the duties assigned to him under [NRS 607.160\(2\)\(3\)](#) and [NRS 607.170\(1\)](#).

You request that we answer the following questions:

1. Is the information requested by the district attorney in paragraphs numbered *one* to *eight* in compliance with the intent of the law in regard to being financially unable to employ counsel?

2. Who has the authority to determine if a claimant has or has not the financial ability to employ counsel? In other words, can a district attorney require that this information be furnished to him? (Italics supplied.)

## ANALYSIS

In order to arrive at a determination of the intent of the Legislature, we set forth the language of the statute:

[NRS 607.160](#)(2) Whenever after due inquiry the labor commissioner shall be satisfied that any such law has been violated or that a person financially unable to employ counsel has a valid and enforceable claim for wages or other demand, he shall present the facts to the district attorney of the county in which such violation occurred or wage claim accrued, showing:

- (a) The names of the claimant and his alleged debtor.
- (b) A description and the location of the property on which the labor was performed, and the right, title and interest of the debtor therein.
- (c) Other property, if any, owned by the debtor and the probable value thereof.
- (d) The time the claimant began and the time he ceased such labor.
- (e) The number of days' labor performed by him during the employment and the rate of wages and terms of such employment.
- (f) The date or dates and the amount, if any, paid on the claim.
- (g) The balance due, owing and unpaid on the claim.
- (h) The date demand for payment was made upon the debtor or his agent or representative and the response, if any, to such demand.
- (i) The names of the witnesses upon whom the claimant expect to rely to provide such facts and to what facts each of such witnesses is expected to testify.

[NRS 607.160](#)(3) The district attorney shall prosecute the claim. Should the district attorney fail, neglect or refuse to begin a prosecution on such claim within 45 days after oral or written demand therefor is made by the labor commissioner, and to prosecute the same diligently to conclusion, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$500, or by imprisonment in the county jail not exceeding 6 months, or by both fine and imprisonment, and in addition thereto he shall be removed from office.

It becomes apparent after a careful reading of the provisions of Nevada law that the duty and responsibility of determining whether a wage claimant is financially unable to employ counsel has been placed by the Legislature solely in the hands of the State Labor Commissioner. Once that question has been determined, it becomes equally clear that the duty devolves on the district attorney to prosecute cases assigned to his office by the commissioner, when such assignments are accompanied by the information required by [NRS 607.160](#)(2), subparagraphs (a) through (i).

[NRS 607.170](#)(1) reads as follows:

When the labor commissioner deems it necessary, he shall have the power and authority to take assignments of wage claims and to prosecute actions for collection of wages and other demands of persons who are financially unable to employ counsel in cases in which, in the judgment of the Labor commissioner, the claims for wages are valid and enforceable in the courts.

It is equally apparent from a careful scrutiny of this statute that the determination to accept an assignment of wage claims from a person whom he has determined is financially unable to employ counsel rests solely with the Labor Commissioner. The duty, therefore, rests with the district attorney to prosecute claims arising as a result of such assignments.

## CONCLUSION

It is, therefore, the opinion of this office that it is beyond the power of the district attorneys to compel the State Labor Commissioner to justify his determination that a wage claimant is financially unable to employ counsel, and that once that determination has been made and the case submitted to the district attorneys, they are compelled to prosecute such cases within 45 days after demand, oral or written, by the commissioner, unless excused from so doing by order out of a duly constituted court of competent jurisdiction.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**191 University of Nevada; Revenue Certificates—Revenue certificates to be issued by the Board of Regents of the University of Nevada for the Radiological Laboratory Project could not be affected by the fact that the property upon which the project is to be located is vested in the State of Nevada rather than the University.**

CARSON CITY, December 18, 1964

MR. JAMES D. ROGERS, *University Engineer, University of Nevada, Reno, Nevada*

#### STATEMENT OF FACTS

DEAR MR. ROGERS: The Board of Regents of the University of Nevada is authorized by legislation to agree to lease and to lease to the federal government the proposed Radiological Laboratory Project, to be built on the campus of Nevada Southern. The lease is to be for a fixed term and at an annual rental sufficient to amortize \$2 million in revenue certificates which the legislation in question authorizes the board to issue in order to acquire the funds necessary to construct the buildings, structures, and the improvements contemplated by the lease.

