

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1965

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.

196 Nevada National Guard—The state law permits a state-federal contract to be entered into to provide for payroll deductions of civilian employees of the Nevada National Guard, to be paid over to an insurer for premiums on a group comprehensive medical insurance plan in respect to beneficiaries designated by such civilian employees. Public Law 87-224; Chapter 470, Statutes 1963 and [NRS 690.100](#), subsection 2, construed.

CARSON CITY, January 7, 1965

MAJOR GENERAL JAMES A. MAY, *The Adjutant General, State Military Department, Carson City, Nevada*

STATEMENT OF FACTS

DEAR GENERAL MAY: The civilian employees of the Nevada National Guard desire to avail themselves of participation in a group comprehensive medical insurance plan made available nationally under National Guard Association of the United States sponsorship and underwritten by Aetna Life Insurance Company, pursuant to the payroll deduction plan (not participating by the United States) as authorized by Public Law 224, 87th Congress of the United States.

In order for such civilian employees of the Nevada National Guard to receive the insurance benefits available by participation in the group comprehensive medical insurance plan, presently in force and effect as to such employees with respect to certain of the other states, two requirements of federal law must be complied with, viz:

1. A federal-state agreement must be executed wherein it authorizes payroll deductions to be made (without contributing participation by the United States) and paid over to the policyholder (trustees of the National Guard Association of the United States Insurance Trust in the District of Columbia).

2. Evidence that the plan is in fact state sponsored.

QUESTION

Do the Statutes of Nevada authorize such an accord to be reached, affecting such civilian employees in the manner mentioned, and entered into by way of a federal-state agreement under the sponsorship of the State of Nevada?

ANALYSIS

The provisions of Public Law 87-224, dated September 13, 1961 (75 Stat. 496, 5 USC 84d, as amended) and Executive Order 10,996, dated February 19, 1962, authorize such a contract between the state and federal government for either insurance benefits or retirement benefits, with payroll deductions for the employees contribution, and contribution by the government for the employer contribution, if the subject matter of the contract is retirement under a state sponsored system. However, this law does not provide for federal contributions if

the subject matter is insurance. The provisions in regard to payroll deductions for insurance coverage may, under this law, be provided in such a contract.

The proposal here is not for a contract that will permit federal contributions, but for a contract that will permit withholding of civilian employees pay sufficient to fully pay the premiums on the group insurance policy presently in force and effect.

Such an accord is authorized under state law by the provisions of [NRS 690.100](#), subsection 2. There it is provided that even though there is no contribution from the employer such a policy is authorized when the employees are of the state government or a political subdivision thereof. Under this provision it appears that state sponsorship is envisioned.

Under Chapter 470, Statutes 1963, state sponsorship of group policies is definitely envisioned. Under this chapter state contributions of funds is authorized, but this provision (contributions by the State) would clearly not apply as to the civilian employees of the Nevada National Guard whose pay is from the federal government.

We are also of the opinion that the Governor, as commander in chief, under the provisions of [NRS 412.115](#), is authorized to execute such proposed agreement in behalf of the State of Nevada.

The conclusion that such an agreement may be entered into by the Governor in behalf of the State and the duly authorized federal officer, enabling the civilian employees of the Nevada National Guard to obtain the benefits of such state sponsored group comprehensive medical insurance plan, is in harmony with the rule of statutory construction that welfare statutes are to be liberally construed to effectuate their purposes.

CONCLUSION

The question is answered in the affirmative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

197 Parks—Since under Art. VIII, Section 9, of the Constitution, the State is forbidden to own capital stock in a private corporation, a gift of such stock under Chapter 11, Statutes 1964, to the State parks and outdoor recreation and development fund must be liquidated, with proceeds invested in United States securities or carried in the State Treasury, credited to the proper fund.

CARSON CITY, January 13, 1965

HONORABLE MIKE MIRABELLI, *State Treasurer, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. MIRABELLI: A donor who prefers to remain anonymous has given ownership of 100 shares of the common capital stock of Ohio Edison Company to the State Parks and Outdoor recreation acquisition and Development Fund, created by the provisions of chapter 11 of the Special Legislative Session of 1964.

The stock certificate has been delivered to the State Treasurer and the power of attorney form constituting a broker or banker with authority to complete the transfer has been executed.

You have mentioned three possibilities as to the ownership of this property, viz:

1. Hold the stock with the hope that it will rise in value, while the dividends would be received and be credited to the park acquisition fund.

2. Sell the stock immediately and invest the proceeds in U.S. Treasury notes with the interest being credited to the park acquisition fund.

3. Sell the stock immediately and credit the proceeds to the account of the park acquisition fund.

The statute involved is Chapter 11 of the Special Session of the Legislature of 1964. Section 3, subsection 3 thereof, in part provides:

3. The state parks and outdoor recreation and development fund shall be composed of:

(a) * * *

(b) Gifts and grants of money from individuals, corporations, foundations, associations or trusts, which gifts and grants the director of the state department of conservation and natural resources is authorized to accept on behalf of the state.

The statute makes no provision for the conversion of securities received as a contribution to cash, nor does it provide that the securities so received shall be so converted; nor does it provide that common stocks may be held by the State Department of Conservation and Natural Resource; nor does it make any provision in regard to the investment of the proceeds of such gifts. It would, therefore, appear that discretionary authority is lodged with the State Board of Finance as to the manner of retaining this wealth, for the purpose given, if there are no constitutional or statutory provisions that forbid.

QUESTION

Does the State Board of Finance have the power and authority to elect and select any one of the three options mentioned and follow the selected method as a manner of preserving the property value of this gift for the purpose of the donor?

ANALYSIS

Although this a "blue chip" stock, conservative in nature and with appreciation possibilities, the State is forbidden to hold it as state-owned property.

Article VIII, Section 9 provides:

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.

However, since the statute does not provide in what form such a trust fund should be carried, prior to its use for the purposes outlined in the statute, and for which it was given, we are of the opinion that options numbered 2 and 3 in your letter of inquiry are within the discretion of the State Board of Finance. Either may be selected as the proper manner of retaining this gift in the interval, prior to its ultimate use under the provisions of the statute.

The decision of the State Board of Finance, upon mature reflection, should be in keeping with the purposes of the statute, under which the donation was made, and should be limited to its choice of options numbered 2 or 3 above stated.

CONCLUSION

The State may not continue to hold this investment in its present form, but may hold the proceeds of this stock certificate in either option number 2 or 3 above stated.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

198 Department of Education; Distribution of Oleomargarine—No provision of state law would prevent the acceptance by the State Department of Education from the United States Department of Agriculture of oleomargarine for distribution gratuitously to the public schools, under the school lunch program, or for other gratuitous distribution to authorized welfare agencies.

CARSON CITY, January 13, 1965

MISS MARGARET M. GRIFFIN, *Supervisor, School Lunch Special Milk and Food Distribution Program, Department of Education, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MISS GRIFFIN: In addition to the administration of a state lunch program under the provisions of [NRS 387.070](#) et seq., the Department of Education distributes surplus foods gratuitously furnished and made available by the United States Department of Agriculture to eligible institutions and to county welfare recipients. Now available for such gratuitous distribution is oleomargarine.

QUESTION

Is there any provision of state law which would prevent the acceptance and gratuitous distribution of oleomargarine, either type 1 or type 2, to the public schools and other agencies mentioned?

ANALYSIS

Your inquiry sets out the content of oleomargarine of types 1 and 2, and the regulated ingredients of each type. However, our statutes do not distinguish between the types or content of types of oleomargarine and this distinction therefore becomes unessential.

Under the provisions of [NRS 584.165](#) a duty is placed upon the manufacturer of oleomargarine offered for sale in Nevada, to label it as such. This provision, however, is limited to "sale."

Under [NRS 581.380](#) it is provided that butter or oleomargarine shall be sold in Nevada by weight only. This provision too contemplates a sale.

Under [NRS 584.170](#) it is provided that the sale of oleomargarine, not labeled as such, shall be unlawful. It is not made unlawful, however, if this unlabeled product be distributed gratuitously.

It appears that the states in which dairying is a principal industry have, for economic reasons, more thoroughly restricted and regulated the distribution of oleomargarine.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

199 Sanitation Districts; Utilities; Taxation—Sanitation districts formed under Chapter 311 of NRS are not presently subject to the tax imposed on public utilities by [NRS 704.033](#). Modifies A.G.O. No. 58 dated August 1, 1963.

CARSON CITY, January 18, 1965

MR. J. G. ALLARD, *Chairman, Public Service Commission of Nevada, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ALLARD: Clark County Sanitation Districts 1 and 2 were organized under the provisions of Chapter 311 of NRS. Prior to 1963, these districts were not subject to the jurisdiction of the Nevada Public Service Commission such as those public utilities defined in Chapter 704 of NRS. In 1963, the Nevada Legislature enacted Chapter 297, Statutes 1963, which amended Chapter 311 of NRS by adding a new section providing that "Each water and sanitation district shall be under the jurisdiction of the public service commission of Nevada in regard to the rates charged and services and facilities furnished in the same manner as a public utility as defined in [NRS 704.020](#)." The constitutionality of this legislation was tested and upheld by the district court in and for the County of Ormsby in a law suit decided on October 26, 1964.

Also in 1963, the Legislature enacted Chapter 424, Statutes 1963, hereinafter referred to as [NRS 705.033](#) [704.033], which amended Chapter 704 of NRS to provide for the levy and collection of an annual assessment of not more than 1 1/2 mills from all "*public utilities*" subject to the jurisdiction of the commission. The question now presented is whether sanitation districts formed under Chapter 311 of NRS are subject to this tax.

QUESTION

Are sanitation districts formed under Chapter 311 of NRS subject to the tax imposed by [NRS 704.033](#)?

ANALYSIS

We answer the question in the negative for the following reasons:

Prior to the 1963 enactments, the districts in question were not established, regulated, or classified as public utilities as defined in Chapter 704 of NRS. Such districts were and still are labeled by statute, [NRS 311.070](#)(6), as governmental subdivisions of the State of Nevada and bodies corporate with all the powers of public or quasi-municipal corporations. Indeed, Judge Waters in his learned opinion in the above referenced action recognized this fact by emphasizing that such sanitation districts are not organized as public utilities.

Chapter 297, Statutes 1963, did not change this classification, but merely subjected the districts to the jurisdiction of the Public Service Commission in regard to rates charged and services and facilities furnished *in the same manner* as a public utility as defined in [NRS 704.020](#). It did not change their status as governmental subdivisions or designate them as Chapter 704 public utilities.

In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. 3 Sutherland, Statutory Construction, p. 294 (1943 Ed.). [NRS 704.033](#) does not extend its application to Chapter 311, sanitation districts which are, by law, governmental subdivisions of the State.

There is also doubt whether the districts could be taxed under their present classification. [NRS 361.055](#) exempts from taxation all lands and *other property* owned by the State and [NRS 361.060](#) exempts all lands and *other property* of various political subdivisions. Although the tax in question is a tax on gross revenue, there is good argument for exemption. See 108 A.L.R. 582; 51 Am.Jur., Taxation, Section 565. This problem could probably be cured by new legislation. For example, it is stated in 51 Am.Jur., Taxation, Section 559 that, "Although, in the absence of constitutional prohibition, a state or municipality having general powers of taxation may tax its own property, if it sees fit to do so, *in the absence of a manifest intention otherwise*, it is a generally accepted principal that the property of a particular body politic, whether used for public purposes or held for income to be derived therefrom, is not taxable by the same body politic. This

exemption exists without any express statutory sanction, and in the face of a specific requirement of the statutes or of the Constitution itself that all property be taxed..” (Italics supplied.)

CONCLUSION

Sanitation districts formed under Chapter 311 of NRS are not presently subject to the tax imposed on public utilities by [NRS 704.033](#).

Insofar as Attorney General’s Opinion No. 58, dated August 1, 1963, conflicts with the foregoing, it is modified to comply with this opinion.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

200 Public Schools; Exclusion by Reason of Illness or Condition Which Might be Infectious or Contagious—School authorities have the right, and the duty, to exclude from school premises a child suffering with an illness of condition which could well be contagious or infectious, despite the prohibition of medical attention in the child’s religion.

CARSON CITY, January 21, 1965

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

DEAR MR. MARSHALL: You have submitted the following facts to this office:

A child had what appeared to be a skin eruption which had not been diagnosed because of the prohibition in the child’s religion against seeking the aid of medical practitioners.

The school authorities, not knowing whether the condition was contagious, excluded the child from public school until such time as the skin condition should heal.

Because this office does not wish to issue opinions which are prospective only, the questions asked, which will be answered, are as follows:

1. Does the principal (or other responsible school official) have the right to exclude a child with an undiagnosed medical problem on the basis it may be detrimental to other students, when the child’s religion prevents medical examination and supervision?
2. What is a reasonable length of time to permit a child to remain away from school in cases of illness, when the child’s religion does not permit such medical attention as may be deemed necessary?

ANALYSIS

School authorities, during school hours, become the custodians and guardians of the welfare of children placed in their care by the parents.

As such custodians it becomes their duty to protect the charges under their care from any dangers which threaten their health and well-being, including the dangers of transmittal of infectious or contagious diseases.

The discovery by a school nurse that a child is afflicted with an illness of the type discussed in the preceding paragraph would most certainly warrant the affected child’s exclusion from the school premises until such time as the discovered illness or condition is completely cured or healed.

The public health and welfare is paramount in importance to the attendance of a child in school when such child is possessed of an illness or condition which requires medical attention, and which may be infectious or contagious. Such a condition, if drastic measures were not taken, might well spread beyond the boundaries of the school itself.

CONCLUSION

It is therefore the opinion of this office that school authorities have the right and the duty to exclude from school premises a child suffering with an illness or condition requiring medical attention, which could well be contagious or infectious, despite the prohibition of medical attention in the child's religion. A reasonable length of time for such prohibition to endure is until such time as the illness or condition is cured.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

201 Insurance—Group term creditor policies of life and accident and health insurance valid where issued and delivered, with exposure accepted, premiums paid and claims processed, in the jurisdiction of residence of insurer, may be made effectual through agency, in respect to Nevada residents as the insured and concerning a Nevada incurred indebtedness, under the doctrine of lex loci contractus, notwithstanding the fact that they are unauthorized as to a domestic insurer. A.G.O. 111 of February 11, 1964 modified.

CARSON CITY, January 25, 1965

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

STATEMENT OF FACTS

DEAR MR. HAMMEL: The Metropolitan Life Insurance Company, a life insurance company domiciled in the State of New York and qualified to do business in Nevada, hereinafter designated as "Metropolitan," has heretofore issued and delivered in the State of New York a term group creditor life insurance policy (No. 19,500 G) which may be effective as to an individual debtor for a term not to exceed 25 years and may cover an indebtedness not to exceed \$30,000 to Bankers Trust Company as policyholder, hereinafter designated as "Bankers Trust," a corporation domiciled in the State of New York.

Similarly Metropolitan has issued and delivered in the State of New York a term group creditor accident and health policy (No. 21,300 G) to Bankers Trust which may be effective as to individual indebtedness for a term not to exceed 25 years and may cover an indebtedness balance not to exceed \$10,000.

Both of these contracts are valid contracts under the laws of the State of New York.

Metropolitan has received commissioner approval for the extension of the benefits of said contracts extraterritorially, notwithstanding the fact that contracts of such scope would not be authorized if entered into within certain of said states. This is accomplished by an agency created between the local creditor as principal and Bankers Trust as agent.

QUESTION

May the provision of said policies numbered 19,500 G, and 21,300 G, be made available to creditors and debtors domiciled in Nevada in respect to an indebtedness contracted in Nevada involving real property with situs in Nevada?

ANALYSIS

The manner of operation proposed is that the Nevada creditor, having formerly entered into an agency agreement with Bankers Trust, will determine whether or not the Nevada debtor desires to avail himself of the coverage afforded by one or the other of said insurance policies. If so he takes the necessary data and transmits it to Bankers Trust, the same being an application for the insurance designated therein. If accepted, the Bankers Trust so notifies the applicant by a certificate designating the coverage. Premiums are payable in New York. Losses are adjusted and settled in New York.

It is true, as we shall hereafter show, that the provisions of these contracts are more extensive and inclusive than that authorized for a domestic insurer to issue in Nevada. Despite this fact, under the doctrine of *lex loci contractus*, the question is therefore presented of whether or not such contracts may be made applicable through agency to Nevada persons, property, and risks. This in turn presents the question of whether or not there are any provisions of Nevada law which preclude an insurance policy not authorized in respect to local issuance becoming effective by reason of the fact that it is valid where issued. This in turn presents the question of whether or not the fact that Metropolitan is qualified to do business in Nevada would preclude this type of operation which could perhaps be permitted if it were not qualified to do business in Nevada. The questions thus presented are very complex and have caused us no little difficulty.

Under the provisions of Chapter 241, Statutes 1955 ([NRS 690.090](#) to [690.130](#)), the terms and provisions of group life insurance for a policy "delivered in this state" are provided. Under Section 1, 1(b) thereof ([NRS 690.110](#)), it is provided that a policy "may be issued to a creditor, who shall be deemed the policyholder." As regards group life insurance it appears that the provisions of [NRS 690.090](#) to [690.130](#) do not apply to the current problem for the reason that neither policy is or will be "delivered in this state." If such provisions were applicable, the limit of coverage thereunder as to amount is \$10,000 or the unpaid indebtedness, whichever is less. As to local group life creditor policies issued and delivered in this State, the upper limit of coverage is therefore \$10,000.

The Legislature of 1959 enacted Chapter 413, to be cited as "The Model Act for the Regulation of Credit Life Insurance." Said enactment has become [NRS 690.310](#) to [690.450](#). At first impression this act appears very specific and, being of later date, appears to revise the earlier law in respect to credit life insurance. However, closer analysis reveals that under [NRS 690.310](#), subsection 2, there provisions are not to apply to "insurance sold in connection with a loan or other credit transaction of more than 5 years' duration." We are informed that the Uniform Law Commissioners, whose purpose it is to make uniform the laws of the several states so far as possible, by recommending acts to the legislatures of the several states for enactment, expressed the purpose of this act was to regulate credit life insurance of a relatively short term, and therefore usually in a relatively small amount. It appears that The Model Act for the Regulation of Credit Life Insurance does not apply to the facts under scrutiny.

Tentatively, then, we conclude that there is no provision of Nevada law which specifically envisions the regulation by the State of Nevada of this type of term, group creditor life policy.

We now consider the regulation by the State of Nevada of the term, group creditor accident and health policy issued and delivered as aforesaid.

The Legislature of 1963 enacted Chapter 139 which amended [NRS 692.060](#) in such a manner as to permit group accident and health policies to be issued upon a group of debtors of Nevada, creating a contingent liability of "the aggregate of the periodic scheduled unpaid installments or the sum of \$10,000, whichever is less." Under [NRS 692.070](#) it is provided that the provisions thereof (692.060 to 692.120) have reference to a "policy of group accident and health insurance issued or delivered in this state." [NRS 692.060](#) to [692.120](#) appear not to apply to the matter under scrutiny for such policy is not "delivered in this state."

The Model Act for the Regulation of Credit Accident and Health Insurance, enacted by Chapter 417, Statutes 1959 ([NRS 692.500](#) to [692.630](#)), by [NRS 692.500](#)(2) applies to all accident and health insurance sold in connection with loans or other credit transactions "except such

insurance sold in connection with a loan or other credit transaction of more than 5 years' duration."

Tentatively, then, we conclude that there is no provision of Nevada law which specifically envisions the regulation by the State of Nevada or the approval of policies of this type of term group creditor accident and health insurance, being not "delivered in the state" and being of "more than 5 years' duration."

A careful search of the statutes fails to disclose any enactment providing specifically against policies of the type here under investigation if validly issued elsewhere. Such a provision, if enacted, would probably be unconstitutional.

We quote from Volume 19, Insurance Law and Practice—Appleman, Section 10,351:

It has been stated that a state cannot impair the obligation of an insurance contract, though the insurer be a foreign corporation. * * * Generally the regulatory statutes of a state are considered to have no extraterritorial effect, so that such state cannot forbid the making of a contract between one of its citizens and a foreign corporation outside the boundaries of such state, and such contract is not controlled by its laws, even though it concerns property located within the state. * * * The insuring of a life of a resident does not constitute the doing of business within the state where the contract is made and carried out in the company's home state.

Neither would the Nevada creditor serve in this operation as the agent of Metropolitan or Bankers Trust, but would serve himself and the insured. *Boseman v. Connecticut General Life Insurance Company* (U.S. S.Ct. 1937), 301 U.S. 196.

In *State v. State Mutual Life Assurance Company of America* (Texas 1962), 353 S.W.2d 413, the state statute enumerated the four types of authorized (permitted) group life insurance. The enumeration did not include employees of members of trade associations. A contract written and serviced beyond the boundaries of Texas, by an insurer authorized to do business in Texas, insuring a prohibited group, residents of Texas, could therefore not be countenanced, and there being statutory authority for the cancellation of license of the offending corporation, the cancellation (revocation) of license was authorized and proper.

In the matter under consideration we know of no such prohibition and as a matter of fact the language employed, as formerly recited, appears to contemplate, although not expressly, such an operation.

Lastly, we are concerned with whether or not the fact that Metropolitan is a duly admitted insurer, operating under the agency system as to many of its Nevada exposures, would place it in a different category to that of an unadmitted insurer. To state the proposition otherwise: If a non-admitted insurer might insure Nevada residents, in respect to a Nevada incurred indebtedness, under these two policies, with characteristics as formerly mentioned, as to the place of contracting, delivery of policies, paying premiums and processing claims, would the fact that Metropolitan is an admitted insurer change the results?

Apparently not. Appleton, Insurance Law and Practice, Volume 19, Section 10,323, P. 13, after mention of the fact that it is within the power of the state to enact such provisions respecting the admission of a foreign insurer as it may see fit to provide, states further:

However, the power of a state to exclude foreign insurance companies cannot be used as a means to accomplish a result beyond the state's constitutional powers. While a state may prohibit a foreign insurance company from entering the state, if it does permit such company to enter, it cannot impose conditions which require the company to relinquish any of its constitutional rights.

To summarize our conclusions: The policies under review are valid and legal contracts under the law of the jurisdiction where written and delivered. Exposure thereunder is accepted in that jurisdiction. The premiums are paid and claims processed in that jurisdiction.

The State of Nevada has not expressly precluded the type of policies here under review, except as to a domestic insurer. Perhaps there is good reason for this and a realization that any domestic insurer might with less ability or less certainty carry such a risk, i.e., a legislative realization that domestic insurers are not nearly so large and their risks are not nearly so well dispersed as are the large foreign insurers domestic to the Eastern States. Be this as it may, in any event the language of our statutes does not forbid (by a foreign corporation) the extension of the benefits and obligations under such policies to persons residing in Nevada respecting an indebtedness incurred in Nevada.

We understand that Metropolitan has informed your office that if the benefits of insurance under these two policies are available to creditors and debtors, residents of Nevada, respecting contracts of indebtedness contracted in Nevada, concerning property situate in Nevada, that the premium tax of 2 percent upon "total premium income" upon such business would be payable by Metropolitan would not challenge the authority of the insurance department in this respect.

Attorney General Opinion No. 111, of February 11, 1964, insofar as the conclusions therein are not in harmony with the conclusions hereof, is hereby modified.

CONCLUSION

The question propounded is answered in the affirmative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. Priest, *Chief Assistant Attorney General*

202 Cities and Counties; Public Improvements Affecting Schools—Provision in Las Vegas City Charter exempting from assessment for public improvements "grounds not taxed," operates, in view of [NRS 361.065](#), to exempt all public school buildings and lots appurtenant thereto within the Las Vegas city limits from liability for any costs incurred in making off-site improvements about such buildings and lots, such as sidewalks, curbs, gutters, street lights, fire hydrants, water and sewer lines, street sections, and drainage for flood control—Such buildings and lands located outside city limits likewise exempt from such assessments by county by reason of both statutory and case law.

CARSON CITY, January 25, 1965

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

DEAR MR. MARSHALL: Due to the rapidly increasing enrollment in the Las Vegas School District, the school trustees for that area find it necessary each year to purchase several new sites and to provide suitable classroom buildings thereon. Frequently, the site purchases is located in a section of the city or county where considerable improvements have already been made by those agencies, such as the installation of curbs, gutters, sewers, water lines, and construction of streets and sidewalks. Similar improvements about any newly acquired school site are essential before any building constructed thereon is in proper condition for classroom use. The costs for such improvements under these circumstances far exceed what would have been required had they been included in the contract previously let by the city or county for improvements made in the surrounding area. Several questions have arisen in this connection, being substantially as hereinafter stated.

QUESTIONS

1. Should the Clark County School District, in making its architectural plans, include off-site improvements for school sites, such as sidewalks, curbs, gutters, street lights, fire hydrants, water and sewer lines, street sections, and drainage for flood controls?
2. Should payment be made from school district funds for off-site improvements of the type mentioned in question number 1 above?
3. If the answer to question number 2 is in the affirmative, is the school district required to make such improvements through contracts let by general bidding as provided for in [NRS 393.120](#) and [NRS 393.130](#)?
4. If such contracts must be let for bid, may the school district take advantage of bids received by other county or city agencies in negotiating a contract for making improvements of a similar nature on county- or city-owned property located in the same area as the school site involved?

ANALYSIS

In analyzing the above questions, it becomes readily apparent that their solution lies in making the initial determination as to what governmental agency is legally responsible for costs incurred for public improvements of the type enumerated in question number 1. A perusal of the Las Vegas City Charter provides the obvious answer to this basic problem insofar as school buildings constructed within the city limits are concerned.

Under the provisions of Section 53 of said charter, the city commissioners are authorized to make public improvements such as those with which we are here concerned and to defray the whole or any part of the costs thereof by special assessment through enactment of proper ordinances. Next follows Section 54, specifying what lands shall be assessed and what portion of said costs shall be paid from city funds. That section reads as follows:

When expense for such improvements or repairs shall be assessed, and there shall be lands belonging to the city, or public grounds not taxable, abutting on such improvements, such part of the expenses of such improvements as, in the opinion of the board or assessor making such special assessment, would be justly apportionable to such public grounds, and city property, and to any interior squares or spaces formed by the intersection of streets where the abutting property is taxable, shall be paid from the general fund or from the proper street or district street fund or partly from each, as the council (board of commissioners) shall determine to be just, and the balance of such expense shall be assessed upon the taxable lots and premises abutting upon such improvement or improved streets in proportion to their number of feet frontage; or, if the special assessment shall include other lands not abutting upon the improvement, then upon all the land included in such special assessment in proportion to the estimated benefits resulting thereto from the improvement. When such assessment is to be made upon the lots in proportion to their frontage upon the improvement, if, from the shape or size of any lot, the assessment thereon in proportion to its frontage would be unjust and disproportionate to the assessment upon other lots, the board or assessor making the assessment, may assess such lots or such number of feet frontage as in their opinion would be just.

This section clearly excludes *lands belonging to the city* and *public grounds not taxable*, from their or its apportionable share of the assessment so made. School sites belonging to the Las Vegas School District certainly fall within the category of “public grounds.” And under [NRS 361.065](#), “all public schoolhouses with lots appurtenant thereto, owned by any legally created school district within the state shall be exempt from taxation.” We believe that the wording of the charter is clear and requires no further interpretation. See *State v. Jepson*, [46 Nev. 193](#). (Italics supplied.)

It is interesting to note that the provisions of Section 54 of the Las Vegas City Charter, enacted by special legislative act in 1911, follows verbatim the wording of Chapter 125, Statutes

1907, being now [NRS 266.655](#), which excludes public ground from assessment for public improvements in cities incorporated in Nevada under general law.

Even in the absence of a charter or statutory provisions governing the assessment of school property, it is nevertheless the prevailing rule that general laws subjecting property to the payment of assessments for local improvements do not apply to property devoted to use of the public schools, unless the intent that they so apply is made to appear affirmatively. See 48 Am.Jur. 645, citing 36 A.L.R. 1540, with annotated cases.

Public school lands and buildings located outside the city limits but within Clark County, and belonging to the Las Vegas School District, are also exempt from payment of any portion of the costs incurred for off-site improvements made in their immediate surroundings. Counties are authorized to carry on and perform only those functions which are within the scope of the statute creating them and defining the powers and duties of their governing boards. Since, under [NRS 361.065](#), public school buildings and lots appurtenant thereto are non-taxable, the county is without power to assess or tax the school lands which abut on the roads, streets, curbs, sidewalks, or other improvements which the county has constructed. When such improvements are made they must be at the expense of the county.

For the foregoing reasons, it is unnecessary to interpret any school laws pertaining to expenditures for off-site improvements or those laws governing the letting of contracts for public improvements. This type of improvement is a function of the City of Las Vegas and of Clark County, respectively, and not that of the school district.

CONCLUSION

It is our conclusion, based upon the provisions of Sections 53 and 54 of the Las Vegas City Charter, as read in connection with [NRS 360.065](#), together with other relevant statutes and decisions from other states, that the expenses for off-site improvements made about the public schools of Las Vegas School District of Clark County, such as sidewalks, curbs, gutters, street lights, fire hydrants, water and sewer lines, street sections, and drainage for flood control, are not an obligation of the district, but must be borne instead by the governmental agency making them, i.e., the city or county. It follows that both questions 1 and 2 must be answered in the negative. Questions 3 and 4 become moot.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By C. B. TAPSCOTT, *Deputy Attorney General*

203 Tuberculosis; Transportation Costs for Indigent Patients—Transportation costs between institutions for indigent patients infected with active tuberculosis and admitted to the State Tuberculosis Care Program are the responsibility of the State, under [NRS 443.105](#) and [443.115](#).

CARSON CITY, January 27, 1965

MR. C. G. MUNSON, *Director Department of Health and Welfare, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. MUNSON: State law provides for the care, at State expense, of indigent persons infected with active tuberculosis. The following question, arising since the opening of the Las Vegas Convalescent Center, is presented to this office concerning the application of the law.

QUESTION

Is the State responsible for transportation costs of indigent patients admitted to the State Tuberculosis Care Program who are moved to out-of-state institutions for the purpose of surgery?

ANALYSIS

[NRS 443.105](#) provides:

1. Every person who, under the regulations of the board, is found to be infected with active 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 expense, 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.

2. 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.

It is our understanding that the patients involved have been found to be infected with active tuberculosis as described in the above statute and have subscribed and sworn to the statement required of indigent patients. Under [NRS 443.115\(2\)](#), the State Health Division may contract with hospitals in other states to provide the facilities and treatment not available in the State of Nevada, and the cost thereof is an expense of the State. The transportation costs necessary to avail such patients of the needed out-of-state treatment would be a necessity and incidental expense to the cost of treatment. Once a patient meets the conditions of [NRS 443.105](#) and is accepted in the Tuberculosis Care Program, the costs of transportation between institutions would be a State expense.

CONCLUSION

Transportation cost between institutions for indigent patients infected with active tuberculosis and admitted to the State Tuberculosis Care Program are the responsibility of the State, under [NRS 443.105](#) and [443.115](#).

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

204 Public Schools; Suspension—Parents whose child is suspended from school for failure to submit to reasonable and ordinary rules of order and discipline are not compelled to enroll such child at another school outside the district wherein the suspension occurred.

CARSON CITY, January 27, 1965

HONORABLE WILLIAM P. BEKO, *District Attorney, Tonopah, Nevada*

STATEMENT OF FACTS

DEAR MR. BEKO: You have advised this office that a 15-year-old student has been suspended in accordance with the provisions of [NRS 392.030](#) which reads as follows:

392.030 Suspension or expulsion of pupils.

1. Subject to the provisions of subsection 2, the board of trustees of a school district shall have the power to suspend or expel from any public school within the school

district, with the advice of the teachers and the state department of education, any pupil who will not submit to reasonable and ordinary rules of order and discipline therein.

2. No school teacher, principal or board of trustees shall expel or suspend any pupil under the age of 14 years for any cause without first securing the consent of the state department of education.

You then call attention to the compulsory education provisions of [NRS 392.040](#), which reads:

392.040 Child between 7 and 17 years of age: Attendance in public school.

1. Except as otherwise provided by law, each parent, guardian, or other person in the State of Nevada having control or charge of any child between the age of 7 and 17 years shall be required to send such child to a public school during all the time such public school is in session in the school district in which such child resides.

Your question then propounded is this: Are the provisions of [NRS 392.040](#) applicable to the child who has been suspended under [NRS 392.030](#)?

ANALYSIS

We believe that the provision at the beginning of [NRS 392.040](#) is the exception which must be relied upon in arriving at a solution. The phrase, "Except as otherwise provided by law" is the clue which leads to the unalterable conclusion that [NRS 392.030](#) makes other provisions of law for children who will not submit to reasonable and ordinary rules of order and discipline in the school.

Persons are entitled to send their children to schools in the place where they reside. This was enacted because the Legislature realized that the financial burden of supporting children negates compelling them to attend school at a place other than the residence of the parents.

In the case of suspension the parents are not compelled to enroll the student in a school removed from the area in which they reside.

It may be that a term away from the school may see the child mature and change his or her attitude. In such case, an application for reinstatement would be in order.

CONCLUSION

It is therefore the opinion of this office that parents whose child is suspended from school for failure to submit to reasonable and ordinary rules of order and discipline are not compelled to enroll such child at another school outside the district wherein the suspension occurred.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

205 School Contracts; School Trustees—[NRS 386.400](#) prevents a school trustee from being interested in a contract entered into by the board of trustees of which he is a member, whether it be as contractor, subcontractor, or supplier of materials.

CARSON CITY, February 4, 1965

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

STATEMENT OF FACTS

DEAR MR. STOKES: You have requested an opinion as to whether [NRS 386.400](#) should be construed so as to apply to school trustees who are subcontractors or material suppliers on bids made for completing school contracts.

ANALYSIS

[NRS 386.400](#) reads as follows:

Trustee not to be financially interested in contracts. No member of any board of trustees shall be financially interested in any contract made by the board of trustees of which he is a member.

It must be apparent to the most casual observer that it was the intent of the Legislature to prevent collusion or favoritism as between contractors, subcontractors, or material suppliers, who might be a school trustee, and the owner or builder on school projects.

It is not difficult to presume that co-trustees might favor a bidder whose contract benefit accrued to a fellow trustee, and this whether he happened to be the prime contractor, subcontractor, subcontractor, or material supplier, and whether or not he participated in the vote to accept the bid.

The law prevents a financial interest in *any* contract made by the board of trustees. This, we feel, filters down to the lowest subcontractor or the supplier of materials of the smallest amount, so long as prospective financial gain attaches to the participant in the contract.

CONCLUSION

It is the opinion of this office that [NRS 386.400](#) prevents a school trustee from being interested in a contract entered into by the board of trustees of which he is a member, whether it be as contractor, subcontractor, or supplier of materials.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

206 Taxation of Dedicated Property—Property dedicated for public use pursuant to Chapter 125, Statutes 1905, may not be placed on the tax rolls. A tax assessment, if made on such property, would be void and would not alter the right of public use.

CARSON CITY, February 23, 1965

HONORABLE JOHN CHRISLAW, *District Attorney, Douglas County, Minden, Nevada*

STATEMENT OF FACTS

DEAR MR. CHRISLAW: On August 5, 1929, the amended map of Subdivision No. 2 of Zephyr Cove Properties, Inc. was filed for record with the Douglas County Recorder. This map was designated as a plat of certain lands abutting the shore of Lake Tahoe, thereon divided into blocks, and streets. We are informed that three “walkways” are designated on the map leading from the street closest to and paralleling the lake shore through a row of platted lots to the beach area. It was executed and recorded in compliance with Chapter 125 (CXXV), Statutes 1905, as amended by Chapter 31, Statutes 1921.

The Marla Bay Protective Association, Inc. contents that it has always taken full responsibility for the maintenance and repair of these “walkways” and for the purpose of “establishing the legality of its action” requests that the said walkways be placed on the tax rolls and assessed to it.

You ask the following questions:

QUESTIONS

1. Can the described walkways be placed on the tax rolls and assessed to the Marla Bay Protective Association, Inc.?
2. If so, does the said association gain any right or rights to bar the inhabitants of the platted area and the general public, or either of them, from the use of said walkways to obtain access to the beach area?

ANALYSIS

In answering the first question we will have to assume that the walkways were dedicated for public use in the first instance.

Chapter 125 (CXXV), Section 4, Statutes 1905, provides in part as follows:

Such maps and plats when made, acknowledged, filed, and recorded with the County Recorder, shall be a dedication of all such avenues, streets, lanes, alleys, commons, or other public places or blocks, and sufficient to vest the fee of such parcels of land as are therein expressed, named and intended for public uses * * *.

It is our opinion that the language above recited would encompass the walkways in question. It is competent for the Legislature to provide for the taking of the fee title and the effect of the statutory dedication in question accomplishes this purpose according to the language employed in the act. Douglas County would hold fee title to the walkways in question.

[NRS 361.060](#) provides that all lands and other property owned by any county in this State shall be exempt from taxation. This exemption includes the walkways in question if they were dedicated for public use. As such, they could not be placed on the tax rolls. Any tax assessment would be entirely avoid and ineffectual.

The following statement is found in 46 Cal.Jur.2d, Taxation, Section 70:

Property that is dedicated to the use of the public cannot be legally assessed or taxed, and its erroneous inclusion in assessment lists and payment of taxes thereon cannot impair the rights of the public or confer rights on the adverse user paying the taxes.

If such an assessment were made, therefore, it would not alter the public right to use the walkways. A case in point is *Gaspard v. Edwin M. LeBaron, Inc.*, 237 P.2d 278 (Cal. 1951). This case involved a validly dedicated roadway for public use upon which was levied a tax assessment. The property was sold at tax sale for nonpayment. The California Supreme Court held the assessment void and said that the purchaser at the tax sale had no right to the land; that the assessment and sale could not destroy the public right. See also *San Leandro v. LeBreton*, 13 P. 405.

CONCLUSION

It is the opinion of this office that property dedicated for public use pursuant to Chapter 125, Statutes 1905, may not be placed on the tax rolls. A tax assessment, if made on such property, would be void and would not alter the right of public use.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

207 Legislature, Nevada State; Constitutional Law—Article 3, Section 1, of the Nevada Constitution precludes and forbids a statute which would require the Governor to appoint a member of the Legislature to a board or commission which is of the Executive Department. [NRS 397.030](#) proposed to be amended by A.B. 217.

CARSON CITY, February 26, 1965

HONORABLE JAMES C. BAILEY, *Assemblyman, Washoe County, Nevada State Legislature, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BAILEY: Assembly Bill No. 217 is pending before the Fifty-Third Session of the Nevada Legislature now in session. This bill, if enacted into law, would amend Chapter 397 of the Nevada Revised Statutes. This chapter of NRS provides for the Western Regional Educational Compact Commission with participating membership of a number of the Western States.

[NRS 397.030](#) provides for the appointment of the commissioners by the Governor of Nevada, designates the term of office, the qualifications and similar matters. An examination of the contents of Chapter 397 of NRS convinces that the members of the commission are functioning as members of the Executive Department or branch of the state government.

The said A.B. 217 would amend [NRS 397.030\(2\)](#) in such a manner as to require that one of the Nevada commissioners be currently and contemporaneously a member of the Nevada Legislature.

QUESTION

If [NRS 397.030](#) were amended in the manner proposed by A.B. 217, would the section as amended be constitutional?

ANALYSIS

Article 3, Section 1, of the Nevada Constitution provides:

Section 1. Three separate departments; separation of powers. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted.

We are clearly of the opinion that Article 3, Section 1, of the Nevada Constitution forbids the appointment to this commission, which is properly classified as of the Executive Department of the state government, of one currently serving in and as a member of the Legislative Department or branch thereof.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

208 Labor; Clarification of Chapter 608 NRS—Supervisory personnel are subject to the restriction that a person may not work more than 8 hours in any 24-hour period in underground mines and workings and in plaster and/or cement mills, but are not subject to such restriction in smelters and mills for refining and reduction of ores, open mines, and surface workings of underground mines.

CARSON CITY, March 4, 1965

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

DEAR MR. COMBS: You have directed to this office an inquiry as to whether in [NRS 608.200](#) through 608.240 the words “workmen” or “workingmen” include employees such as foremen, general foremen, superintendents, and other supervisory personnel.

The decision is a complex one, for the reason that no definitions are included at the beginning of Chapter 608 NRS except that for “private employment.”

ANALYSIS

Let us first consider working in underground mines or tunnels. The wording of [NRS 608.200](#)(1) is as follows:

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

It will be noted that the words “work or labor” are used. A supervisory employee in the categories you have indicated might work but not labor. Black’s Law Dictionary defines “work” as any form of physical or mental exertions, or both combined, for the attainment of some object other than recreation or amusement, and “labor” as “continued exertion of the most onerous and inferior kind, usually and chiefly consisting in the protracted expenditure of muscular force.”

Therefore, a person who works underground, whether in a supervisory or laboring capacity, would seem to fall under the wording of the above statute, within the prohibition of working more than 8 hours in any 24-hour period.

The phrase, “in work or labor of any kind or nature” would seem to substantiate this position. The section is divided so that all persons employed in underground mines in any capacity, as well as tunneling or making excavations, are subject to the law.

The gist of the law is to prevent any person from working underground for more than 8 hours in any 24-hour period, because of the menace to health and welfare.

In [NRS 608.210](#), relating to employment in mills and smelters, the word “workingman” is used. This term in the general usage applied to it refers to one who labors. Smelters and mills for the refining and reduction of ores are above ground. While fumes and dust may be present, a supervisory employee can seek the fresh air of outdoors when required. It will be noted also that the words “all persons” as used in [NRS 608.200](#) are not present in the smelter and mill statute.

The same factors apply to [NRS 608.220](#), which governs employment in open mines, and [NRS 608.230](#) covering surface workings of underground mines. In the latter statute, the hours of

employment of certain designated employees are specifically pointed out. Supervisory personnel are not mentioned.

The Legislature evidently intended, in the statute concerning employees of plaster and cement mills ([NRS 608.240](#)), to have the legislation apply to all persons, including supervisory personnel, because again they use the all inclusive phrase “all persons.”