The land upon which the project is to be built is vested in the State of Nevada through its Board of Regents of the University, and not directly in the University. You ask the following questions concerning the effect this vesting of title in the State of Nevada, rather than the University, may have on the revenue certificates to be issued by the Board of Regents.

#### QUESTIONS

1. Could the revenue certificates to be issued by the Board of Regents be affected in any way by the fact that the property in question is vested in the State of Nevada rather than the University?
2. Does the Board of Regents of its University have such control over the project as to preclude any future legislative change that would affect the lease to be executed or the revenue certificates to be issued by the board?

#### ANALYSIS

The Nevada Legislature has specifically authorized the Board of Regents to issue the revenue certificates in question and to acquire with the proceeds, buildings, structures, and improvements for the project. The board is also specifically authorized to lease the project to the federal government for an annual rental sufficient in amount to amortize the certificates and to pay the operating costs of the project during the term of the lease. Chapter 387, Statutes 1963. Once the certificates are issued pursuant to legislation and

the security thereon provided they could not be adversely affected by subsequent legislation or action of the State even though title to the property is vested in the State.

After the rights of the certificate holders have become vested, the State has no power to alter such rights to the detriment of those who dealt with the University upon the faith of the authority granted by the Legislature to the University. Public bonds and certificates have been uniformly and consistently held to constitute contracts within the purview of provisions of the federal and state constitutions prohibiting laws impairing the obligations of contracts. Any laws purporting to do this would be invalid. Statutes by authority of which and under which such certificates are issued become a part of, and later govern, the contracts in such a way that the obligation of the contracts cannot thereafter be hampered or obstructed by a change in the law. Cf. 43 Am.Jur., Public Securities and Obligations, Sections 9 and 12.

In the instant situation the security is provided by legislation. The Board of Regents is authorized by the Legislature to agree to lease and to lease the project in question and once such agreement or agreements are executed they cannot be rescinded by legislative action. The fact that the property in question is vested in the State of Nevada rather than the University would have absolutely no effect on the certificates to be issued by the board, the security therefor, or the obligations thereof.

The first question is answered in the negative and the second in the affirmative.

#### CONCLUSION

Revenue certificates to be issued by the Board of Regents of the University of Nevada for the Radiological Laboratory Project could not be affected by the fact that the property upon which the project is to be located is vested in the State of Nevada rather than the University.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By DANIEL R. WALSH, *Deputy Attorney General*

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#### **192 Department of Agriculture—Persons representing out-of-state nurseries required by [NRS 555.236](#) to procure license before being authorized to sell or peddle nursery stock within the State of Nevada, or to solicit orders therefor.**

CARSON CITY, December 23, 1964

MR. LEE M. BURGE, *Executive Director, Department of Agriculture, P.O. Box 1209, Reno, Nevada*

#### STATEMENT OF FACTS

DEAR MR. BURGE: Out-of-state nurseries have, during the past several years, made sales of shrubbery, trees, etc., to home owners in Southern Nevada through salesmen who solicit orders from buyers. In some instances, these buyers have not obtained the name or address of the salesmen soliciting these orders or the name of the company they represent. Much of the nursery stock later shipped to the buyers has failed to survive or has been of inferior quality.

#### QUESTION

Are door-to-door salesmen representing a foreign nursery corporation, not qualified to do business in Nevada, required to be licensed?

## ANALYSIS

[NRS 555.236](#) requires a license for each person selling nursery stock. It reads as follows:

555.236 Licenses to sell nursery stock; exceptions.

1. Every person who sells nursery stock shall obtain a license from the executive director, except;

(a) Retail florists or other persons who sell potted, ornamental plants intended for indoor decorative purposes.

(b) A person not engaged in the nursery business, raising nursery stock as hobby in this state, from which he makes occasional sales, if such person reports to the executive director his intention to make such sales and does not advertise or solicit for the sale of such nursery stock.