CONCLUSION

It is therefore the opinion of this office:

1. That all persons working in underground mines, plaster and/or cement mills, including supervisory personnel, cannot, under the law, work more than 8 hours in any 24-hour period.
2. That supervisory employees are not covered in the statute designating hours in smelters and mills, open mines, and surface workings of underground mines.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

209 Elections; Term of Office of Municipal Judge of Reno—The appointment by the city council of a replacement for the regularly elected municipal judge who died in office is for the unexpired term of the decedent, and carries over to the 1967 election.

CARSON CITY, March 12, 1965

RICHARD BREITWIESER, ESQ., *City Attorney, Reno, Nevada*

DEAR MR. BREITWIESER: Your office has requested from this office an opinion as to whether John J. Mathews, who was appointed by the city council on June 1, 1964, to fill the unexpired term of Kirby Unsworth, deceased, is compelled to run for election at the city election of 1965.

ANALYSIS

The Reno City Charter, by its express terms (Article XVII, Section 1) provides for the election of a city judge every 4 years. Mr. Unsworth was elected in 1963 to serve a 4 year term. The election provided for in the charter for 1965 is for city councilmen from the first, third, and fifth wards, and one councilman at large. No provision is made for the election of a city attorney, city clerk, or police judge.

CONCLUSION

It is therefore the opinion of this office that the appointment by the city council of John J. Mathews as police judge (or municipal judge) was for the unexpired term of Kirby Unsworth, and carries over to the 1967 election. To rule otherwise would confuse the regularly prescribed procedures for the selection of municipal officers.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

210 Nepotism—Appointment by boards of county commissioners to board of directors of county power district is valid despite relationship within the third degree of affinity. Sections 281.210 and 312.040 of NRS construed.

CARSON CITY, March 15, 1965

HONORABLE ROSCOE H. WILKES, *District Attorney, Lincoln county, Pioche, Nevada*

STATEMENT OF FACTS

DEAR MR. WILKES: Alamo Power District Number 3, lying entirely within Lincoln County, Nevada, was created a number of years ago under statutory provisions now embodied in Chapter 312 of the Nevada Revised Statutes.

Some time ago the board of county commissioners appointed a man to serve on the board of directors of the said Alamo Power District Number 3, who was the brother-in-law of one of the said commissioners.

QUESTION

Was such an appointment so made, a legal appointment when made?

ANALYSIS

[NRS 281.210](#), the nepotism law, in part provides:

281.210 Officers of state and political subdivisions prohibited from employing relatives; exceptions; penalties.

1. Except as provided in this section, it shall be unlawful for any individual acting as a school trustee, state, township, municipal or county official, or for any board, elected or appointed, to employ in any capacity *on behalf of the State of Nevada, or any county, township, municipality or school district thereof*, any relative of such individual or of any member of said board, within the third degree of consanguinity or affinity. (Italics supplied.)

We are concerned with the question of whether or not a power district, created pursuant to the provisions of Chapter 312 of NRS, is a “municipality” within the meaning of [NRS 281.210\(1\)](#).

Under [NRS 312.040\(5\)](#), the district when created is termed “municipal power district,” “power district,” or “district.” It is not termed a “municipal corporation.” Under [NRS 312.040\(6\)](#), the term “municipality” is defined to include an incorporated city or town, and it is provided that a municipal power district may include a municipality.

Clearly then [NRS 281.210\(1\)](#) does not include a municipal power district. The doctrine *inclusio unius est exclusio alterius* here applies. The inclusion of certain denominated entities in which a board of county commissioners may not employ a relative (within the third degree) is exclusive of other entities which could have been, but were not, mentioned.

We are satisfied that this is the correct construction to be placed upon [NRS 281.210\(1\)](#), for this prohibition results in a deprivation of employment, in certain cases, one of the most important liberties of free men, and should, therefore, be strictly construed to include no greater deprivation than the Legislature clearly intended.

See also, *State v. Lincoln county Power District Number 1*, [60 Nev. 401](#), 111 P.2d 528, holding that such a corporation is not a “municipal corporation” but is a public corporation created for municipal purposes.

CONCLUSION

We are, therefore, of the opinion that the appointment mentioned was not barred by the provisions of [NRS 281.210\(1\)](#), that it was legal from the beginning and that the question must be answered in the affirmative. The appointment having been valid *ab initio*, and nothing having

been recited which would change its status, it follows that the employment remains, at the date hereof, a legal subsisting employment, not assailable under the provisions of [NRS 281.210](#).

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

211 Savings and Loan Associations—When a savings and loan association takes title to real property, pursuant to the provisions of [NRS 673.276\(3\)](#), for subdivision and development, principally for residential use, and subsequently divests itself of title within 3 years, as therein provided, the resulting loan contracts are limited by the provisions of [NRS 673.324](#), et seq.

CARSON CITY, March 24, 1965

MR. MARVIN L. WHOLEY, *Commissioner, Savings and Loan Division, Department of Commerce, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. WHOLEY: The Legislature of 1961 created the office of Commissioner of Savings Associations and delegated to that officer the administration of Chapter 673 of NRS and the regulation of building and loan associations, sometimes designated as savings and loan associations. Chapter 378, Statutes 1961.

The Legislature of 1963 broadened the scope of permissive investments of building and loan associations by an amendment to [NRS 673.276](#) (hereinafter specifically set out) which provided that such associations could purchase real property for development to a limited extent of its total assets, but requiring divestiture of ownership, by conversion to sales, within a specified maximum time. This amendment was effective on April 5, 1963. Chapter 259, Statutes 1963.

Prior to 1963, not only had such associations been limited by the provisions of [NRS 673.276](#) as to “permissive investments,” but had been limited also by the provisions of [NRS 673.324](#) through 673.330, as to the provisions and conditions of the loans or contracts authorized to be entered into by such associations. In other words, the former ([NRS 673.276](#)) limited the loans that such associations could legally make, and the latter ([NRS 673.324](#) through 673.330) limited the permissive terms and provisions of such loans.

QUESTION

If a Nevada savings and loan association, subsequent to April 5, 1963, purchases Nevada real property for subdivision and development, pursuant to the provisions of [NRS 673.276\(3\)](#), is such association bound and limited, in the subsequent development and disposition of such property, by the provisions of [NRS 673.324](#) through 673.330?

ANALYSIS

Implicit in the provisions and regulations of Chapter 673 of NRS is shown a concern by the Legislature in the public interest, in two propositions, viz: (1) that the security of the depositors (investors) with the corporation as certificate holders be carefully safeguarded, by providing specifically the authorized investments of such associations ([NRS 673.276](#)); and (2) that the borrowers, as well as certificate holders, of such institutions be safeguarded by provisions regulating the scope of permitted loan contracts ([NRS 673.324](#) through 673.330).

The provisions of [NRS 673.276](#)(1) permit only “gilt-edge” investments, whereas subsection 2 permits loans secured by mortgages or first deeds of trust on real property. Such loans are, of course, limited by the provisions of [NRS 673.324](#) through 673.330. However, under said subsection 3 thereof, the association is permitted to purchase real property outright with a view to subdivision and development principally for residential use, with a requirement that it divest itself of such ownership within 3 years.

[NRS 673.276](#)(3) provides:

3. An association may create loans by investment in real property within 100 miles of its home office, and such investment may include the subdivision and development of such real property principally for residential use. No association shall have investments under this subsection at any time greater than 5 percent of its assets. No investment made pursuant to this subsection may be held by an association for more than 3 years except with the permission of the commissioner.

It will be observed that under this subsection the contemplated divestiture of title to such real property within 3 years will result in either cash to the association or loans or both. It will further be observed that this subsection constitutes a further liberalization to the affected associations, of powers of investment, which liberalization, in the public interest, cannot be extended further than the Legislature intended.

Except for the requirement of title divestiture within 3 years, this subsection deals with conditions existing at the time of purchase by the association. Whereas, [NRS 673.324](#) et seq., deals with and regulates the manner, ratios, and terms of loans upon real property.

If this department were to conclude that subsection 3 of [NRS 673.276](#) permits the association as owner to convert ownership to loans, without being bound by the provisions of [NRS 673.324](#) et seq., such would result in an exception from control in the making of loans which the Legislature has not granted, and apparently did not contemplate, and would result in an erosion of the safeguards and protections which the Legislature has wisely provided, in the public interest, to the investing public as certificate holders, as well as to borrowers.

CONCLUSION

It is, therefore, the opinion of this office that if a Nevada savings and loan association, subsequent to April 5, 1963, purchases Nevada real property for subdivision and development, pursuant to the provisions of [NRS 673.276](#)(3), that such association is bound and limited in the subsequent development and disposition of such property by the provisions of [NRS 673.324](#) through 673.330.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

212 Criminal Law; Procedure Upon Arrest—Upon arrest pursuant to a warrant, the person arrested must be taken for examination before the nearest magistrate in the county where the offense is triable. Nothing in the law requires or even authorizes taking him before a magistrate in an adjoining county for examination merely because such magistrate is closest to place of arrest, or at all.

CARSON CITY, March 25, 1965

MR. GEORGE WILKINS, *Sheriff of Churchill County, Fallon, Nevada*

STATEMENT OF FACTS

DEAR SHERIFF WILKINS: Several persons arrested in Hazen Township, Churchill County, Nevada, on suspicion of violating certain liquor laws, were taken before the justice of the peace in New River Township of the same county for examination. The arrest was made by a duly authorized Deputy Sheriff of Churchill County pursuant to a warrant issued by the New River Township Justice of the Peace, there being no justice of the peace in Hazen Township at the time. From the point of arrest, it was approximately 17 miles to the justice of the peace's office in New River Township and some 9 miles to the office of the justice of the peace at Fernley in adjoining Lyon County, Nevada.

QUESTION

Were the persons arrested entitled by law to be taken before the Fernley Justice of the Peace for examination upon their arrest?

ANALYSIS

Under the provisions of [NRS 171.120](#), a magistrate (justice of the peace) must examine into any complaint laid before him alleging the commission of any crime triable within the county, and under [NRS 171.130](#), if he is satisfied that the offense complained of has been committed, he must issue a warrant of arrest. We believe that these sections confer proper authority upon a justice of the peace to issue a warrant for an offense committed in another township of the county, and particularly so in those instances where, as was the case here, there was no justice of the peace in the township where the offense was committed.

Under the provisions of [NRS 171.295](#), "an officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law." The applicable law in such cases is provided in [NRS 171.215](#), which reads as follows:

The officer who executed the warrant must take the defendant before the nearest or most accessible *magistrate of the county in which the offense is triable*, and must deliver to him the depositions and the warrant, with his return endorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself. (Italics supplied.)

This section makes it mandatory that one under arrest must be taken before a magistrate in the county where the offense is triable. See Ex Parte Ah Kee, [22 Nev. 374](#).

CONCLUSION

By reason of applicable law and Nevada decisions, the persons hereinabove mentioned who were arrested in Churchill County for an offense triable there, were not entitled to be taken into Lyon County or any other county for examination. Proper compliance with the law was made by taking them before the nearest justice of the peace in Churchill County. The question must be answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By C. B. TAPSCOTT, *Deputy Attorney General*

213 Elections; City Attorneys—One who is not a licensed attorney authorized to practice law in Nevada is not qualified to file for, nor to hold, the office of City Attorney of

Las Vegas, and his name should not be placed on the ballot as a candidate for that office at the primary election of May 4, 1965.

CARSON CITY, April 5, 1965

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

DEAR MR. WHITMORE: You have requested an opinion of this office as to whether one who is not a licensed attorney is qualified to hold the office of City Attorney of Las Vegas. Such a person has filed for that office requiring his name to be placed on the ballot at the forthcoming primary election on May 4, 1965.

ANALYSIS

Las Vegas is not a city incorporated under the general law (Chapter 266 NRS), but is a specially chartered city by legislative action.

Section 6, Chapter II, of the City Charter of Las Vegas, insofar as it is applicable to the city attorney provides, “* * * the city attorney * * * shall not be less than twenty-five (25) years of age, citizen(s) of the United States and qualified voter(s) of the City of Las Vegas for at least two years immediately preceding the year in which said election (city election) is held.”

It can be seen by reading this section that there is no specific provision that the city attorney be a licensed attorney.

But the duties imposed upon the city attorney are such that they could not be performed satisfactorily, or adequately, by one who is not a licensed attorney, qualified to practice in this State.

For example, paragraph 86 of Section 31 of the City Charter of Las Vegas authorizes the city commissioners to institute and prosecute, as well as defend, certain suits common to all cities and concludes, “All such suits, actions and proceedings shall be instituted, commenced, prosecuted and defended, as the case may be, by the city attorney, without additional compensation.”

Section 1-10-1 of Title I, Chapter X, of the City of Las Vegas Code, provides:

Duties and Powers: The city attorney shall be legal advisor of the board of commissioners and all offices of the city, in all matters respecting the affairs of the city. He shall act as attorney for the city in any and all legal proceedings in any and all courts in which the city is a party or interested. He shall prosecute in the proper court for all offenses against the provisions of the Charter and the provisions of this Code and shall perform such other and further duties as may be required of him by the board or prescribed by this Code. He shall be present at all meetings of the board of commissioners, draw all ordinances, orders and resolutions required by the board. He shall verify and file for record all claims of the city for assessments imposed for street improvements which remain unpaid, and shall preserve, protect and enforce the rights of the city by prosecuting suits for the foreclosure of the same in the proper courts, and shall receive all moneys paid in by delinquents or otherwise realized in such proceedings, and shall, without delay, pay over all such moneys to the city clerk.

Section 1-10-2 of Title I, Chapter X, provides:

Attendance at Board Meetings: The city attorney shall attend the sittings of the board when engaged in auditing accounts or claims brought against the city, and in all cases shall oppose such accounts or claims as he may deem unjust, illegal or extortionate. The attorney, except for his own services, shall not be allowed to present any claim, account or demand for allowance, or in any way represent any claimant against the city.

It can readily be ascertained from the duties set forth by these sections of the code that none but a lawyer has the qualifications necessary to meet the demands imposed by these laws.

The Legislature, in the adoption of legislation for the formation of cities incorporated under the general law (Chapter 266 NRS), indicated their intent as to the qualifications of city attorneys. [NRS 266.465](#) reads as follows:

1. Except as provided in subsection 2, no person not a licensed and practicing attorney of the supreme court of this state, in good standing at the bar and a bona fide resident of the city for at least 1 year preceding his election or appointment, shall be eligible to the office of city attorney.

2. In cities of the third class the mayor may, at his discretion, by and with the consent of the council, appoint a city attorney; provided:

(a) That in cities of the third class the mayor, with the consent of the city council, may appoint as city attorney any qualified attorney who has resided in the city for 3 months preceding the date of his appointment.

(b) That if there is no duly licensed and practicing attorney in good standing at the bar within the city, the mayor, with the consent of the city council, may appoint some other attorney within the state to fulfill the duties of the office until some other qualified attorney can be appointed.

(c) That in cases where the boundaries of cities of the third class adjoin the boundaries of any charter city of a population in excess of 20,000, the mayor, with the consent of the city council, may appoint as city attorney any duly licensed and practicing attorney in good standing at the bar within either of the cities.

While it is true that Chapter 266 NRS does not apply to cities incorporated by special charter, the analogy is obvious. If the Legislature requires a duly licensed attorney to serve in cities operating under the general incorporation law, it stands to reason that it was their intent to give charter cities the same protection. That this is so can be reasoned from the results that would attend if one not a licensed attorney were to be elected to this position. He would not be eligible to appear before courts of competent jurisdiction in this State, but would have to assign that duty to aides or assistants who were members of the bar. He could not, himself, resolve any legal problems posed to him by the elective officials of the city or by the city commissioners, but that duty would devolve upon assistants who are not elected and who are not, therefore, responsible to the people.

The word "attorney" itself is defined by Black in his law dictionary as follows: "Lawyer and attorney are synonymous," and as to duties imposed on the city attorney by the Charter and the Las Vegas Code, Black states, "When used with reference to the proceedings of courts, of the transaction of business in the courts, the term (attorney) always means attorney at law unless a contrary meaning is clearly indicated."

CONCLUSION

It is, therefore, the opinion of this office that one who is not a licensed attorney, authorized to practice law in Nevada, is not qualified to file for, nor to hold, the office of City Attorney of Las Vegas, and that his name should not be placed on the ballot as a candidate for that office at the primary election of May 4, 1965.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

214 Public Employees Retirement—Substitute school teachers are entitled, if they so elect, to count all of the time that they actually serve as a service credit under the provisions of Chapter 286 NRS for purposes of retirement, and being qualified to participate under the state system are not eligible to participate under the Old Age and Survivors Insurance program embodied in the Social Security Act.

CARSON CITY, April 6, 1965

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

Attention: Mr. Robert L. Petroni, Deputy District Attorney

STATEMENT OF FACTS

DEAR MR. MARSHALL: Certain of the larger school districts have made arrangements with fully licensed teachers, that they serve the school district at irregular periods of time, as substitute teachers within the district, when emergency conditions, as for example the illness of a full-time teacher, or other emergency arises, requiring the services of a substitute teacher. The periods of employment are usually brief and the teacher is paid for the actual time that she serves only.

QUESTION

In what manner and degree, if at all, should the county school district protect such substitute teachers, in respect to obtaining membership in and contributions toward the Public Employees Retirement System and/or the Old Age and Survivors Insurance under the Social Security System?

ANALYSIS

Clearly such substitute teachers are in the employ of a member of the system established by Chapter 286 of NRS, under [NRS 286.290](#) are entitled to be enrolled as members, unless the intermittent nature of the employment forbids.

[NRS 286.320](#), in part, provides:

(Eligibility of employee for membership in system; casual or intermittent employment.)

1. An employee shall be regarded as eligible for membership in the system if his position, on the basis of 1 year of service, would require 1,200 or more hours of service per year. In determining eligibility all positions shall be regarded as continuing for 1 year regardless of anticipated duration, and all incumbents of covered positions shall be eligible regardless of individual tenure.

2. Casual or intermittent employment in periods of less than 1 calendar month shall be credited toward retirement on the basis of 1 calendar month for every 21 days of work.

These provisions make the construction clear that, in determining eligibility of one who is employed by a participating public employer and who receives more than \$150 per month for 1 full month of service, one must look at the position from the standpoint of 1 year of service and not from the standpoint of probable individual tenure. The persons who fill positions of the type we are reviewing are, therefore, eligible for membership.

Since this type of employment would ordinarily not extend for as much as 60 days until there would be an interruption, after which the teacher might or might not be called back for additional service during the year, it also clearly appears that she would not be compelled to become a member of the system. However, at her election she may become such a member for all substitute teacher service rendered, and may make contributions thereon and receive accreditation for the actual time employed, pursuant to [NRS 286.320\(2\)](#). That she may make

such contributions on all such employment and receive proper accreditation is provided by [NRS 286.420](#). This section provides:

(Deductions, contributions not made until next pay period following 60 consecutive days of employment; exception.)

1. Deductions shall not be made from the salary of an employee and contributions shall not be paid thereon by the public employer until the start of the next official pay period following the conclusion of 60 consecutive days of employment, *unless the employee shall elect, at the beginning of the employment period, to make such contributions from the first day of employment.* (Italics supplied.)

2. That period of employment upon which contributions are not paid shall not be regarded as service toward retirement and the individual shall not be entitled to any benefits under this chapter during such period of noncontribution.

Since such substitute teacher may elect to make contributions from the first day of employment, pursuant to [NRS 286.420\(1\)](#), on the individual periods at which she may be called back to teach for an indefinite period of time, she should be informed of this right by the employer. Needless to say, if she elects to contribute as permitted by [NRS 286.420\(1\)](#), the participating public employer will be required to contribute similar amounts from time to time under the provisions of [NRS 286.450](#). The school board should notify such substitute teacher of her rights and duties in this respect.

One question remains to be answered, namely: Are such employees of a participating political subdivision eligible for membership and coverage under Old Age and Survivors Insurance under the Federal Social Security laws?

This question is answered in the negative. Although the Legislature has provided ([NRS 287.050](#) to [287.240](#)) that employees of the State and its political subdivisions may, in certain instances, participate in the Old Age and Survivors Insurance program embodied in the Social Security Act, the law specifically provides that such coverage is available only to those employees "who are in positions which are not eligible to participate in the public employees' retirement system (Chapter 286 of NRS) on as broad a basis as is permitted under the Social Security Act." [NRS 287.050](#).

To the same effect [NRS 287.190](#) provides:

(Service of employees eligible for participation in public employees' retirement specifically excluded.)

Service of employees of the State of Nevada or of any political subdivision thereof in positions which are eligible to participate in the retirement system established pursuant to chapter 286 of NRS, as the same has been or hereafter may be amended, is specifically excluded from [NRS 287.050](#) to [287.240](#), inclusive.

CONCLUSION

Substitute teachers, by their specific election, may be covered by the provisions of the Public Employees Retirement Act as to the time that they actually teach, even though broken up by short duration periods of service of uncertain and unpredictable lengths of time, and since such teachers are eligible and qualified for membership in the state system, they are not qualified to participate under the Old Age and Survivors Insurance program embodied in the Social Security Act. It is true, however, that such substitute teachers must elect to pay the contribution for all service, and in order that they may intelligently decide whether to so elect to pay from the beginning of service, they are entitled to be fully informed by the employer of this right as well as the right to reject such coverage for the first 60 consecutive days of service. Participation in the state system becomes mandatory after the first 60 consecutive days of employment regardless of substitute status.

Respectfully submitted,

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

215 County Officers—Interpretation of statutes pertaining to county surveyors, county managers, and county planning commissions, and particularly [NRS 255.060](#); [NRS 244.130](#); [NRS 245.080](#); [NRS 281.210](#); [NRS 281.230](#); [NRS 197.110](#); and [NRS 278.040](#).

CARSON CITY, April 12, 1965

HONORABLE JOSEPH O. MCDANIEL, *District Attorney of Elko country, Elko, Nevada*

STATEMENT OF FACTS

DEAR MR. MCDANIEL: The Board of County Commissioners of Elko County, Nevada, have under consideration the entering into of a contract with the Elko County Surveyor, wherein that office would perform certain duties for and on behalf of the county which, in paragraph I thereof, are generally described as follows:

- A. Be responsible for engineering needs of the County Highway Department.
- B. Advise the County Commissioners of building construction and maintenance needs of all county buildings.
- C. Act as advisor on economic and fiscal matters concerning the county.

It is provided in paragraph II of the proposed contract that the surveyor be compensated by:

- A. Payment of \$300 per month, out of which a part time secretary is to be paid the sum of \$50 per month.
- B. Being provided office space, maintenance and utilities.
- C. Payment of fees for all county work, based upon a schedule of charges set forth in the contract.

QUESTION

1. Would the proposed contract be construed in any way as violating [NRS 244.130](#), dealing with the employment of a county manager?
2. Would the contract violate any of the following statutes: [NRS 245.080](#), [NRS 281.210](#), [NRS 281.230](#), or [NRS 197.110](#)?
3. Could the county surveyor, being an ex-officio member of the county planning commission, pursuant to the provisions of [NRS 278.040](#), perform the same service as outlined in the proposed contract for and on behalf of the planning commission for compensation?

ANALYSIS

Prior to legislative enactment in 1949, fees for county surveyors were set by law then existing. Under the present statute, being [NRS 255.060\(1\)](#), provision is made for their compensation as follows:

The board of county commissioners shall allow to each county surveyor fair and reasonable compensation, in lieu of salary, in connection with each survey ordered by the board, or for such other services performed by him for the county, when he has been authorized to perform the same.

Since the compensation to be fixed and paid pursuant to this section is in lieu of a salary, we must conclude that it was intended by the Legislature that the county commissioners exercise considerable leeway in arriving at the amount of such compensation. Furthermore, in providing for allowance of compensation for “other services,” the Legislature has undoubtedly clothed the commissioners with power to include therein any type or nature of services as, within their discretion, are necessary and proper on behalf of the county, provided their performance by the surveyor is not prohibited by or in conflict with other statutes.

Whether or not performance of the additional duties by the Elko County Surveyor, as embodied in the proposed contract, conflicts with the law governing the employment of a county manager, must be determined by the provisions of [NRS 244.135\(1\)](#). That section reads as follows:

The county manager shall perform such administrative functions of the county government as may be required of him by the board of county commissioners.

The quoted section limits the duties of the county manager to “administrative functions.” The authorities have found that term extremely difficult or impossible to define for all purposes. However, it has been held to include the carrying out of the legislative will, assisting the executive in executing the laws, and aiding the courts in their proceedings and judgments. *State v. Atlantic Coast Line R. Co.*, 47 So. 969 (Fla.) And it seems that the term essentially embraces the power to ascertain a fact of state of facts which will justify a course of action. *Board of Education v. Mulcahy*, 123 P.2d 114 (Cal).

Regardless of definitions of the term, it is apparent from that portion of the statute last above quoted, that the county commissioners may delegate most of their administrative functions to the county manager for performance. If any function so delegated is subsequently assigned as a duty to be performed by the county surveyor, a duplication results which must be avoided.

Although it appears from the nature of the duties to be performed by the County Surveyor of Elko county under the proposed contract, and particularly paragraph I(C) thereof, that they may overlap or conflict with certain administrative functions which may be delegated to the county manager, nevertheless, we are of the opinion that the contract does not necessarily violate [NRS 244.135\(1\)](#), wherein the duties of such manager are provided for. We find nothing in the law providing for appointment of county managers and specifying their duties, which would exclude or prohibit the performance of certain county functions by other persons. Since the provisions of [NRS 244.135\(1\)](#) limit the functions to be performed by the county manager to those only which the county commissioners may require, it leaves the implication that other functions not so delegated may be assigned to another person or other persons. We cannot find that these two statutes with which we are here concerned, viz., [NRS 255.060\(1\)](#) and [NRS 244.135\(1\)](#), are in conflict or that either supersedes the other. It is a common rule of statutory interpretation, and often followed by the Nevada State Supreme Court, that two statutes relating to the same subject matter are to be read and construed together, with a view to harmonizing them, if possible, to give effect to both, unless the later act expressly repeals the earlier, or is so repugnant to it as to repeal it by necessary implication. *Presson v. Presson*, [38 Nev. 203](#). See also *State v. Nevada Tax Commission*, [38 Nev. 112](#); *Ex parte Ah Pah*, [34 Nev. 283](#); *State v. Esser*, [35 Nev. 429](#).

Since the county commissioners designate the functions and duties to be performed by these two officers, viz., the county surveyor and the county manager, pursuant to the respective statutes covering each, care should be taken in those counties where both offices exist, that there are no duplications in the assignment or delegation of their duties. To that end the county commissioners in those particular counties should carefully scrutinize the provisions of any proposed contract providing for additional or “other” duties, to be performed by the county surveyor, and reconcile such duties which have been or may be delegated to the county manager. In no case should they overlap.

From a careful analysis of the terms and provisions of the proposed contract, this office is of the opinion, as is hereinafter more explicitly stated in order, that said contract in nowise

violates any of the following statutes: [NRS 245.080](#); [NRS 285.210](#); [NRS 281.230](#); and [NRS 197.110](#).

The provisions of [NRS 245.080](#)(1) making it unlawful for any county officer to be interested in any contract made by him, is not applicable to the proposed contract with Elko County surveyor, because under [NRS 255.060](#)(1) this type of contract is specifically authorized.

[NRS 281.210](#) prohibits officers of the State and political subdivisions thereof, with certain exceptions, from employing relatives for state work. This statute could have no possible application to the proposed contract between the Elko county commissioners and the Elko County surveyor, unless there is a relationship between the principals thereto within the third degree of consanguinity. And even then, such contract would not be prohibited because it is authorized under [NRS 255.060](#)(1).

[NRS 281.230](#)(1) prohibits any state or county officer from receiving any personal profit or compensation from any contract in which the county is interested. Again, because of the provisions of [NRS 255.060](#)(1) authorizing such contract in the case of county surveyors, this prohibition has no application to the contract here under consideration.

[NRS 197.110](#) is designed to prohibit the misconduct of public officers, and subsection 2 thereof specifically prohibits such officer from being beneficially interested in or accepting any compensation arising out of any contract made under the supervision of such officer or for the benefit of his office. However, the type of contract contemplated under [NRS 255.010](#), such as the proposed contract here under consideration, is there removed from this prohibition. Furthermore, the proposed contract is not for the benefit of or on behalf of the surveyor's office, but for his own benefit instead. The prohibitory statute above cited has no application here.

We come now to the question raised by reason of the fact that the Elko County Surveyor is an ex-officio member of the Elko county Planning Commission pursuant to the provisions of [NRS 278.040](#) and also by reason of county ordinance adopted by that county.

By reason of [NRS 278.040](#)(3), all members of county planning commissions serve without compensation and certain powers are conferred upon them by law. The duties which these commissions perform are many and varied and are designed for benefit and betterment of the county in which each serves. If a duty or act which the county surveyor is under obligation to perform as an ex-officio member of the commission is also one included in a contract with the county commissioners, and for which he receives compensation, the mandate of the statute that commission members serve without pay has been circumvented. No principle is better founded or more elementary than that to the effect that what the law prohibits or enjoins directly may not be done directly. For these reasons, this office is of the opinion that the County Surveyor of Elko county is not entitled to compensation under the proposed contract for the performance of any duties which he is already obligated to perform as an ex-officio member of the Elko County Planning Commission where he is by statute required to serve without compensation.

Under the provisions of [NRS 278.040](#)(2), either the chief engineer, the county surveyor, or his designated deputy may be appointed as one of the ex-officio members of the county planning board. Since the surveyor, either personally or through his deputy, would become disqualified to act in that capacity if a contract of the type proposed is executed, it is suggested that the chief engineer, if there is one, be appointed as such member instead. If this suggestion is not feasible, and the surveyor continues as a member of the commission, then the compensation provided for in the proposed contract between the county commissioners and the county surveyor should be reduced in an amount equivalent to the estimated value of the surveyor's services performed as a commission member.

CONCLUSION

1. The proposed contract between the Elko County Commissioners and the Elko County Surveyor is properly authorized by the provisions of [NRS 255.060](#)(1) and is not in direct conflict with [NRS 244.125-244.135](#), governing the appointment of a county manager. Under well-recognized rules of statutory interpretation, even though these statutes deal with the same or similar subject matter, they may both be given effect insofar as consistent. This may be done by carefully reconciling the duties to be performed by the county surveyor under the terms of the

proposed contract with those which have been or may be delegated to the county manager in accordance with [NRS 244.135](#)(1). The answer to question number 1 is in the negative.

2. Since the proposed contract is specifically authorized under [NRS 255.060](#)(1), the provisions of certain other statutes pertaining to contracts entered into by a state or county officer from or on behalf of the state have no application, such other statutes being particularly [NRS 245.080](#), [NRS 285.210](#), [NRS 281.230](#), and [NRS 197.110](#). Question number 2 hereinabove propounded is answered in the negative.

3. What the law forbids to be done directly may not be accomplished indirectly. For that reason, the county surveyor, who is by law an ex-officio member of the county planning commission, without compensation, upon entering into a contract with the county commissioners for performance of certain additional duties for which he is to receive compensation pursuant to [NRS 255.060](#)(1), is not entitled to receive any such compensation for performance of any acts or duties which he is already under obligation to perform as an ex-officio member of the commission. Question number 3 is answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By C. B. TAPSCOTT, *Deputy Attorney General*

216 District Attorneys—Under general law district attorneys have the authority to appoint deputies and specific statutory authority appertaining to a specific county is not required. [NRS 252.070](#) construed.

CARSON CITY, April 15, 1965

HONORABLE JOHN CHRISLAW, *District Attorney, Douglas County, Minden, Nevada*

STATEMENT OF FACTS

DEAR MR. CHRISLAW: The Board of County Commissioners of Douglas County has made provision in the county budget for the fiscal year commencing on July 1, 1965, and ending on June 30, 1966, in the amount of \$6,000, for the compensation of a deputy district attorney of such county. The board of county commissioners has given its consent to such appointment.

The district attorney is considering making such an appointment but has no specific statutory authority applicable to the County of Douglas authorizing him to appoint a deputy district attorney.

QUESTION

Has the District Attorney of Douglas County authority to appoint a deputy district attorney under the facts given?

ANALYSIS

[NRS 252.070](#) provides:

252.070 (Deputies; staff.)

1. All district attorneys are authorized to appoint deputies, who shall have power to transact all official business appertaining to the offices, to the same extent as their principals.

2. District attorneys shall be responsible for the compensation of their deputies, and shall be responsible on their official bonds for all official malfeasance or nonfeasance

of the same. Bonds for the faithful performance of their official duties may be required of deputies by district attorneys.

3. All appointments of deputies under the provisions of this section shall be in writing, and shall, together with the oath of office of the deputies, be filed and recorded in a book provided for that purpose in the office of the recorder of the county within which the district attorney legally holds and exercises his office. Revocations of such appointments shall also be filed and recorded as herein provided. From the time of the filing of the appointments or revocations therein, persons shall be deemed to have notice of the same.

4. Any district attorney may, subject to the approval of the board of county commissioners, appoint such clerical, investigational and operational staff as the execution of duties and the operation of his office may require. The compensation of any such person appointed shall be fixed by the board of county commissioners.

Subsection 4 of the above section of NRS was added by Chapter 156, Statutes 1961. The remainder of [NRS 252.070](#) had long been the law, and the power of the district attorneys to appoint deputies had, from early days of statehood, been the law. *State of Nevada v. Harris*, [12 Nev. 414](#); *State ex rel. Blaisdell v. Conklin*, [62 Nev. 370](#), 151 P.2d 626.

Subsection 4, however, merely broadens the power of the district attorneys as regards the appointment of clerical and investigatorial staffs with the approval of the board of county commissioners.

We note that in the case under consideration the board of county commissioners is in agreement with your tentative determinations respecting the necessity and propriety of appointing a deputy district attorney and also note that funds have been made available for this purpose for the fiscal year commencing July 1, 1965.

CONCLUSION

For the reasons given, we, therefore, conclude that under general law the District Attorney of Douglas County has the authority to appoint a deputy district attorney, pursuant to the provisions of [NRS 252.070](#). The question is answered in the affirmative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

217 Insurance, Division of—Amendatory laws passed at the same legislative session, both applicable to a statutory provision ([NRS 692.060](#)), effective on different dates, the latter amendment containing the material contained in the former, with certain additions, are to be construed under the rule of *pari materia*, in a manner to give recognition to both. Chapter 451 and 456, Statutes 1965, construed.

CARSON CITY, April 21, 1965

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

STATEMENT OF FACTS

DEAR MR. HAMMEL: The 1965 Legislature enacted Assembly Bill No. 417 containing an amendment to [NRS 692.060](#)(2). This bill was signed into law on April 13, 1965, and has become Chapter 451, Statutes 1965. This amendment was effective upon passage and approval.

This Legislature also enacted Assembly Bill No. 451 containing amendments to [NRS 692.060](#) through 692.090. This bill was signed into law on April 13, 1965, the provisions of which were to become effective on July 1, 1965.

[NRS 692.060](#)(2), as amended by Assembly Bill No. 417, effective on April 13, 1965, provides:

2. A policy issued to an association *of employers or an association whose members are in the same industry, occupation or profession, and* which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least 25 members of the association for the benefit of persons other than the association or its officers or trustees as such. (The italicized portion is the material added in 1965.)

[NRS 692.060](#)(2), as amended by Assembly Bill No. 451, to become effective on July 1, 1965, provides:

2. *Under* a policy issued to an association of employers, an association whose members are in the same industry, occupation or profession, *or a labor union,* and which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than of obtaining insurance, insuring members, *employees, or employees of members* of the association for the benefit of persons other than the association or its officers or trustees. (The italicized portion is new material and supplements that portion added by Assembly Bill No. 417.)

QUESTION

Which of the tow quoted sections actually states the law, and which is to be followed by the Insurance Division?

ANALYSIS

It will be observed that the Legislature contemplated the passage of the earlier bill (Assembly Bill No. 417) by the amendment and the italics that are employed in the passage of the later bill (Assembly Bill No. 451).

Number 451 contains all that is contained in No. 417 except that it struck out "at least 25" members. It contains material not contained in 417 in that it added the clauses "or a labor union" and "employees or employees of members."

The bills must be construed together, without the nullification of either under the rule of *pari materia*, and as clearly shown by the second bill including material which was new to the first bill.

CONCLUSION

We therefore conclude that [NRS 692.060](#)(2) as amended by Assembly Bill No. 417 (Chapter 451), is now the law, but that this subsection (as well as other amendments contained in Assembly Bill No. 451) will be modified by the provisions of Assembly Bill No. 451 (Chapter 456), upon the effective date of the later bill, namely, July 1, 1965.

On July 1, 1965, Assembly Bill No. 417 (Chapter 451) will be fully superseded by the provisions of Assembly Bill No. 451 (Chapter 456, Statutes 1965).

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

218 Securities Act—Opinion delineates the limited authority of partner, officer, or director of both broker-dealers and issuers, in the absence of registration under [NRS 90.130](#), as “agents” in the sale of securities. [NRS 90.030\(3\)](#) and [NRS 90.130\(7\)](#) reconciled.

CARSON CITY, April 27. 1965

HONORABLE JOHN KOONTZ, *Secretary of State, State of Nevada, Carson City, Nevada*

Attention: Mr. George M. Spradling, Deputy Secretary of State, Division of Securities

STATEMENT OF FACTS

DEAR MR. KOONTZ: [NRS 90.030](#), as amended by Chapter 363, approved April 13, 1965, effective July 1, 1965, provides the following:

90.030 1. “Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

2. “Agent” does not include an individual who represents an issuer in effecting transactions with existing employees, partners or directors of the issuer, or any of its subsidiaries, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

3. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is not the agent of such broker-dealer or issuer, but may, if he meets the test of subsection 1, be the agent of another broker-dealer or issuer.

Section 90.030(3) prior to the amendment of 1965 provided the following:

3. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an agent only if he otherwise comes within this definition.

[NRS 90.120](#) and [90.130](#) provide for registration of broker-dealers and agents. The former section provides:

90.120 1. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

2. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

3. * * *

[NRS 90.130\(7\)](#) provides:

7. Registration becomes effective when the application is approved by the administrator. Registration of a broker-dealer automatically constitutes registration of an agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions.

QUESTION

In light of the provisions of [NRS 90.130\(7\)](#), may a partner, officer, or director of a duly registered broker-dealer, or a person occupying a similar status or performing similar functions, in the absence of being duly registered as an agent, serve as agent under [NRS 90.030\(1\)](#) in the sale of securities other than those issued by the broker-dealer company?

ANALYSIS

We are here concerned with that which appears at first blush to be a conflict between [NRS 90.130\(7\)](#) and [NRS 990.030\(3\)](#), as amended by Ch. 363, Statutes 1965. We are concerned with the reconciliation of these apparent conflicting provisions, in light of the other provisions which reflect the purposes of the chapter.

Under [NRS 90.030\(3\)](#), as amended, a limitation is placed upon the authority of a partner, officer, or director of a broker-dealer or issuer, in that such officers are not agents for the sale of securities generally, but may serve as such agents for other broker-dealers or issuers by qualifying under subsection 1.

A broker-dealer either partnership or in corporate form may sell its own securities. For this purpose, the registration of a broker-dealer automatically constitutes registration of an agent who is a partner, officer, or director under the provisions of [NRS 90.130\(7\)](#). We are advised by the Uniform Securities Act analysis that this is to give the necessary information about its officers, thus rendering it unnecessary that this information be given as to the individuals separately.

But broker-dealers in much greater quantity are concerned with the sale of securities of other broker-dealers and particularly, other issuers. In this respect, the directive of [NRS 90.030\(3\)](#) becomes operative. Thus the apparent inconsistency between [NRS 90.030\(3\)](#) and [NRS 90.130\(7\)](#) is reconciled, in that under the permission granted by [90.130\(7\)](#), absent individual registration, the officers of a broker-dealer may sell only its own securities; and that to qualify to sell also the securities of another broker-dealer or issuer, such officers must qualify as agents and be duly licensed, bonded, and fingerprinted. Thus under the doctrine of *pari materia*, the entire chapter is given a meaning, for the Legislature presumptively knew of [NRS 90.130\(7\)](#) when, in 1965, it amended subsection 3 of [90.030](#). Neither does the fact that [NRS 90.030\(3\)](#) becomes effective on July 1, 1965, modify any conclusion reached as to the immediate future, for the amendment of 1965 does not modify the concept here under review.

CONCLUSION

The above analysis leads to the conclusion that, (1) a partner, officer, or director of a broker-dealer firm, in the absence of registration as an agent under [NRS 90.130](#), may sell no securities except as provided in the exception of [NRS 90.030\(2\)](#), and securities issued by such firm; (2) that in order for such officers to sell securities of another broker-dealer or issuer (except as provided in [NRS 90.030](#), subsection 2), such officers must qualify and register as agents; and (3) that the officers of an issuer (with the exception noted) may not sell the securities of such issuer until duly qualified and registered as agents.

This interpretation is in harmony with the construction placed upon similar provisions by the states of Pennsylvania and Kentucky. We have not examined other states. This construction also is compatible with the purpose of the act, in the protection of the public against persons in a position that affords the opportunity of great mischief, in that prior to the grant of authority to sell securities, the administrator must have on record morals data showing the type, quality, and manner of work of the prospective registrant.

The question is answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

219 Education; Teachers—Sabbatical leave permissive only to instructors at college or university level; leave for purpose of conducting personal business allowable only if deducted from annual leave.

CARSON CITY, April 27, 1965

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

DEAR MR. MARSHALL: You have requested an opinion from this office as to whether sabbatical leaves are legal in Nevada, and as to whether it is legal to grant leaves to classroom teachers or school employees for personal business reasons.

ANALYSIS

The only provision for sabbatical leave mentioned in the Nevada Statutes is found in [NRS 281.150](#)(2a), which permits the Regents of the University of Nevada to grant such leave.

This statute permits the Welfare Division of the Department of Health and Welfare to grant educational leave stipends when paid entirely from federal funds.

[NRS 612.230](#) permits the Executive Director of the Employment Security Department to grant educational leave stipends to employees of his department if the cost is borne by the federal government.

There is no provision for leave to conduct personal business. This constitutes deduction from annual leave.