(c) Persons engaged in agriculture and field-growing vegetable plants intended for sale for use in agricultural production.

(d) That the executive director may, to relieve hardships imposed by the licensing requirements of [NRS 555.235](#) to [555.249](#), inclusive, upon persons residing in sparsely settled areas of the state in which there exist no licensed nurseries, waive nursery licensing requirements for any established business concern to permit occasional sales of nursery stock for customer accommodation.

(e) At the discretion of the executive director, persons selling vegetable bulbs or flower bulbs, such as onion sets, tulip bulbs or similar bulbs.

2. Persons exempt from the licensing requirements shall conduct their businesses in accordance with pest regulations and grades and standards for nursery stock as established by the executive director.

A person soliciting for the sale of nursery stock is an “agent” under the definition given in [NRS 555.235](#)(1). And when such person solicits or offers nursery stock for sale to the ultimate consumer, and has no established place of business in the State he is defined as a “peddler” under [NRS 555.235](#)(8). It becomes clear that the persons making sales in Southern Nevada in the manner hereinabove described are “peddlers.” It has long been the policy and practice of both cities and counties in the State to regulate soliciting through agents and peddlers by requiring a license. The provisions of [NRS 555.236](#) are broader still and require a license of *every person* selling nursery stock within the State, exclusive of those coming within the exceptions therein specified. We believe that the legislative intent is clearly expressed in this provision of the law, and that unless a salesman, solicitor, or peddler dealing in nursery stock falls within one of the enumerated exceptions, a license is required before he is authorized to sell or peddle such stock or take orders therefor.

## CONCLUSION

It is opinion of this office that salesmen, peddlers, agents, or solicitors representing out-of-state nurseries come within the purview of [NRS 555.236](#) and are required to obtain a license for selling or peddling nursery stock within the State or for soliciting orders therefor.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By C. B. TAPSCOTT, *Deputy Attorney General*



**193 Public Employees' Retirement Act—An employee of Boulder City, under federal administration elected to continue under federal employment after the incorporation of the city under state law. Such constituted a constructive waive of his privilege of crediting work time prior to incorporation under the Public Employees' Retirement Act (Chapter 286 NRS) and prevented “dual coverage” which the law forbids.**

CARSON CITY, December 24, 1964

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

STATEMENT OF FACTS

DEAR MR. BUCK: Prior to January 4, 1960, Boulder City was administered by the federal government. On that date it was incorporated under the statutes of Nevada and federal control ceased.

[NRS 286.320](#)(2) permits the retirement board to accredit community service preceding incorporation of a city, under the terms of an agreement to be entered into between the members of the board and the city. ([NRS 286.370](#))

[NRS 286.450](#)(3) provides that credit shall granted a member of the system for all continuous service which he rendered to the State or to his public employer prior to the time the public employer commences participation in the system.

On September 25, 1962, pursuant to [NRS 286.370](#) a contract was entered into by and between the Public Employees' Retirement Board and the City of Boulder City, providing inter alia for the accreditation of certain of the employees of the city for their public employment with the city while under federal control. The contract provided the following:

1. That service prior to incorporation of the City shall be accredited towards retirement but that such service to be eligible for accreditation shall have been in a department or a capacity directly contributing to the welfare, safety, and operation of the community and concerned with the administration of programs having a direct community application such as service in the street, fire, and police departments although not limited to such enumeration.
2. The decision of the Board as to eligibility for coverage under Paragraph 1 shall be final.

X was employed by the federal government in community services prior to the incorporation of Boulder City. At the time of incorporation he was offered, but refused, employment with the city. He declined the offer of employment with the city and continued in other federal employment. He now wishes to accept employment with a participating public employer under the state system and receive credit for service, rendered as aforesaid, prior to the incorporation of the city. Mr. X received accreditation under the federal system of retirement for the time employed by the federal government in the public service of Boulder City prior to the date of incorporation under state law. Upon the incorporation Mr. X did not continue in a position which would qualify under paragraph numbered 1 of the contract. In other words, upon incorporation, although Mr. X was offered a position with the city which thereafter became a participating public employer, he elected to work for the federal government, in work of a different kind, and elected to continue his retirement rights under the federal law.