CONCLUSION

It is, therefore, the opinion of this office that, (1) sabbatical leave cannot be granted to classroom teachers at the primary, grade, or high school level; (2) that leave cannot be granted for business purposes unless such leave is deducted from annual leave.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

220 County Fair and Recreation Boards; Advertising—Boards have a wide discretionary power in the allocation of advertising funds related to area-wide recreational facilities.

CARSON CITY, April 27, 1965

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

DEAR MR. MARSHALL: You have inquired of this office as to the power of fair and recreation boards, created under [NRS 244.640-244.780](#), to expend funds for general advertising purposes when such advertising has no direct relationship to recreational facilities or activities.

ANALYSIS

[NRS 244.640](#)(1e) gives to counties having a population of more than 9,000 the authority to advertise, publicize, and promote the recreational facilities of the county.

Upon the creation of the fair and recreation board, such power and the exercise thereof passes to the board.

The narrow, restricted view would limit expenditures under [NRS 244.640\(1e\)](#) to designated recreational facilities under the jurisdiction of the board, but we feel that the words, “recreational facilities” are broader than this.

[NRS 244.640\(2\)](#) would indicate that the Legislature intended to include recreational facilities extending beyond buildings, incidental improvements, equipment, furnishings, sites, and grounds used for recreational purposes, else it would not have included the words “Without limiting the *generality* of the provisions of subsection 1.” Webster defines generality as “lack of particularity,” so that advertising which tends to bring to the attention of the public all recreational media in the area presided over by the fair and recreation board would not, under present statutes, be prohibited. (Italics supplied.)

CONCLUSION

It is, therefore, the opinion of this office that county fair and recreation boards have a wide discretionary power in the allocation of advertising funds related to area-wide recreational facilities.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

221 Taxation—Real property publicly owned under lease to private entity, although taxable in certain instances, is not taxable: (1) When business is not conducted for profit, or (2) When property is upon or within the limits of a public airport, park, market, fairground, or other property available for use of the general public. Chapter 432, Statutes 1965 construed.

CARSON CITY, April 30, 1965

HONORABLE THEODORE H. STOKES, *Ormsby County District Attorney, Court House, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. STOKES: You have requested an opinion of this office on behalf of the Assessor of Ormsby County in making a determination as to whether or not certain real property located in Ormsby County and owned by the County of Ormsby or the City of Carson City should be taxed on the ground that it is being leased to private individuals or corporations.

Your request for an opinion arose with the passage of Assembly Bill No. 185 which provides for the taxation of such property when it is used in connection with a business for profit except where the use is by way of a concession in or relative to the use of a public airport, park, market, fairground, or similar property which is available for the use of the general public.

One particular example raised by the assessor is that of the Carson city golf course, which is a private corporation which leases the golf course and some improvements from the City of Carson City. The pro shop and the course itself are operated for profit; however, it is within Mills Park and is definitely available for the use of the general public upon payment of a reasonable green fee.

A similar situation is that of the Mills Park Golf Club, which is a private, nonprofit organization. This club leases a building adjacent to the pro shop which is not available to the general public but is not operated as a business for profit. Similar situations exist at the administration building located on the Carson City airport.

QUESTIONS

1. Should a real property tax be assessed against the Carson City Golf Course, Inc. for real property, including the golf course and the pro shop, which is owned by the City of Carson City and leased from said city by said corporation?

2. For our future guidance, does the phrase “available for the use of the general public” as contained in Assembly Bill No. 185, have any bearing upon whether or not a fee is required for such use?

3. Are we correct in assuming that Assembly Bill No. 185, does not apply to any activity other than a business conducted for profit?

ANALYSIS

Assembly Bill No. 185, now Chapter 432, Statutes 1965, provides:

Section 1. Chapter 361 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2 1. When any real estate which for any reason is exempted from taxation is leased, loaned or otherwise made available to and used by a private individual, association, partnership or corporation *in connection with a business conducted for profit*, it shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such real estate. This section does not apply to:

(a) Property *located upon or within the limits of* a public airport, park, market, fairground or upon similar property which is available to the use of the general public; or * * *. (Italics supplied.)

The provisions of Section 2(1) of Chapter 432 are clear that exempt real property used in connection with a business conducted for profit *is* taxable and it would therefore follow that exempt real property *not* used in connection with a business conducted for profit or used by a nonprofit organization would *not* be taxable under this section. The foregoing conclusion, however, would not be applicable to the Carson City Golf Course, Inc., for since the golf course and the pro shop are within Mills Park, this brings same into the exception provided under Section 2(1)(a) set forth above which exempts property located upon or within the limits of a public airport, park, etc. The administration building and other buildings located on the Carson City airport would be similarly exempt.

The conclusions reached herein make the second question herein moot and it therefore will not be discussed in this opinion.

CONCLUSION

Based on the foregoing discussion, it is the opinion of this office that:

1. A real property tax should not be assessed against the Carson City Golf Course, Inc. for real property, including the golf course and the pro shop, which is owned by the City of Carson City and leased from said city by said corporation, since the property is within Mills Park.

2. The discussion herein based upon the facts herein presented make question number 2 moot and it is therefore left unanswered.

3. Assembly Bill No. 185, now Chapter 432, Statutes 1965, does not apply to any activity other than a business conducted for profit.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By GABE HOFFENBERG, *Chief Deputy Attorney General*

222 County Commissioners; Liquor Licenses—A county commissioner, even though a member of the county liquor board, may hold a liquor license. He cannot refrain from being a member of such board, but can refrain from voting where his license is involved.

CARSON CITY, May 6, 1965

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

DEAR MR. BLAISDELL: You have requested an opinion of this office on the following questions involving a Mineral County Commissioner who recently purchases a package liquor business in the City of Hawthorne and was issued a liquor license by the Mineral County Liquor Board.

QUESTIONS

1. May a county commissioner who purchases a liquor business during his term of office lawfully own a liquor license?
2. May a county commissioner who holds a liquor license in such instance lawfully serve as a member of the county liquor board?
3. May a county commissioner holding and using a liquor license lawfully disqualify himself from serving on the county liquor board?

ANALYSIS

An exhaustive search of the law dealing with these matters leads us to the reluctant conclusion that it is legal for a county commissioner in Nevada to acquire a liquor license. It would not be proper, however, for him to vote on the motion granting such a license, and the interest of the public is certainly not served when members of the county liquor boards become engaged in such business. The reason for this must be clear. The member will vote on the granting or denial of applications for liquor licenses, and could, by reason of his membership on such board, be in a position to shut out competition.

It is interesting to note, however, this writer made a check of the laws of 10 different states and, without exception, each had specific laws prohibiting members of liquor boards from having any interest whatsoever in a wholesale or retail liquor business. (See: New Jersey Stats. Anno. 33:1-7; California Business and Professional Code, Sec. 23060; Oregon Rev. Stats. 471.710(2); Ohio Rev. Code 4301.07; Anno. Code of Md. Art. 2B, Sec. 166; Anno. Laws of Mass., Ch. 138, Sec. 4; Comp. Laws of Mich. 436.11; Minn. Stats. Anno. 340.08; Missouri Anno. Stats. 311.640; New Mex. Stats. 46-2-2.) This office will certainly recommend to the Legislature that such a law be enacted in Nevada.

The board of county commissioners, the district attorney, and the sheriff of the several counties are designated by statute as members of county liquor boards ([NRS 244.350](#)). Article IV, Sec. 26 of the Nevada Constitution provides that county commissioners shall, jointly and individually, perform such duties as may be prescribed by law. One of the duties prescribed is to serve on the county liquor board. But he should not under available decisions vote on a question involving his own license. *Dubbs v. Florida State Finance Co.*, 159 So. 527.

CONCLUSION

It is therefore the opinion of this office that:

1. A county commissioner may be granted a liquor license even though he serves on the liquor board granting the license.
2. A county commissioner holding a liquor license may serve on the county liquor board.
3. A county commissioner holding a liquor license may not disqualify himself from serving on the county liquor board but he may withhold his vote if he feels there is a conflict of interest, or his license is involved.

We conclude that while there is no statutory prohibition against a member of the county liquor board holding a liquor license, county liquor boards should be hesitant about granting such a license in view of the conflict of interest that must certainly arise.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

223 Collection Agencies; Licenses—A collection agency must be licensed by the State prior to the time it may be licensed to do business by a city. The residence requirement of [NRS 649.070](#) must be fulfilled prior to licensing.

CARSON CITY, May 6, 1965

HONORABLE SIDNEY R. WHITMORE, *City Attorney of Las Vegas, Las Vegas, Nevada*

DEAR MR. WHITMORE: You have submitted the following questions:

1. Must a collection agency be licensed by the State prior to the time that it may be licensed to do business by the City of Las Vegas?
2. Must the residence requirements in [NRS 649.070](#) be fulfilled prior to the licensing of such an agency by the State or city?

ANALYSIS

[NRS 649.050](#) prohibits any person from conducting a collection agency within this State without having first applied for and obtained a license to do so from the State Superintendent of Banks. Since a collection agency cannot do business until licensed by the State, it logically follows that a city cannot license it to conduct a business it is not yet authorized to conduct under state law.

[NRS 649.070](#) requires an applicant for a collection agency license to file with the Superintendent of Banks, concurrently with the application, a bond in the sum of \$10,000. Paragraph 2 of this statute requires that the principal on the bond be the applicant, and, “who shall have been a resident of the State of Nevada for at least 6 months prior to the application.” Obviously, the bond would not be in compliance with this law if the applicant were not a resident of the State for 6 months. If the bond does not meet the requirements of law, the application would not be granted.

Although [NRS 649.055](#) describing the qualifications of an applicant does not spell out the required residency, we must construe each section of Chapter 649 in connection with the other sections therein contained to produce a harmonious whole. One cannot obtain a license without a bond and cannot obtain a bond without having been a resident for 6 months. The residence requirements of [NRS 649.070](#) must be fulfilled prior to licensing by State or city.

CONCLUSION

A collection agency must be licensed by the state prior to the time it may be licensed to do business by a city. The residence requirement of [NRS 649.070](#) must be fulfilled prior to licensing.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

224 Administrative Hearings; Evidence—Findings, conclusion, and judgment in a civil action and the transcript therefrom may not be received into evidence before an adjudicative administrative hearing of the Nevada Real Estate Advisory Commission for the purpose of determining whether the act charged was actually committed. The commission may not pass a rule that it will receive such evidence.

CARSON CITY, May 12, 1965

MR. DON MCNELLEY, *Administrator, Real Estate Division, Department of Commerce, Carson City, Nevada*

DEAR MR. MCNELLEY: The Nevada Real Estate Advisory Commission conducts hearings to determine whether real estate broker's licenses should be revoked or suspended upon motion of the administrator or upon a verified complaint of any person if such complaint alleges a prima facie case ([NRS 645.610](#) et seq.). In certain cases the licensee has previously been a party to a civil action in a district court involving the transaction that is the subject of the proposed hearing in which the court has made findings that the licensee has or has not committed an act that constitutes grounds for revocation or suspension of a license under [NRS 645.630](#). You ask the following questions arising out of this set of facts:

QUESTIONS

May the commission receive into evidence at the hearing for revocation or suspension of a license, the pleadings, findings, conclusions, judgment and/or transcript of such a civil action?

May the commission pass a rule or regulation that it will receive such material in evidence?

ANALYSIS

[NRS 645.690](#) provides that the licensee shall be entitled *at the hearing* to "examine, either in person or by counsel, any and all persons complaining against him, as well as all other witnesses whose testimony *is relied upon* to substantiate the charge made." The obvious purpose for the admission of such evidence would be to provide some basis for a decision. (Italics supplied.)

These hearings are quasi-judicial in nature and decisions arising therefrom adjudicate the rights of individuals to pursue a livelihood as real estate salesmen and brokers. Procedural due process requires, in our opinion, that sufficient competent evidence be introduced to warrant revocation or suspension. Findings, conclusions, and judgment of a separate civil action are hearsay and not sufficient to justify suspension or revocation of a license. In Missouri the suspension of a real estate broker's license was set aside on the ground that "hearsay testimony is not competent and substantial evidence and could not provide a legal basis for a finding." *Dittmeier v. Missouri Real Estate Commission*, 237 S.W.2d 201 (1951).

Although the general rule allows hearsay evidence in administrative hearings if there is a residuum of competent evidence to support the findings, we do not believe findings, conclusions, and judgments of a separate action should be introduced into the hearings under discussion. See 2 Davis, *Administrative Law*, pp. 291-323 (1958 Ed.). The commission is required by law to make its own findings, conclusions, and judgment from the evidence presented to it at its hearing and should not rely on another's judgment. *Phelps Dodge Corporation v. Ford*, 203 P.2d 633 (Ariz. 1949); 18 A.L.R.2d 564, 565; 73 C.J.S., p. 444.

It is also our opinion that the transcript of a separate civil action should not be introduced as evidence of guilt or innocence of the charge. This is also hearsay. [NRS 645.690](#) specifically requires that the licensee be entitled *at the hearing* to examine all witnesses. He could not cross

examine a transcript. Under this statute direct evidence must be provided by witnesses duly sworn. However, the transcript could be used for impeachment purposes. (Italics supplied.)
Question number 2 is also answered in the negative.

CONCLUSION

Findings, conclusion, and judgment in a civil action and the transcript therefrom may not be received into evidence before an adjudicative hearing of the Nevada Real Estate Advisory Commission for the purpose of determining whether the act charged was actually committed. The commission may not pass a rule that it will receive such evidence.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

225 Licenses; Ambulances—The passage of Chapter 271, Statutes 1965, takes from the Public Service Commission authority over ambulances operating in various political subdivisions of the State, but does not deny such political entities the right to license and certificate these vehicles.

CARSON CITY, May 13, 1965

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

DEAR MR. WHITMORE: You have requested from this office an opinion as to wherein lies the jurisdiction over ambulances in view of the passage of Chapter 271, of the Statutes 1965.

ANALYSIS

Under Chapter 271, Statutes 1965, the Public Service Commission has relinquished its jurisdiction over ambulances and hearses, feeling that they are not, strictly speaking, common carriers.

It was not the intention, however, of the Public Service Commission, in securing the enactment of this legislation, to take from licensing political subdivisions the right to certificate or license these vehicles. They have, in fact, relinquished this problem to the political subdivisions.

Chapter 271, Statutes 1965, is an amendatory act which in part repeals an existing state statute. It superseded and to that extent repeals existing law.

If the City Charter of Las Vegas provides for the licensing or certificating of ambulances, generally or specifically, there has been no transfer of legislative authority, but rather a grant of power to procure local regulations.

CONCLUSION

It is therefore the opinion of this office that the passage of Chapter 271, Statutes 1965, takes from the Public Service Commission authority over ambulances operating in various political subdivisions of the State, but does not deny such political entities the right to license and certificate these vehicles.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

226 Welfare; Aid to Dependent Children—The Welfare Division of the Nevada Department of Health and Welfare is authorized to accept and use federal funds for children qualifying under the Aid to Dependent Children Program who have been placed in foster homes.

CARSON CITY, May 13, 1965

MR. QUENTEN L. EMERY, *State Welfare Administrator, Department of Health and Welfare, Carson City, Nevada*

DEAR MR. EMERY: Title 42 U.S.C.A. Sec. 608 authorizes payment of federal funds under the Aid to Dependent Children Program to states for dependent children who have been placed in foster homes pursuant to court order and whose care is the responsibility of a state or local agency administering the Aid to Dependent Children Program. You ask the following question:

QUESTION

Is the Welfare Division of the Nevada Department of Health and Welfare authorized to accept and use federal funds for children in foster care who have previously qualified under the Aid to Dependent Children Program?

ANALYSIS

Title 43 U.S.C.A. Sec. 606(a) defines a dependent child as follows: “a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece, in a place of residence maintained by one or more of such relatives as his or their home * * *.”

Nevada law, [NRS 425.030](#), defines a dependent child in substantially the same manner and was apparently adopted from the above quoted federal law.

[NRS 425.040](#)(3) directs the State Welfare Division to:

Cooperate with the Federal Government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the Federal Government to be necessary for the efficient operation of the plan for such assistance.

[NRS 425.020](#)(2) recites:

The provisions of this chapter shall be liberally construed to effect its stated objects and purposes.

The children in question were receiving aid as dependent children prior to the time they were placed in a foster home by court order. Although they are not strictly within the definition of a “dependent child” we must liberally construe the law to effect its purpose. The Social Security Act in 42 U.S.C.A. Sec. 608 broadens the term “dependent child” to include children who would meet the requirements of the strict definition except for removal from a relative’s home as the result of a judicial determination and whose placement and care in a foster home are the responsibility of the state agency administering the state plan.

Chapter 195, Statutes 1965, amended Chapter 422 dealing with state welfare administration, and authorizes the acceptance of any funds made available for extension of programs and services administered by the department under the Social Security Act; directs the

director of the Welfare Division to cooperate with the federal government in increasing the efficiency of welfare programs by prompt and judicious utilization of new federal grants and authorizes him to accept, with the approval of the Governor, any increased benefits from federal legislation for child welfare programs, either as relates to eligibility for assistance or otherwise. In addition, [NRS 422.260](#)(1) recites that the State of Nevada assents to the purposes of the Social Security Act and “assents to such additional federal legislation as is not inconsistent with the purposes of Chapter 422.”

The above legislation clearly authorizes the Welfare Division of the Nevada Department of Health and Welfare to use the described federal funds for these children in foster care. Accordingly, the care of such children is the responsibility of the Welfare Division.

CONCLUSION

The Welfare Division of the Nevada Department of Health and Welfare is authorized to accept and use federal funds for children qualifying under the Aid to Dependent Children Program who have been placed in foster homes.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

227 Public Utilities; Water Companies—A Corporation owning and selling a tract of land in small parcels together with appurtenant water rights is not a public utility because it operates and maintains a ditch through which the water is supplied and for which it charges purchasers a maintenance charge on a pro-rata basis.

CARSON CITY, May 17, 1965

MR. J. G. ALLARD, *Chairman, Public Service Commission, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ALLARD: A Nevada corporation purchased approximately 258 acres of land together with certain irrigation water rights. The water is delivered to the land through a water ditch. The company is selling the land in 2 1/2 acre parcels with a pro-rata share of the water rights, and when all the parcels are sold the company will have divested itself of all such land and water rights and will dissolve. In the interim, the company operates and maintains the ditch and bills the actual expense thereof to each purchaser on his pro-rata share. You ask the following question:

QUESTION

Is the described corporation operating as a public utility and required to apply to the Public Service Commission for a certificate of public convenience and necessity?

ANALYSIS

[NRS 704.020](#)(2) recites:

2. “Public utility” shall also embrace:

(a) Any person, partnership, corporation, company, association, their lessees, trustees or receivers (appointed by any court whatsoever) that now or hereafter may own, operate or control any ditch, flume, tunnel or tunnel and drainage system, charging rates, fares or tolls, directly or indirectly.

Before a corporation is a public utility within the terms of the above statute, it must be charging rates, fares, or tolls directly or indirectly. A rate, fare, or toll is generally described as a charge for the use of a commodity. *McNeal Pipe and Foundry Co. v. Howland*, 16 S.E. 857; *State v. Spokane and I.E.R. Co.*, 154 P. 1110; *Black's Law Dictionary*, p. 1658 (1951 Ed.). It is our opinion that the maintenance charge is not a rate, fare, or toll for the use of the water in question. The water has already been purchased by the vendees under land contracts.

Several cases from other jurisdictions have been found holding that similar corporations are not public utilities, without touching on the question of interpretation of statutes such as detailed above.

In *McCullagh v. Railroad Commission*, 210 P.264 (Cal. 1922) an owner of a large tract of land acquired the right to use the water of a certain river and thereafter conveyed such right to a corporation which was owned by a landowner. The land was sold in small tracts to purchasers with whom the corporation agreed to furnish certain amounts of water, which water rights were to be appurtenant to the land and for which the purchaser agreed to pay an annual rate. The California Supreme Court held that the company was not a public utility.

Central Oregon Irrig. Co. v. Public Service Commission, 196 P. 832 (Ore. 1921) involved similar purchases of land and water rights wherein an annual "maintenance fee" was one of the considerations of the contract. The court held that the corporation selling the property and maintaining the water supply was not a public utility and further that the exercise of jurisdiction by the Public Service Commission in increasing or decreasing the fee would impair the obligation of contract to buy and sell real estate with an appurtenant water right.

It was held in *Stratton v. Railroad Commission*, 198 P. 1051 (Cal. 1921) that a water company was not a public utility, so as to bring it within the jurisdiction of the commission where, having been organized and owned by a land company which desired to subdivide and sell a tract having riparian rights as the chief source of water supply, and having received by transfer the land company's stock in a mutual water company, it agreed to distribute to the land the water which it was authorized to divert as the agent of the land company, for an annual charge of \$1 per acre.

We are accordingly of the opinion that the company in question is not a public utility that must apply to the Public Service Commission for a certificate of public convenience and necessity.

CONCLUSION

A corporation owning and selling a tract of land in small parcels together with appurtenant water rights is not a public utility because it operates and maintains a ditch through which the water is supplied and for which it charges purchasers a maintenance charge on a pro-rata basis.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

228 Unemployment Compensation—The voluntary departure of an employee to accept a higher wage, when present working conditions are acceptable as to standards, is not such "good cause" as would justify an increase in the contribution rate of an employer under the Unemployment Compensation Act of Nevada.

CARSON CITY, May 20, 1965

HONORABLE WILLIAM J. RAGGIO, *District Attorney, Washoe county, Reno, Nevada*

DEAR MR. RAGGIO: You have asked this office for an interpretation of the words “without good cause” in [NRS 612.380](#).

You advise that the words “without good cause” are connected with the voluntary departure from employment by an employee. You further indicate that the Nevada Employment Security Department, in arriving at an employer’s contribution rating interprets the words so as to include leaving employment in order to seek another job or career because of increased pay or emoluments.

ANALYSIS

[NRS 612.380](#) reads as follows:

An individual shall be disqualified for benefits for the week in which he has left his most recent work voluntarily without good cause, if so found by the executive director, and for not more than 15 consecutive weeks thereafter, occurring within the current benefit year, or within the current and following benefit year, as determined by the executive director according to the circumstances in each case.

The words “without good cause” were meant by the Legislature to apply only to those features or conditions of employment which induce and employee to voluntarily leave such employment. These could include, but are not all inclusive, improper working conditions, conduct of an employer, continual imposition of overtime, uncleanliness of the office, reduction of a living wage to one impractical, etc.

But the words “without good cause” were not meant to imply that an employer should be penalized in his contribution rating because an employee leaves a good job, which has none of the detriments, or others, listed above, to accept a job at a higher salary. To rule otherwise would be inflicting upon employers a penalty for not being able to meet the offer of a competitor. This was not the intention of the Legislature.

CONCLUSION

It is, therefore, the opinion of this office that the voluntary departure of an employee to accept a higher wage, when present working conditions are acceptable as to standards, is not such “good cause” as would justify an increase in the contribution rate of an employer under the Unemployment Compensation Act of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

229 County Commissioners; Taxes—County commissioners have no authority to make any compromise with delinquent taxpayers or to release them from payment of any part of their legally assessed taxes.

CARSON CITY, May 24, 1965

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

DEAR MR. DEMETRAS: Approximately 3 years ago, certain agricultural land in White Pine County was sold subject to a deed of trust. The purchaser subdivided the land for sale and filed a subdivision plat with the county recorder. Subsequently, and because the land was subdivided,

the property was assessed for tax purposes at a much higher value. The purchaser defaulted in the payments and the seller foreclosed on the deed of trust, only to discover that the county had a tax lien against the land in the approximate sum of \$5,900. The seller has now requested the White Pine County commissioners for a compromise of the taxes. You ask the following question.

QUESTION

May the county commissioners compromise legally assessed taxes?

ANALYSIS

As early as 1873 the Nevada Supreme court, in *State v. Central Pacific R.R. Co.*, [9 Nev. 79](#), stated that the only way county commissioners may reduce or change taxes as assessed is when they act as a board of equalization and when acting in that capacity they must comply literally with the plain provisions of the statute. Two years later the Supreme Court in *State of Nevada v. C.P.R.R. Co.*, [10 Nev. 68](#), stated that the county commissioners have no authority to make any compromise or composition with delinquent taxpayers, or to release them from the payment of their taxes. Annotations in 99 A.L.R. 1062 and 28 A.L.R.2d 1425 disclose many decisions from other jurisdictions on this point. Accordingly, we are of the opinion that no compromise may be made.

We are also of the opinion that [NRS 354.220](#) and [354.240](#) providing for certain refunds by county commissioners are not applicable to the real property taxes. The procedure for contesting an assessment on real property is set forth in Chapter 361 of NRS providing for a hearing before the county board of equalization and appeal to the State Board of Equalization. No action may be maintained until these administrative remedies have been exhausted ([NRS 361.410](#)). One cannot do indirectly that which he cannot do directly. If there has been a failure to protest the assessment and the taxes are legal and due, no refund may be made.

CONCLUSION

County commissioners have no authority to make any compromise with delinquent taxpayers or to release them from payment of any part of their legally assessed taxes.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

230 District Attorney—Under general statutes of Nevada, a district attorney has authority, with consent of county commissioners, to hire a stenographer, notwithstanding Chapter 82, Statutes 1965.

CARSON CITY, May 24, 1965

HONORABLE ED DELANEY, *Assemblyman, Eureka County, Eureka, Nevada*

DEAR MR. DELANEY: You have inquired of this office as to whether the District Attorney of Eureka County may employ a stenographer.

ANALYSIS

Under Chapter 59, Statutes 1961, which amended Chapter 23, Statutes 1953, as amended by Chapter 178, Statutes 1955, the County Commissioners of Eureka County were empowered to

authorize the district attorney to employ a stenographer at a salary to be fixed by the commissioners.

The act was further amended by Chapter 158, Statutes 1963, which authorized the district attorney to employ a stenographer at \$3,300 per year, and said employment did not require authorization from the county commissioners.

In the recent session of the Legislature, Chapter 82, Statutes 1965, was passed, which amended the act by deleting the employment of a stenographer.

The act further repealed Section 9 of the 1953 act, which provided that in case of an emergency the district attorney might, with the unanimous consent of the board of county commissioners, employ a deputy at a salary not to exceed \$200 per month.

However, under Chapter 156, Statutes 1961, Section 4 thereof, it is provided: "Any district attorney may, subject to the approval of the board of county commissioners, appoint such clerical, investigational and operational staff as the execution of duties and the operation of his office may require. The compensation of any such person appointed shall be fixed by the board of county commissioners."

It is clear that this act, which has not been repealed, takes precedence over Chapter 82, Statutes 1965, and for the very reason set forth in the 1961 act, to wit: that a stenographer is necessary, in the opinion of the commissioners, to aid the district attorney in the execution of his duties.

This office cannot comprehend a district attorney functioning without the services of a stenographer. Otherwise, he would have to type all correspondence, type pleadings, and attend his office constantly. By the very nature of the duties assigned to him by law, the absence of a stenographer would impose upon him an onerous burden which would interfere with his prescribed duties.

CONCLUSION

It is therefor the opinion of this office that under Chapter 156, Statutes 1961, which has not been repealed, district attorneys are permitted, with the consent of the county commissioners, to hire at least one stenographer.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

231 General Improvement Districts—The procedures set forth in Chapter 318 of Nevada Revised Statutes, and not those contained in Chapter 354 of Nevada Revised Statutes, are applicable to general improvement districts.

CARSON CITY, May 25, 1965

CAMERON BATJER, ESQ., *Attorney for Kingsbury General Improvement District, P.O. Box 606, Carson City, Nevada*

DEAR MR. BATJER: You advise that the Kingsbury General Improvement District was created pursuant to Chapter 318, NRS. You ask whether the district must also comply with [NRS 354.410](#)-354.440.

ANALYSIS

[NRS 354.410](#) defines those political subdivisions subject to Chapter 354, NRS. This includes cities, towns, school districts, irrigation districts, fire protection districts, agricultural associations, and mosquito abatement districts.

General improvement districts not being mentioned they are excluded.

CONCLUSION

It is therefore the opinion of this office that only the procedures set forth in Chapter 318, NRS are applicable to general improvement districts.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

232 State Parole Board; Open Meeting Law—Hearings conducted by the Nevada Parole Board, at which applications for parole, revocation of parole, or determination of statutory time served, or to be served, are considered, are closed hearings and open only to parole board personnel, witnesses called or summoned, the applicants or subjects of parole board action, and qualified prison administrators.

CARSON CITY, June 1, 1965

MR. GEORGE J. REED, *Chief Parole and Probation Officer, Carson City, Nevada*

DEAR MR. REED: You have directed to this office the following inquiry:

Is the Nevada Parole Board's proposed rule making Parole Board hearings, on Nevada State Prison inmates when considering their applications for parole, revocation of parole or hearing on statutory time a "private hearing", except for such officials as are provided for in the statute and proposed rules, contrary to the Statutes of the State of Nevada?

ANALYSIS

This office on August 24, 1961, in an opinion issued by my learned predecessor, thoroughly discussed the Nevada Open Meeting Law, Chapter 241 of NRS.

In that opinion it was pointed out "The policy favoring public access to government operations competes with another policy which is essential to efficient public administration. The public interest is sometimes best served by non-disclosure of government functions. The operation of government like any other business, must sometimes be conducted in private."

We are constrained to hold that meetings of the Parole Board, when conducting hearings on applications for parole, revocation of parole, or on statutory time served or to be served, are such meetings as should be closed to all but parole board personnel, witnesses called or summoned, the applicant or subject of Parole Board action, and qualified prison administrators.

The reasoning behind this, we feel, is sound. At such hearings clinical, psychological, and psychiatric reports of a confidential nature are received from county, state, and federal agencies. These must be openly discussed in arriving at a determination as to the proper action to be taken by the board. No public interest would be served by making these records available to the general public.

As a matter of fact, the revealing of these highly confidential and highly personal records might close the avenue of their availability to the board. The agencies responsible for gathering and disseminating the information might determine that it was not to their best interest to make further data along this line available.

This does not close the door to making such information available to the courts district attorneys, or law enforcement agencies directly responsible for the protection of the public, when the board deems such action necessary.

CONCLUSION

It is therefore the opinion of this office that hearings conducted by the Nevada Parole Board, at which applications for parole, revocation of parole, or determination of statutory time served, or to be served, are considered, are closed hearings and open only to parole board personnel, witnesses called or summoned, the applicants or subjects of parole board action, and qualified prison administrators.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

233 Political Subdivisions; Collective Bargaining—Political subdivisions of the State cannot enter into collective bargaining agreements affecting public employees.

CARSON CITY, June 1, 1965

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

DEAR MR. WHITMORE: You have submitted to this office an inquiry as to whether political subdivisions or entities in the State of Nevada may enter into collective bargaining agreements with unions concerning employment of personnel paid with funds of such political entities.

ANALYSIS

To subject the State or any of its political subdivisions to collective bargaining would be to deprive these entities of a part of their sovereignty and would constitute a delegation of the powers and duties imposed on city, county, and state officials to the bargaining agent or agency.

As was stated in *Plumbers and Pipefitters Local Union No. 633 v. City of Owensboro, Kentucky*, “Labor cannot invade the precincts of governmental activities and substitute its control for the control of the duly elected representatives of the people. . .”

The court went on to state, “Not only may a city not collectively bargain with such organizations, it simply cannot bargain with them. For a public official or body to cast aside their duty to fix the compensation of its employees to the uncertain authority of collective bargaining may well constitute misfeasance and in any event such collective bargaining would be . . . ultra vires . . .”

There can be no doubt that organizations of state, county, and municipal officers have long been recognized as serving a useful purpose. Nevertheless, the organization and activity in organization of public officers and employees is subject to some regulation for the public welfare. (See *United Public Workers v. Mitchell*, 330 U.S. 75.) This is because a public officer or employee, as a condition of the terms of public service, voluntarily gives up such part of his rights as may be essential to the public welfare.

While there is nothing improper in the organization of municipal employees with labor unions, collective bargaining by public employees is another matter. As pointed out by Franklin D. Roosevelt, our late President, “All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are

governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.”

We may refer to Section 7 of the National Labor Relations Act, 29 U.S.C.A. § 157, which was adopted for the purpose of compelling collective bargaining in private industry and which excluded specifically public employees.

Legislative discretion cannot be bargained away and no citizen or group of citizens have any right to a contract for legislation or to prevent legislation. Under our form of government public office or employment has never been, and cannot become, a matter of bargaining and contract. (State ex rel Rothrum v. Darby, 345 Mo. 1002, 137 S.W.2d 532; Nutter v. City of Santa Monica, 74 Cal.App.2d 292, 168 P.2d 741; Miami Waterworks Local No. 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194; Mugford v. Mayor and City of Baltimore, 185 Md. 266, 44 A.2d 745.)

This is true because the whole matter of qualifications, tenure, compensation, and working conditions for any public service involves the exercise of legislative powers. The Legislature cannot delegate such powers and such powers cannot, therefore, be bargained or contracted away; and certainly not by any administrative or executive officer who cannot have any legislative powers.

It can be readily seen that despite the fact that public employment is a privilege and not a right, to place in the hands of public employees the right to strike against the political subdivision hiring them would be contrary to public policy and the public welfare.

CONCLUSION

It is therefore the opinion of this office that political subdivisions of the State cannot enter into collective bargaining agreements affecting public employees.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

234 Criminal Identification Material—Material in the hands of law enforcement officials is not available to the general public under Chapter 46, Statutes 1965, amending [NRS 239.010](#).

CARSON CITY, June 3, 1965

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

DEAR MR. MARSHALL: You have asked whether the Legislature intended, by the enactment of Chapter 46, Statutes 1965, to make available to the public confidential police reports, photographs of those formerly convicted of felonies, fingerprint cards, and records of convictions.

ANALYSIS

The public records referred to in Chapter 46, Statutes 1965, which amends [NRS 239.010](#), are such as are kept by public agencies in the course of ordinary public business conducted from day to day. Some of the records available for inspection by the public are tax records, recording records, public court records, except when sealed by court order, and assessment records.

It is our view that the Legislature never intended to make available for public inspection confidential crime reports, photographs, and criminal records, for the simple reason that such revelation would not be in the public welfare. It is also to be pointed out that if such records were available to the general public, the apprehension of criminals by law enforcement agencies

would be hampered. It is not unreasonable to believe, for example, that should material be made available on a “wanted” person, such person could be forewarned.

If attorneys desire information of the type described above, they can avail themselves of court orders rather than the statute.

CONCLUSION

It is, therefore, the opinion of this office that criminal identification material in the hands of law enforcement officials is not available to the general public under Chapter 46, Statutes 1965, amending [NRS 239.010](#).

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

235 Department of Education; Driver Education Classes—(1) A pupil not enrolled in a full-time day high school during the regular school term is not entitled to take driver education. (2) A pupil enrolled in summer school must take classes other than driver education in order to be eligible for driver education instruction. (3) Parochial pupils attending summer school would be eligible for driver education classes only if such were taken in conjunction with other classes.

CARSON CITY, June 4, 1965

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

DEAR MR. STETLER: You have submitted to this office a request which contains the following statement:

1. Chapter 349, Nevada Statutes 1965, states in Section 1, paragraph 3, “The board of trustees of a school district may establish and maintain automobile driver education classes during regular semesters and summer sessions and during the regular school day and at times other than during the regular school day for:

(a) Pupils enrolled in the regular full-time day high schools in the school district;
(b) Pupils enrolled in summer classes conducted in high schools in the school district.”

2. The title of the Act refers to automobile driver training courses in public high schools and indicates that Chapter 349, Nevada Statutes 1965 amends Chapter 389 of NRS, relating to courses of study in the public schools.

3. In paragraph 3, it is stated that the board of trustees may establish and maintain automobile driver education classes for “(a) Pupils enrolled in the regular full-time day high schools in the school district; (b) Pupils enrolled in summer classes conducted in high schools in the school district.”

You then propound the following three questions:

1. During regular semesters is anyone who is not enrolled in a full-time day high school eligible to enroll in an automobile driver education class provided by the school district under Chapter 349, Nevada Statutes 1965?

2. Does section 1, paragraph 3(b) mean that pupils must be enrolled in other summer classes conducted in high schools in the school district to be eligible to enroll in

an automobile driver education class maintained in the same high school during the summer program?

3. Would pupils who attended a parochial school during the regular semesters be eligible to enroll in an automobile driver education class maintained under the provisions of section 1, paragraph 3(b) during the time when the parochial school was not in session, i.e., summer classes, or classes held on Saturdays or in the evenings?

ANALYSIS

It is easy to answer the first question; the answer is "No." As to the second question, we feel that the legislature intended automobile driver education to be extended to those enrolled in courses in summer school other than driver education. The reasoning behind this is that the facilities of the driver education program are limited. To interpret Chapter 349, Statutes 1965, so as to allow a pupil to enroll only for driver education would result in an influx of students which could not be adequately handled, and would be discriminatory as against those students who attend school during the regular term. The answer to your second question covering Section 1, 3(b) is "Yes."

The answer to question number 2 above governs question number 3. Parochial students attending summer school would be entitled to take driver education only if they were regularly enrolled in the summer session of public schools and taking classes other than driver education.

CONCLUSION

It is therefore the opinion of this office that:

1. A pupil not enrolled in a full-time day high school during the regular school term is not entitled to take driver education.
2. A pupil enrolled in summer school must take classes other than driver education in order to be eligible for driver education instruction.
3. Parochial pupils attending summer school in the public school system would be eligible for driver education classes only if such were taken in conjunction with other classes.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

236 District Judges; Travel Expenses Outside State—There is no provision by law whereby the country is responsible for the payment of travel expenses outside State of District Judges.

CARSON CITY, June 4, 1965

MR. PAUL E. HORN, *Clark County Recorder and Auditor, Las Vegas, Nevada*

DEAR MR. HORN: You have submitted to this office a question as to whether District Judges making trips outside the State and not connected, or connected indirectly, with their official duties, may be paid from county funds.

The rules governing the submission of travel claims covering travel outside the State for District Judges are set forth in [NRS 281.160](#), and especially Section 5 thereof, which reads as follows:

Before any district judge, state officer, commissioner, representative or other employee of the state shall travel on official business outside the state, he shall make written request for and receive permission for such travel as provided in this subsection.

Requests shall be submitted, on forms approved by the state board of examiners, to the budget division of the department of administration at least 10 working days prior to the beginning of travel and no travel shall be authorized except after having been approved by the budget division. The budget division may refuse permission for such travel only if there are insufficient funds for out-of-state travel or if the method of travel does not conform to the regulations approved by the state board of examiners. If the budget division disapproves such request for permission to travel, the applicant therefor may appeal the decision to the state board of examiners, whose decision shall be rendered at its next regular meeting. Such determination shall be final. In emergencies, the budget division, upon good cause shown by the applicant, may consider request for travel submitted to it less than 10 working days prior to the beginning of travel. Claims for reimbursement for travel which are not approved by the budget division shall be considered by the state board of examiners at a regular meeting.

[NRS 281.165](#) states that *all* claims of District Judges for travel expenses and subsistence allowance shall be submitted to the Clerk of the Supreme Court, who shall act as administrative officer in processing such claims pursuant to the regulations of the State Board of Examiners.

This office has been informed that the Supreme Court requests out-of-state travel funds for District Judges, but that the Legislature has appropriated only \$1,000 for this purpose.

CONCLUSION

It is therefore the opinion of this office that District Judges should follow the dictates of [NRS 281.160](#)(5) and [NRS 281.165](#), prior to making trips outside the state, and that there is no provision of law whereby the county is responsible for the payment of such expenses.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

237 School Districts; School Sites on Federal Property—A school district cannot spend its own funds for the construction of buildings located on property owned by the federal government. The school district would not have control, title, or custody of such property as required by law.

CARSON CITY, June 8. 1965

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

DEAR MR. MARSHALL: You ask the opinion of this office on the following question:

QUESTION

May a local school district expend funds for the construction of school facilities on federally owned property?

ANALYSIS

[NRS 393.010](#) recites that the board of trustees of a school district shall:

1. Manage and control the school property within its district.
2. Have the custody and safekeeping of the district schoolhouses, their sites and appurtenances.

The building in question would be located on a military base. It is our opinion that a school district could not spend its funds for the construction of buildings on such federal property. The district would not have title, control, or custody of the site and the purpose of the above quoted statute would be defeated.

CONCLUSION

A school district cannot spend its own funds for the construction of buildings located on property owned by the federal government. The school district would not have title, control, or custody of such property as required by law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

238 General Improvement Districts—Members of board of trustees and treasurers of general improvement districts who were qualified and serving prior to the amendment of [NRS Chapter 318](#) may serve the remainder of their terms without procuring new bonds in the increased amounts provided in the amended statute.

CARSON CITY, June 15, 1965

CAMERON M. BATJER, ESQ., *Attorney for Kingsbury General Improvement District, Sweetland Building, Carson City, Nevada*

DEAR MR. BATJER: The Kingsbury general Improvement District was created pursuant to [NRS Chapter 318](#) in 1964 and the trustees of the district were appointed, qualified, and posted their bonds as required by the statute. The 1965 Session of the Legislature has increased the amount of the bonds for the trustees and treasurer of such districts. You ask the following questions:

QUESTIONS

1. Is it necessary for members of the board of trustees of general improvement districts organized pursuant to [NRS Chapter 318](#) prior to 1965 to procure new bonds in the amounts provided for in Chapter 413, Statutes 1965?
2. Is it necessary for the treasurer of a general improvement district organized pursuant to [NRS Chapter 318](#) prior to 1965 to procure a new bond in the amount provided for in Chapter 413, Statutes 1965?

ANALYSIS

[NRS 318.080](#) is the statute applicable to the first question and reads as follows:

The members of the board of trustees shall qualify by filing with the county clerk their oaths of office and corporate surety bonds, at the expense of the district, the bonds to be in an amount not less than \$10,000 each, the form and exact amount thereof to be approved and determined, respectively, by the board of county commissioners, conditioned for the faithful performance of their duties as trustees.

It is clear from reading the statute that the Legislature intends to impose more stringent bonding requirements for trustees of all districts who qualify in the future. But does the language

of the statute apply retroactively to acts completed and persons serving before the enactment of the statute?