The Public Employees' Retirement Board has tentatively concluded that the free election of Mr. X to continue his retirement coverage under the federal law, constituted a constructive waive of the right that he could have acquired in the accreditation of

employment time with Boulder City prior to its incorporation if he had accepted the tendered position with the city after incorporation, and that if he now accepts or has recently accepted employment with a participating public employer he will not be permitted to accreditation of the former service, rendered prior to January 4, 1960.

#### QUESTION

Is the tentative conclusion of the board correct and consistent with the provisions of the Public Employees' Retirement Act and of the contract provision respecting accreditation?

#### ANALYSIS

We are not informed on what date Mr. X retired from federal service having included all time employed in community service for Boulder city while under the administration of the federal government, being now the happy recipient from the Treasurer of the United States, of his monthly annuity, nor are we informed on what date he has accepted or proposes to accept employment with a participating public employer with accruing rights under Chapter 286 of NRS.

It is true that on the date of incorporation (January 4, 1960) under state law the city was not qualified under Chapter 286 NRS as a participating public employer. Nor could it be at the time. However, Mr. X knew or is charged with knowledge of the fact that the city could qualify and no doubt would qualify as a participating public employer, as had the other cities of the State.

The conclusion is therefore inescapable that Mr. X made an informed election to accept the benefits of the one statute (pertinent federal retirement statute) and reject the readily available retirement rights under Chapter 286 of NRS. Such election constituted a waiver, by operation of law.

To have concluded otherwise would have resulted in "dual coverage," which is specifically precluded as to another group of federal employees. Under [NRS 286.365](#) which provides for coverage under state law of the civilian employees of the Nevada National Guard, it is provided that there shall be no dual coverage. This confirms our belief that the interpretation given by the board is in conformance with legislative intent.

#### CONCLUSIONS

We conclude that the question must be answered in the affirmative.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*  
By D. W. PRIEST, *Chief Assistant Attorney General*

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**194 Motor Vehicle Carriers—[NRS 706.520\(5\)](#), [NRS 706.670\(1c\)](#) and [NRS 706.670\(2\)](#) clarified.**

CARSON CITY, December 30, 1964

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

DEAR MR. SPITZ: You have directed to this office a letter under date of December 28, 1964, requesting clarification of [NRS 706.670](#) and [NRS 706.520](#). Specifically, you ask the following questions:

1. Are the miles mentioned in [NRS 706.520\(5\)](#) air miles or highway miles?

2. Do the words in the same section, “5 miles outside such limits” refer to 5 miles from the point of departure from city or town limits or 5 miles from every point and projection of city or town limits?

3. What is the significant meaning of the word “radius” as used in [NRS 706.670\(1c\)](#) and [NRS 706.670\(2\)](#)?

#### ANALYSIS

The first inquiry above is answered by the succeeding paragraphs.

With regard to the words in [NRS 706.520\(5\)](#), “5 miles outside such limits,” this means 5 miles from every point or projection of city or town limits for the reason that all roads do not lead into the city and yet may be traveled by the designated vehicles.

The word “radius” as used in [NRS 706.670\(1c\)](#) and [NRS 706.670\(2\)](#) was intended by the Legislature to conform to the definition of “5 miles outside such limits.” In other words the radius referred to would include all territory within a line drawn completely around the city at a point 5 miles from every point or projection of such city or town.

A city or town is an inhabited place, with definite corporate limits.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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**195 Department of Commerce—Director has limited powers in hiring and firing chiefs of divisions. The director does not have power to commingle the duties nor the personnel of separate divisions. Director has authority to establish overall policy and to require a common method of processing records and to require that proposed legislation affecting the divisions of his department be submitted for scrutiny and approval prior to submission to the Legislature.**

CARSON CITY, December 31, 1964

MR. WALTER C. WILSON, *Director, Department of Commerce, Carson City, Nevada*

#### STATEMENT OF FACTS

DEAR MR. WILSON: You have directed to this office an inquiry as to the extent of the powers of the Director of the Department of Commerce, particularly with the power to appoint and dismiss, the full powers accompanying administration, and the authority to establish division policy.