The jurisprudence of the American people has never favored retroactive legislation. (United States Constitution, Article I, Section 9; Nevada Constitution, Article I, Section 15.) The Supreme Court in the case of *Wildes v. State*, [43 Nev. 388](#), 187 Pac. 129, cited an ancient maxim, that law ought to be prospective and not retrospective in holding as follows:

There is always a presumption that statutes are intended to operate prospectively only, and words ought not to have a retrospective operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute. If all of the language of a statute can be satisfied by giving it prospective action only, that construction will be given it.

Most recently in *The County of Clark, a Political Subdivision of the State of Nevada, et al, v. Roosevelt Title Insurance company, Ltd., a Nevada corporation*, _____ Nev. _____, 396 P2d. 844, the court cited the decision in the *Wildes* case with approval and stated the general rule to be that statutes are to be construed as prospective only, unless the language employed conclusively negatives that construction.

There is no language in the amended statute which negates the construction that it is to apply only to trustees serving in the future. Indeed, Section 23.5 of Chapter 413, Statutes 1965, states that all incomplete proceedings may at the option of the board of trustees be completed pursuant to the old statute. If incomplete proceedings may be completed, certainly those persons who qualified for office in 1964 need not comply with the statute passed in 1965.

It is therefore our conclusion that general improvement districts organized prior to the passage of amendments to [NRS 318 need](#) not purchase a bond in an increased amount for members of the board of trustees who have already qualified. Our answer, of course, would be to the contrary for any new members of the board of trustees who should comply with the amendments at the time they qualify for office.

The matter propounded in the second question regarding treasurers of such districts is more difficult. [NRS 318.085](#) has been amended and the Legislature has done more than increase the amount of the bond required from \$5,000 to not less than \$50,000. It has also added a provision that any other officer or director who actually receives or disburses money of the district shall furnish a bond as provided in the subsection.

Perhaps the Legislature intended that treasurers presently in office should file a bond in the increased amount. However, it did not expressly say this and for reasons previously cited, in our opinion, the amendment does not apply to treasurers now in office. But treasurers of districts taking office after the enactment of the statute and any other officers or directors who actually receive or disburse money of the districts should furnish a bond as provided in the amended statute.

CONCLUSION

Members of the board of trustees and treasurers of general improvement districts who were qualified and serving prior to the amendment of [NRS Chapter 318](#) may serve the remainder of their terms without procuring new bonds in the increased amounts provided in the amended statute. The provisions of the statute should be observed by all persons taking office or persons receiving or disbursing money of the district subsequent to enactment of the amendment to the statute.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DON W. WINNE, *Deputy Attorney General*

239 Taxes; Penalties and Interest for Delinquent Tax Payments—(1) Statutes imposing interest charges or penalties upon delinquency in payment of taxes will not be deemed retroactive unless the intent that they shall so operate is manifest. (2) Interest cannot be charged for a full month on a tax that is delinquent only a portion of month unless expressly authorized by the legislature. (3) Interest cannot be charged on penalties for delinquency in payment of taxes unless expressly provided by law.

CARSON CITY, June 16, 1965

MR. EDWARD E. BOWERS, *Executive Secretary, Nevada Gaming Commission, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. BOWERS: Chapter 399, Statutes 1965, amends certain portions of Chapter 463 of NRS by providing and increasing penalty and interest assessments for failure to pay state gaming license fees. The amendments become effective July 1, 1965, and several questions relating to the application of the law have been presented for our opinion. They are as follows:

QUESTIONS

1. Since this law is effective on July 1, 1965, will the interest assessments and penalty increase attach to Quarterly Renewal Reports of the Nevada Gaming Commission which are due to be filed on or before July 25, 1965, covering casino operations for the period April 1 through June 30, 1965; or is it the intent of the law that these new rates will initially apply to quarterly reports for the July 1 through September 30, 1965, quarter, which is reportable on or before October 25, 1965?

2. Must the interest rate of 7 percent per annum be computed on a daily basis on delinquent returns or may this commission consider any portion of a month as a full month's delinquency in arriving at this assessment; that is, in example, may a licensee 24 days delinquent be considered 30 days delinquent?

3. This new law makes reference to an interest assessment of 7 percent per annum on the gross amount due. Is the principal amount plus the penalty to be considered as the basis on which interest is to apply or is the interest to be computed on principal amount due without regard to penalty?

ANALYSIS

A rule of law that is controlling throughout this analysis was first recited in Nevada in the 1878 case of *State v. California Mining Co.*, [13 Nev. 203](#), at [217](#), 218, as follows:

The provisions of the statute requiring payment of an additional percent of the tax in case of delinquency, is penal in its nature and object. * * * It has been long and well established that such statutes must be construed strictly.

In *Ex parte Todd*, [46 Nev. 214](#) (1922) the court said that where the intention of the legislature is in doubt, a penal statute must be strictly construed and in *United States Fidelity and Guaranty Co. v. Marks*, [37 Nev. 306](#) (1914), the court said:

It is a well settled rule that penalties not expressed are not favored, and that the Court will not read or legislate into a statute forfeitures which it does not purport to provide.

It is observed that the 1965 amendments referred to do not purport to apply retroactively, nor do they expressly purport to allow collection of a full month's interest from a licensee who is delinquent only a portion of the month or interest on the penalty.

A statute imposing interest charges or penalties upon delinquency in payment of taxes does not apply to taxes delinquent at the time the act takes effect, for such a statute will not be deemed retroactive unless the intent that it shall so operate is manifest. (85 C.J.S., Taxation, p. 579; *People v. W. A. Wiebolt & Co.*, 191 N.E. 689, 93 A.L.R. 789; 51 Am.Jur., Taxation, Sec. 977.) The 1965 amendments do not take effect until July 1, 1965, and consequently will not apply until the quarter of July 1 through September 30, 1965.

In applying the above cited rules to the second question we conclude that it must be answered in the negative. Penal statutes will not be extended by implication. Interest cannot be charged for a full month on a tax that is delinquent only a portion of a month unless expressly authorized by the Legislature. Interest should be charged only to date of payment. It might be noted that California Statutes providing interest penalties for delinquent taxes expressly provide that the interest is imposed only to the date of payment. Cal. Code, Revenue and Taxation, Sec. 25901c.

The third question is also answered in the negative. The Supreme Court of Montana was confronted with the identical question in *Shubat v. Glacier County*, 18 P.2d 614. The court was concerned with the imposition of interest on a penalty charge for delinquent taxes. The statute involved was similar to the one with which we are presently concerned. The court held:

The provisions of the statutes which impose a penalty are penal in nature and must not be extended by implication. * * * The application of these principles leads us to the conclusion that the Legislature intended the interest provision * * * should apply only to the original tax and not the penalty. * * * Had it been the intention of the lawmaking body that the interest provision should apply to the penalty as well as to the original tax, it would doubtless have said so in terms.

CONCLUSION

1. Statutes imposing interest charges or penalties upon delinquency in payment of taxes will not be deemed retroactive unless the intent that they shall so operate is manifest.
2. Interest cannot be charged for a full month on a tax that is delinquent only a portion of a month unless expressly authorized by the Legislature.
3. Interest cannot be charged on penalties for delinquency in payment of taxes unless expressly provided by law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

240 Gaming; Cabaret Tax; Chapter 525, 1965 Statutes Interpreted.

CARSON CITY, June 21, 1965

MR. EDWARD E. BOWERS, *Executive Secretary, Nevada Gaming Commission, Carson City, Nevada*

DEAR MR. BOWERS: You have submitted to this office a request to interpret certain provisions of Chapter 525 of the 1965 Statutes of Nevada.

It is necessary to point out that the act provides that Nevada's cabaret tax will be based on 50 percent of the federal tax as imposed by Chapter 26 of the U.S. Code 4231(6), and that in the event the federal tax is reduced subsequent to January 1, 1965, the state tax will be the difference between the rate prevailing on January 1, 1965, and the tax actually imposed by the federal government.

Your questions are as follows:

1. Since the casino entertainment tax *base*, as we understand the law, is the federal cabaret tax remitted to the Internal Revenue Service, what would be the basis for determining revenues due the State if, for instance, a gaming establishment is found to be subject to the casino entertainment tax but it is not licensed with, or remitting cabaret tax to, the federal government? (Italics supplied.)

2. There is presently pending before Congress a bill which proposes the elimination of the federal cabaret tax at noon on December 31, 1965, and the chances of passage appear excellent at this time. Should said bill become law, would the casino entertainment tax then be increased to a 10 percent rate or, if not, how would this legislation at the federal level affect this new state tax?

3. May the casino entertainment tax be passed on to the consumer, either directly or indirectly, or must the licensed gaming establishment defray the tax? If your reply to this interrogatory is in the affirmative as to payment of tax by the consumer, would it be incumbent upon the gaming licensee to separately state the charge on his bill of fare?

4. Since the casino entertainment tax is levied upon each licensed gaming establishment in the state, would the tax still apply to lessees of gaming operations on the remises where entertainment is provided by the lessor, landlord, etc., and such costs of entertainment are borne by other than the gaming licensee?

5. It is our understanding that the casino entertainment tax will attach to sales commencing July 1, 1965, and that the first quarter year of operation will end on September 30, 1965, and the tax will be required to be remitted not later than October 31, 1965. May we have your confirmation of this statement?

6. On lines 6 and 7 on page 1, what does the phrase "except instrumental or mechanical music alone" mean? That is, if, for instance, the Flamingo Hotel had a 40-piece orchestra without benefit of vocalist providing entertainment in the lounge and no dancing privileges are afforded, would sales of non-exempt food or refreshment be subject to the casino entertainment tax?

7. Lines 9 through 20 set forth exemptions from the tax if certain conditions are met, specifically, subsections "a" through "d"(2). May each subsection be considered separately in determining the exemption from tax, or must all subsections be considered jointly in making this determination?

8. Section 2 on page 1 refers to the providing of entertainment in conjunction with the serving or selling of food, refreshment or merchandise. If service of drinks, for instance, is accomplished and billed to patrons of a show prior to the commencement of entertainment, are such sales subject to the casino entertainment tax when the customer elects to remain for the performance?

ANALYSIS

Section 2 of Chapter 525, which amends Chapter 463 NRS, reads as follows:

Sec. 2. 1. In addition to any other license fees and taxes imposed by this chapter, a tax, to be known as the casino entertainment tax, is hereby levied upon each licensed gaming establishment in this state where music and dancing privileges or any other entertainment, except instrumental or mechanical music alone, are afforded the patrons in connection with the serving or selling of food, refreshment or merchandise. A licensed gaming establishment is not subject to tax under this section if:

(a) No distilled spirits, wine or beer is served or permitted to be consumed;

- (b) Only light refreshment is served;
 - (c) Where space is provided for dancing, no charge is made for dancing; and
 - (d) Where music is provided or permitted, such music is:
 - (1) Instrumental or other music which is supplied without any charge to the owner, lessee or operator of such establishment or to any concessionaire; or
 - (2) Mechanical music.
2. The amount of the tax imposed upon each licensed gaming establishment by this section shall be either:
- (a) So long as such tax remains at the rate in effect on January 1, 1965, 50 percent of the federal cabaret taxes imposed under 26 U.S.C. § 4231(6) upon such establishment for the same period; or
 - (b) If the federal cabaret tax so imposed is reduced after January 1, 1965, an amount equal to the difference between the federal cabaret tax applicable to such establishment at the rate prevailing on January 1, 1965, and the tax actually imposed and collected by the Federal Government.
3. The tax imposed by this section shall be paid by the licensee of such establishment.

The answer to question number 1 is that there would be no base upon which to levy the tax and therefore, until amended, the law could not be enforced as to such an enterprise.

Question number 2 is answered by stating that if the federal tax were eliminated, the state tax would be 10 percent, and means would have to be taken to estimate such tax (even as to the enterprises included in question number 1) and to collect the same.

Question number 3 is answered by stating that the tax could be passed on to the consumer provided such tax is plainly shown on the check submitted to the consumer. Only in this way could the State determine the tax due and collectible.

Question number 4 is answered by advising that the person licensed by the gaming commission is responsible for the tax, even though the burden is placed on such lessee to collect or guarantee the tax when the cabaret portion of the establishment is leased to another.

Question number 5 is answered by confirming your understanding of the tax period, to wit: July 1 through September 30.

Question number 6 is answered by interpreting Section 2, 1(d)(1)(2), wherein there is a reference to instrumental or other music which is supplied without charge to the owner, lessee, or operator, or to a concessionaire, and mechanical music. We interpret this to mean an instrumentalist group where remuneration is received by means of customer contribution, or where a juke box or other mechanical device is played by depositing coins.

Question number 7 is answered by stating that (a), (b), (c), and (d) are all inclusive requirements for tax exemption and therefore to be considered together and in relation to each other.

Question number 8 is answered by advising that drinks served prior to entertainment in a place where taxable entertainment is furnished are subject to the cabaret tax.

CONCLUSION

The opinion of this office is in accordance with the opinions expressed hereinabove.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

241 Motor Vehicles; Field Agents; Retirement—Field agents of the Department of Motor Vehicles are entitled to retire as “police officers” under [NRS 286.510](#).

CARSON CITY, June 30, 1965

MR. KENNETH BUCK, *Executive Secretary, Public Employees Retirement Board, Carson City, Nevada*

DEAR MR. BUCK: You ask the opinion of this office on the following question:

QUESTION

May Motor Carrier Field Agents of the Department of Motor Vehicles be granted retirement at age 55 as police officers?

ANALYSIS

[NRS 286.510](#) provides:

1. After July 1, 1949, a police officer or a fireman who is a member of the system, who has attained the age of 55 years, and who has completed a minimum of 10 years of credited service, may be retired from service; and thereafter, except as otherwise provided in this chapter, the date of his retirement shall be the 1st day of the calendar month in which application for retirement shall be filed with the board or the last day of compensation, whichever is later.

2. After July 1, 1949, any other employee who is a member of the system, who has attained the age of 60 years, and who has completed a minimum of 10 years of credited service, may be retired from service; and thereafter, except as otherwise provided in this chapter, the date of his retirement shall be the 1st day of the calendar month in which application for retirement shall be filed with the board or the last day of compensation, whichever is later.

There is no formal, statutory definition of “police officer” that would determine the classification of the field agents for purposes of retirement under the above quoted statute. We will, therefore, attempt to arrive at a classification through an analysis of the scope and purpose of their employment.

Prior to 1963, some of the duties carried on by field agents were handled by the Nevada Highway Patrol, the composition of which included a director, inspectors, patrolmen, and field agents. The field agents of the patrol were then charged with the enforcement of only two chapters of NRS, Chapter 482 relating to vehicle licensing and registration, and Chapter 706 dealing with motor vehicle carriers. In 1963, Chapter 481 was amended to place field agents within the Department of Motor Vehicles, and their duties were enlarged to include the enforcement of five additional chapters of NRS, including Chapter 484, which sets forth all the state traffic laws. [NRS 481.0491](#) states that field agents shall have the powers of peace officers in carrying out their duties and be entitled to retire under the circumstances provided in [NRS 286.510](#), without specifying under which paragraph of this statute they qualify. However, if it was not intended to qualify them under paragraph (1), there would be no purpose for such a specification. They would automatically be covered as any other employee under paragraph (2). This, in our opinion, indicates a legislative intent that they may retire as police officers.

A police officer, according to judicial definition, is one who enforces the law. As indicated above, the field agents in question enforce the laws detailed in seven chapters of the Nevada Code. They have all powers of peace officers in doing so, and [NRS 171.150](#) specifically provides that they *are* peace officers when performing their duties. It is our opinion that the field agents are police officers within the contemplation of [NRS 286.510](#). If the Legislature had intended otherwise, it could have specifically barred them from early retirement, as they did with fish and game wardens.

CONCLUSION

Field agents of the Department of Motor Vehicles are entitled to retire as “police officers” under [NRS 286.510](#).

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By DANIEL R. WALSH, *Deputy Attorney General*

242 Marriages, Performance of—The retirement mentioned in [NRS 122.070\(1\)](#) is not such as would allow voluntary retirement for the operation of a wedding chapel. Certificates of permission to perform marriages should be denied in such instances.

CARSON CITY, June 21, 1965

HONORABLE WILLIAM J. RAGGIO, *District Attorney, Washoe County, Reno, Nevada*

DEAR MR. RAGGIO: You have requested an opinion as to the meaning of the word “retirement” as set forth in the following sentence concluding [NRS 122.070\(1\)](#):

The fact that a minister is retired shall not disqualify him from obtaining a certificate of permission to perform marriages if, prior to such retirement, he had active charge of a congregation within this state for a period of at least 3 years.

ANALYSIS

The Legislature clearly intended by the passage quoted to extend retirement to ministers who have, by reason of age, illness, or disability, or by orders of their church, the right to retire. They did not contemplate that a young minister, without disabilities above defined, could voluntarily leave the active ministry to open a wedding chapel. An opinion which would so define the act as to allow “retirement” to be defined so as to allow the procedure sought would offend not only the church served by the minister, but society as well.

CONCLUSION

It is, therefore, the opinion of this office that the retirement mentioned in [NRS 122.070\(1\)](#) is not such as would allow voluntary retirement for the purpose of engaging in the operation of a wedding chapel. Certificates of permission to perform marriages should be denied in such instances.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*

243 Labor: Minimum Wages; Maximum Hours; Overtime, Rest, and Lunch Periods for Male Employees—There is no provision in the state law for time and one-half for overtime for male employees employed in private industry within the State of Nevada. The benefits conferred on female employees by Chapter 609 of NRS do not apply to male employees.

CARSON CITY, June 21, 1965

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

STATEMENT OF FACTS

DEAR MR. COMBS: Chapter 609 of NRS has provided minimum wages, maximum hours, payment for necessary overtime work, rest periods, and other benefits for females employed in private industry in the State of Nevada. The law has not applied to male employees. In 1965 the Nevada Legislature enacted Chapter 333, Statutes 1965, which amended Chapters 608 and 609 of NRS. The law amended Chapter 608 to provide a minimum wage for male employees as follows:

Sec. 2. * * * (T)he minimum wages which may be paid to male persons in private employment within the state are as follows:

(a) For minors under 18 years of age, \$1 per hour, or \$8 for 1 day of 8 hours, or \$48 for 1 week of 6 days of 8 hours each.

(b) For persons 18 years of age or older, \$1.25 per hour, or \$10 for 1 day of 8 hours, or \$60 for 1 week of 6 days of 8 hours each.

The law also amended Chapter 609 of NRS to increase the minimum wages that may be paid to female employees. The law does not purport to extend the overtime pay or other benefits applicable to female employees to male employees. The following questions are propounded to this office:

QUESTIONS

1. Are male employees to receive time and one-half for overtime to the same extent as female employees or are they to work overtime for the minimum wages?

2. Are male employees entitled to the same benefits detailed for female employees in Chapter 609 of NRS in regard to maximum hours, rest periods, lunch periods, and the furnishing of special uniforms?

ANALYSIS

An understanding of this analysis and the conclusions reached will perhaps be aided by a review of the reasons for a different legislative and judicial application of labor laws to male and female.

The law has long sought to safeguard the health and well-being of women employees to a much greater extent than men by providing rest periods, restrictions of hours of employment and the like that have not extended to men. The right of the Legislature to do this has been so often affirmed by the courts that it cannot now be considered an open question. (*West Coast Hotel Co. v. Parrish*, 300 U.S. 379.) Even though in many jurisdictions women now have practically the same rights to contract as men, the courts have recognized the fact relied upon by legislatures that the physical structure and maternal functions of women place them at such a disadvantage in the struggle for existence as to form a substantial difference between the sexes, and that this fact affords a basis for legislation regulating conditions of labor for women; the fact that the law does not extend to men does not subject it to the objection that there is an arbitrary discrimination. See 12 AmJur., Constitutional Law, Sec. 496. Although this may be open to argument in some quarters, it is still the law.

The application of these principles is precisely what we are confronted with in answering the present questions. We have two separate chapters dealing with employment practices, one of which applies to men and the other to women. The fact that one bill amends both chapters does not change the legislative division. The provisions of Chapter 609 dealing with the employment of women do not apply to the employment of men.

The only thing Chapter 333, Statutes 1965, provides for men is a minimum wage. It does not provide time and one-half for overtime. However, under [NRS 608.100](#) it is unlawful for an employer to pay a lower wage than required by statute. The male employees would continue to receive the minimum wage for overtime work, absent an agreement to the contrary. It should be

noted, however, that employers subject to the Federal Minimum Wage Law are not relieved of its application.

Chapter 609 as it relates to hours, overtime, rest periods, lunch periods, and the furnishing of special uniforms still applies only to female employees.

CONCLUSION

There is no state law providing time and one-half overtime pay for male employees of private industry. The provisions of Chapter 609 of NRS dealing with female employment do not apply to male employees.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
BY DANIEL R. WALSH, *Deputy Attorney General*

244 Las Vegas Valley Water District—The office of president of the Las Vegas Valley Water District Board must, under the statute, viz., Chapter 167, Statutes of Nevada 1947, as amended by Chapter 401, Statutes of Nevada 1957, be filled by election of the board rather than by succession of the vice president to that office.