This covers such a broad field that this opinion must of necessity be somewhat longer than the average answer to questions submitted by letter agencies of government.

#### ANALYSIS

At the 1963 session of the State Legislature, pursuant to the request of the Governor, legislation was enacted creating three super departments of government, Administration (Chapter 404, Statutes 1963), Commerce (Chapter 339, Statutes 1963), and Health and Welfare (Chapter 393, Statutes 1963).

Various departments of state government were placed under these agencies. Each department was provided with a director, who was given authority to hire, with the approval of the Governor, the heads of the divisions falling within the purview of each director’s department.

Because the provisions of the three statutes creating the new departments are governed by the same general rules with regard to administration, the answers to your

questions would apply equally to Administration and Health and Welfare, with such exceptions as will hereafter be noted.

The Department of Conservation and Natural Resources, which is the fourth super agency of government, was created in 1957. The appointment of the heads of the divisions under the department is left solely at the discretion of the director. (See: [NRS 232.100](#), [232.110](#), [232.120](#), [232.130](#), and [232.135](#).)

We call this to your attention because we feel it indicates the complete reliance placed by the Legislature in the Director of the Department of Conservation and Natural Resources as compared to their reluctance to give the same powers to the directors of the three super agencies created in 1963. Under identical provisions of Sections 5(1) of the acts creating the Departments of Commerce, Administration, and Health and Welfare, the appointment of heads of divisions under these departments can be made by the directors only with the consent of the Governor. This clearly indicates that the Legislature felt that the primary responsibility for the successful operation of these new departments should rest with the appointees concurred in by the Chief Executive, with the directors afforded a secondary position in the governmental orbit affecting the appointment of chiefs of these divisions. Having placed the curb of executive approval on the hiring of department heads, it must then follow that the termination of such employment must also rest on approval by the Governor.

The strong hand given the Governor by the Legislature is indicated by the fact that while the salaries for the chiefs of the divisions serving under you may be set by you, the final arbiter of such salaries is the Chief Executive. Only where the Commissioner of Savings and Loan Associations is concerned is the salary set by statute.

The Legislature has further curtailed your power of appointment of chiefs of the divisions under your jurisdiction by compelling you to obtain lists of nominees from recognized professional organizations, if any, in the appropriate professions, and to make appointments not only satisfactory to the Governor, but satisfactory to such organizations. These curbs, we feel, place restrictions upon your administrative discretion which hampers the proper administration of your department.

As to the powers accompanying your administration of the Department of Commerce, it appears that you have full authority to assess the operating efficiency of component agencies and to direct proposals to the division heads which comport with an improved administration of such divisions.

Your administration of the divisions under your department seems by [NRS 232.270](#) to be shared by the chiefs of the divisions who are directed by such legislation to administer the provisions of law relating to his division subject to administrative supervision by you as director. It would appear that such direction would place in your hands a veto power if you thought the chiefs' interpretation of the law was incorrect.

We do not feel, however, that the law implies, or allows, the director to commingle the duties attendant upon the administration of the law applicable to each separate division, nor to require the personnel of one division to perform services for another. Such procedure would lead to confusion and the implanting of unrelated skills in each division. An employee skilled in real estate might be totally incompetent or unversed in insurance or banking.

We certainly feel that as director you would have the authority to establish overall policy as to the processing of records and the submission of budgets for approval by the director and that statutory changes proposed by division chiefs should bear your scrutiny and approval before being submitted to the Legislature.

#### CONCLUSIONS

It is therefore the opinion of this office that:

1. The authority of the Director of the Department of Commerce to hire and fire is subject in both instances to the approval of the Governor.

2. The authority to administer your department does not include the right to commingle the duties or personnel of separate divisions.

31 You have the authority to establish policy and to require a common method of processing records and to require that proposed legislation affecting the divisions in your department be submitted to you for your scrutiny and approval prior to submission to the Legislature.

Respectfully submitted,  
HARVEY DICKERSON, *Attorney General*

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