Carson City, July 6, 1965

Las Vegas Valley Water District, *Board of Directors, Las Vegas, Nevada*

STATEMENT OF FACTS

Gentlemen: The Las Vegas Valley Water District exists by virtue of Chapter 147, Statutes of Nevada 1947, as amended by Chapter 401, Statutes of Nevada 1957. The board, consisting of seven members, is authorized to elect its own president and vice president and appoint a secretary and treasurer. The statute is silent as to the duties of these officers or the exact method of filling vacancies. A vacancy now exists by reason of the resignation of the board member who also occupied the position of president.

QUESTION

Does the vice president succeed the resigning president for the remainder of the term of office or must a new election be held by the board to select his successor?

ANALYSIS

It is noted that the original act, which is not changed by the amendment, provides:

Any vacancies in the office of director shall be filled from the division in which the vacancy occurs by the remaining members of the board. In cases where a vacancy occurs in the office of director, and the remaining directors, at the next regular monthly meeting of the board of directors following such vacancy, do not by a majority vote of such remaining directors appointed a successor to fill such vacancy, then the president of the board of directors shall fill such vacancy by appointment, and in the event of the vacancy occurring in the office of the director who is president of the board, then the vice president shall fill the vacancy by appointment. A director appointed to fill a vacancy, as above provided, shall hold his office until the next biennial election, and until his successor is elected and qualified.

This could mean but one thing, namely, that the remaining six directors are empowered to fill the vacancy now existing on the board. If they cannot agree by a majority vote on a person from the division of the district where the vacancy occurs, then the vice president must fill the vacancy

by appointment. Since the board as a whole is empowered to elect its president immediately after the members take office, we can only conclude that it was the intention of the Legislature that the board also elect a president when that office has become vacant as in the case here. We base this conclusion upon the fact that the statute does not provide for vice presidential succession to the office of president. This is in line with the authorities generally with regard to vice presidents of organizations. It appears to be universally recognized that the inherent power of a vice president is to act in the absence of the president or when there is a vacancy in the office of president. See 13 Am.Jur. 883; Robert's Rules of Order, Sec. 46(d), page 146.

There appears to be no authority that the vice president succeeds to the office of president in the absence of authority so providing. It appears to this office that although the above mentioned statute fails to provide specifically how the vacancy shall be filled, there is ample authority nevertheless to fill the same by election of the board at an election. Such election would, of course, be held after the board selects a new member or such member is appointed by the vice president, as the case may be.

CONCLUSION

It is therefore the conclusion of this office that the vacancy existing in the office of president of the Las Vegas Valley Water District must, in view of the above mentioned statute, be filled by election and not by succession of the vice president to the office.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott, *Chief Assistant Attorney General*

245 State Controller; Inactive Deposits—Provisions of Chapter 18, Statutes of Nevada 1965, are separable so that fact that provision that inactive deposits shall be made through warrants of State Controller conflicts with [NRS 227.170\(1\)](#), and is therefore inoperable, does not repeal other provisions of the act.

Carson City, July 15, 1965

Honorable Keith L. Lee, *State Controller, Carson City, Nevada*

Dear Mr. Lee: You have requested an opinion of this office as to A.B. 58, which became Chapter 18, Statutes of Nevada 1965.

Chapter 18 of the 1965 Statutes provides as follows:

[NRS 356.015](#) is hereby amended to read as follows:

1. With the written consent and approval of the state board of finance, the state treasurer shall:
 - (a) Establish a definition of inactive deposits; and
 - (b) Determine what amounts of money shall be deposited as inactive deposits and the rates of interest to be received thereon.
 - (c) Make inactive deposits through warrants of the state controller.
 2. The state controller shall maintain accurate records of inactive deposits.
- This act shall become effective upon passage and approval.

ANALYSIS

It will be noted that [NRS 356.015\(1c\)](#) provides that inactive deposits shall be made through warrants of the State Controller.

The office of State Controller is governed by Chapter 227 of NRS and [NRS 227.170\(1\)](#) provides, in part, “and no warrant shall be drawn on the treasury except there be an unexhausted specific appropriation, by law, to meet the same.”

This conflict in the law has not been resolved by the Legislature because [NRS 227.170\(1\)](#) was not amended or repealed.

Prior to the enactment of Chapter 18 the State Treasurer had the duty of establishing a definition of inactive deposits and of determining what amount of moneys should be deposited as inactive deposits and the rates of interest to be received thereon.

Chapter 18 makes the same provisions with two exceptions: (1) The Treasurer is to make inactive deposits through warrants of the State Controller, and (2) the State Controller is required to maintain accurate records of inactive deposits.

It can clearly be seen that Chapter 18 is capable of separability. While the provision of the law that inactive deposits be made through warrants of the State Controller is in conflict with [NRS 227.170\(1\)](#), all other requirements of Chapter 18 can be met.

CONCLUSION

It is therefore the opinion of this office that [NRS 356.015\(1c\)](#) is inoperable in view of the express prohibition contained in [NRS 227.170\(1\)](#), but the provision that the State Controller maintain accurate records of inactive deposits may be complied with. The effect of this opinion is to return to the State Treasurer the duty of making inactive deposits without warrants from the State Controller.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

246 Board of Education; Residence of Member—Removal of residence by a member of the Board of Education from one educational district to another during a term of office to which he or she was elected creates a vacancy in that office which must be filled by appointment by the Governor.

Carson City, July 21, 1965

Mr. Byron Stetler, *Superintendent of Public Instruction, Carson City, Nevada*

Dear Mr. Stetler: You pose the following problem: A member of the State Board of Education was elected from one educational supervision district and has moved to another educational supervision district since taking office. [NRS 385.020](#), paragraphs 1-5, provided for the election and appointment of members and the composition of the State Board of Education. In providing for the election of the elective lay members, it is indicated that one shall be elected from each of the education supervision districts of the State. There is no direct reference to residence with respect to the qualification of an elected lay member.

You then ask the following question: Can an elective lay member of the State Board of Education who was elected from one educational supervision district and who, after taking office, moves to another educational supervision district, continue as a member of the state board?

ANALYSIS

While the statute is clear as to the election of members of the State Board of Education it is not clear, nor in fact designated, as to what takes place in case an elected member from one district moves to another educational supervision district.

The question arises as to whether a member of the State Board of Education is a state officer. We believe that under the definition found in 42 Am.Jur. 895, Sec. 20, he is. That section reads, in part: "A state officer has been defined as one whose field for the exercise of his jurisdiction, duties and powers is coextensive with the limits of the state and extends to every part of it." (Cases cited.)

Under this definition, as referred to in Attorney General's Opinion No. 185 dated June 29, 1956, the members of the State Board of Education are clearly state officers.

Article XVII, Section 22, of our constitution provides:

Vacancies in state offices: How filled. 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 appointment 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.

[NRS 283.040](#)(1) provides:

Every office shall become vacant upon the occurring of either of the following events. . . (f) The ceasing of the incumbent to be a resident of the state, district, county, city, or precinct in which the duties of his office are to be exercised, or for which he shall have been elected or appointed.

CONCLUSION

It is therefore the opinion of this office that removal of residence by a member of the State board of Education from one educational district to another during a term of office for which he or she was elected, creates a vacancy in that position, and calls for an appointment by the Governor to fill such vacancy.

Respectfully submitted,

HARVEY DICKERSON, Attorney General

247 Justice of the Peace; Fish and Game—Fines imposed under the Fish and Game laws of Nevada are mandatory upon violation and either a plea or finding of guilty to the infraction charged.

Carson City, August 23, 1965

Mr. Frank Groves, *Director, Fish and Game Department, P.O. Box 678, Reno, Nevada*

Dear Mr. Groves: You have submitted to this office a question as to whether a justice of the peace has authority to waive the imposition of a fine as set forth in the Fish and Game statutes after a plea of guilty has been entered by the defendant, or the defendant has been found guilty after trial.

ANALYSIS

Section 501.365 of Nevada Revised Statutes, paragraph 1, reads as follows:

Except as other wise specifically provided in this title, every person who is guilty who is guilty of a misdemeanor under this title shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail for not less than 25 days nor more than six months, or by both fine and imprisonment.

This statute is quite explicit in its meaning and can be interpreted in only one way, that the minimum fine is \$50 and it is mandatory. These fines, under Article II, Section 3 of the Nevada Constitution, are pledged for educational purposes and under [NRS 169.050](#) are to be paid into the state treasury. All fines collected are to be allotted to the state permanent school fund under [NRS 387.010\(1b\)](#).

CONCLUSION

It is therefore the opinion of this office that the Fish and Game fines are mandatory and the minimum fine is \$50.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

248 Civil Defense; City and County Jurisdictions—Municipalities have full authority under [NRS 414](#) to create and operate Civil Defense Agency. County civil defense agency authority arises when disaster occurs in municipality which is beyond municipality's control.

Carson City, July 22, 1965

William S. Barker, Esq., *City Attorney, 1301 East Lake Mead Boulevard, North Las Vegas, Nevada*

Dear Mr. Barker: Certain problems in the administration of civil defense agencies have arisen in Clark County as a result of certain ordinances enacted by Clark County. (Ordinances Nos. 161 and 172.)

You ask three questions:

1. Is County Ordinance No. 161 as amended by Ordinance No. 172 limited in its application to those areas of Clark County outside of the incorporated cities of Clark County?
2. Does each incorporated city within Clark County have the sole authority, power and responsibility for the civil defense functions within its jurisdiction?
3. Do the Clark County Board of Commissioners and/or the Director of the Clark County Civil Defense Agency have any control over the civil defense agencies of the incorporated cities of Clark County, or of the civil defense functions within the incorporated cities of Clark County?

ANALYSIS

It will be noted that under Section 5 of Ordinance No. 161, the assumption of control by the county commissioners acting as the governing body of the Clark County Civil Defense Agency, arises only when local political subdivisions are faced with a disaster situation beyond their control.

Chapter 414 NRS clearly gives local political subdivisions the authority to create civil defense agencies. The same situation might be said to exist if a county civil defense agency was confronted with a disaster beyond its ability to cope. In such a case the State Civil Defense and Disaster Agency would have to meet the problem.

The important thing in civil defense is that all agencies, state, county, and municipal, stand ready to lend their full cooperation consistent with the protection of the public in case of national, state, or local disaster.

CONCLUSION

It is therefore the opinion of this office that in answer to Question No. 1, County Ordinance No. 161 is applicable both in the county and in case of disability beyond local control, in the municipalities.

In answer to Question No. 2, each incorporated city within Clark County, Nevada, being a political subdivision of the State, has authority, power, and responsibility within its capabilities to provide for civil defense activities.

In answer to Question No. 3, the Clark County Commissioners and the Director of Clark County Defense have jurisdiction over municipalities in Clark County when a disaster occurs which is beyond the capability of the municipality to cope with, and when the entire county is threatened.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

249 State Board of Health may issue a permit for construction of a sewerage system, part of which is outside a General Improvement District, notwithstanding the provisions of Section 7 of Ordinance 42 of Lyon County.

Carson City, July 28, 1965

Mr. Ernest G. Gregory, *Acting Chief, Bureau of Environmental Health, Carson City, Nevada*

Dear Mr. Gregory: You advise this office that Section 3(a) of your Water Pollution Control Regulations reads as follows:

Except as otherwise provided, no person hereafter shall construct, install, or operate a new sewer, disposal system or treatment works, or extensions, modifications or additions to an existing sewer, disposal system or treatment works; extensions, modifications, or additions to factories, manufacturing establishments, or business enterprises, the operation of which would cause a substantial increase in wastes discharged to municipal facilities, or alter the physical, chemical or biological properties of the waters of the State; or make or cause to be made any new outlet for the discharge of sewage, industrial waste, or other waste, or effluent into the waters of the State without first securing a permit from the Department of Health.

It appears that a sewerage system has been proposed to serve a subdivision in Lyon County, and that plans which are in accord with rules and regulations of your department, with a few exceptions which are to be included or added, have been presented.

You also present a letter from the District Attorney of Lyon County protesting the granting of a permit by your department for the construction of the proposed sewerage system, on the basis that under Lyon County Ordinance No. 42, creating the Penrose General Improvement District, it is provided that the boundaries of the district cannot be enlarged without permission of the county commissioners.

Your question is whether your office must issue the permit when plans detailing the construction of the sewerage system have been submitted and are acceptable to your office, or whether you must withhold the permit as petitioned by the county commissioners.

ANALYSIS

The question must be answered, we feel, on the basis of the need for the sewerage system, insofar as the health of the inhabitants of the Penrose General Improvement District is concerned, and the damage to such health if the system is installed within the borders of the district.

[NRS 439.150](#) provides that the State board of Health is supreme in all health matters. Therefore, if the State Board of Health, acting through any of its agencies, deems the construction of a sewerage facility necessary to preserve the health of a segment of the population, that decision is paramount to any local ordinance, and under [NRS 439.200](#) the State Board of Health has the power to adopt, promulgate, amend and enforce reasonable rules and regulations consistent with law, and which support the supreme authority vested in the board by statute.

Under [NRS 318.080](#), et sequitur, the duly authorized trustees of the General Improvement District are empowered to conduct the overall operation of the district, and under [NRS 318.160](#) the Board of Trustees are given the power to acquire, dispose of and encumber real and personal property including, among other things, leases and easements. Under this provision, the constitutional and inherent powers of the Legislature are delegated to the board for the acquisition, disposal and encumbrance of property.

[NRS 318.170](#) further delineates the powers of the Board of Trustees:

1. The board shall have the power to consult with the health division of the department of health and welfare about any system or proposed system of drainage or sewerage as to the best method of disposing of the district's drainage or sewage with reference to the existing and future needs of other cities, towns, districts or other persons which may be affected thereby, and to submit to the health division for its advice and approval the district's proposed system of drainage or sewage.

2. No district shall proceed to acquire or improve any system of water supply, drainage or sewage disposal without first obtaining the approval of the county board of health.

3. In this section the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and industrial filth and waste.

Under [NRS 318.190](#) the board is given the power of condemnation of private property for public use, either within or without the district.

[NRS 318.220](#)(1) reads as follows:

Any municipality, county, special district or owner may sell, lease, grant, convey, transfer or pay over to any district, with or without consideration, any project or any part or parts thereof or any interest in real or personal property or any funds available for construction or improvement purposes, including the proceeds of bonds issued prior to or after March 30, 1959, for construction or improvement purposes which may be used by the district in the construction, improvement, maintenance or operation of any project.

The above provisions of the law clearly indicate that a sewerage system, which connects with the houses within the district, can be constructed on land without the district. This places no penalty upon the user, because he pays, in most instances, a connection charge and for the services afforded by such connection to the sewer.

CONCLUSION

It is therefore the opinion of this office that the State Board of Health may issue a permit for construction of a sewerage system, part of which is outside a General Improvement District, notwithstanding the provisions of Section 7 of Ordinance 42 of Lyon County.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

250 Patented Mining Claims; Assessment—When assessing property the county assessor may consider the use to which the property is currently put, and is not limited to \$500 when such property is subject to a patented mining claim.

Carson City, July 28, 1965

Honorable William P. Beko, *District Attorney, Nye County, Tonopah, Nevada 89049*

STATEMENT OF FACTS

Dear Mr. Beko: You have directed to this office a problem based on the following:

The unincorporated town of Tonopah, Nevada, is situated over several patented mining claims. At the time the town was established, certain portions of these patented mining claims were subdivided and deeds issued therefor by the patentee. Since that time the area has become populated and currently the surface of the property in question is used chiefly for commercial and residential purposes.

You then require an answer to the following:

QUESTIONS

1. May the county assessor legally assess the property in question at a rate based upon the value of the property taking into consideration the use to which it is currently put?
2. May the county assessor legally assess the property in question in addition to the \$500 assessment, if the land is subject to a patented mining claim?

ANALYSIS

Taking the questions in that order in which they were asked, we call your attention to [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.

The property which is deemed to be exempt is set forth in [NRS 361.050-361.155](#), inclusive. The property referred to in your inquiry does not come within the scope of one of these exceptions, and the assessed value of the property should be based upon its full cash value.

Furthermore, [NRS 361.260\(1\)](#) provides:

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 his county subject to taxation, and also the names of all persons, corporations, associations, companies or firms owning the same. He shall then determine the full cash value of all such property and shall then list and assess the same at 35 percent of its full cash value to the person, firm, corporation, association or company owning it.

Attorney General's Opinion No. 191, September 4, 1925, reflects the application of Article X, Section 1, of the Constitution with regard to patented mining claims. Said opinion reads, in part, as follows:

Under the constitution and the legislative enactments, patented mining claims are to be assessed at not less than \$500. A minimum valuation is thereby determined, but no maximum is fixed.

If the facts warrant, there exists no reason why a valuation upon patented mining claims should not be fixed in excess of \$500.

If the individual parcels of land in question could be assessed in excess of \$500, the present use of the land would warrant an assessment in excess of \$500.

We next proceed to an analysis of Question No. 2:

Article X, Section 1, of the Nevada State Constitution provides as follows:

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

[NRS 362.020](#) provides, in part, as follows:

Each patented mine shall be assessed at not less than \$500 except where \$100 in development work has been actually performed upon such patented mine during the federal mining assessment work period ending within the year for which the assessment is levied.

By the terms of this constitutional provision and legislative enactment, it is clear that the owner of a patented mining claim, which has not been developed by at least a \$100 expenditure, must pay a tax based upon a minimum assessment of \$500.

It is not the opinion of this office, however, that each owner of a parcel of land which is located on the same patented mining claim, must pay tax on a \$500 assessment of that claim. Each individual patented mining claim is subject to such assessment, but the county assessor may not assess a patented mining claim by multiplying the minimum statutory assessment of \$500 by the number of owners of such claim. Attorney General's Opinion No. 39, June 7, 1963, supports this position.

CONCLUSION

It is therefore the opinion of this office that in answer to Question No. 1, the owners of the property in question must pay taxes on their property at a rate based upon its full cash value.

In answer to Question No. 2, the assessor is not limited to the minimum assessment of \$500 for a patented mining claim, where the use of the land has been changed.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

251 County budgets; Salary Raises, Emergency Loans—Increases in the salaries of certain elected and appointed county officials, by act of the Legislature, can only be met from budgeted funds. If the increases exceed amounts budgeted for county operation the only recourse is by application of the procedures for emergency loans as set forth in [NRS 354.070-354.110](#).

Carson City, August 5, 1965

Mrs. Lenore B. Mullenax, *Recorder and Auditor, Goldfield, Nevada*

Dear Mrs. Mullenax: You advise that the Legislature, by enactment of Chapter 191, Statutes of Nevada 1965, increased the salaries of Esmeralda County elected officials, but that the

Esmeralda County Commissioners did not budget for these raises. Your question is whether the increased amount provided for by the Legislature can be paid by you to the officials designated by the act.

ANALYSIS

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

It shall be unlawful for any county commissioner, or any board of county commissioners, or any county officer to authorize, allow or contract for any expenditure, except for the purchase of comprehensive liability policies of insurance which require an audit at the end of the term thereof, unless the money for the payment thereof is in the county treasury and specially set aside for such payment.

Under Chapter 191, Statutes of Nevada 1965, the salary of the sheriff was increased \$300 per year; deputy sheriff and assessor \$600 per year; county clerk and treasurer \$600 per year; county recorder and auditor \$600 per year; and district attorney \$600 per year.

While the law as enacted provides that the raises become effective on the first day of the first month following the passage and approval of the statute, to wit: April 1, 1965, yet without funds budgeted for the purpose, the provisions of [NRS 354.070](#), et sequitur, providing for an emergency loan, should have been followed.

In Attorney General's Opinion No. 370 dated April 8, 1958, this office held that the county commissioners of Washoe County could not transfer funds from the general fund to meet the increased expenses not contemplated in the original budget.

In that opinion we called attention to [NRS 354.060](#) hereinbefore quoted, and went on to say, "Whatever may have been the intention of the Legislature in the omission of the wording 'by the budget' in that provision pertaining to county finance, we are of the opinion that the operation of the budget system requires an adherence to the concept that each of the governmental entities are limited in their total expenditures to the total amount of their budget for that fiscal year."

"The only provision in the law to meet this appears to be the temporary emergency loan procedure found in [NRS 354.070-354.110](#)."

We also pointed out the procedures set forth in [NRS 354.100](#) which reads as follows:

Transfer of funds to meet emergency: Limitations.

1. After an emergency loan has been authorized as provided in [NRS 354.080](#) and if, in the judgment of the board of county commissioners, the fiscal affairs of the county can be carried on without impairment and there is sufficient money in the general fund of the county or a surplus in any other fund, with the exception of the bond interest and redemption fund and the general road fund, the board of county commissioners is authorized to transfer from the general fund of the county or any other fund, with the exception of the bond interest and redemption fund and the general road fund, money sufficient to handle the emergency.

2. When such a transfer is made, the board of county commissioners shall comply with the provisions of [NRS 354.110](#), and when the emergency tax is thereafter collected the amount so collected shall be placed immediately to the credit of the fund from which the money was transferred.

3. In cases where the general fund or other fund, at the time of the transfer of funds therefrom, contains a surplus that in the judgment of the state board of finance is or will not be needed for the purposes of the general fund or other fund in the ordinary course of events, then the emergency tax need not be levied, collected and placed in the general fund or other fund, but such transfer shall be deemed refunded for all purposes of this chapter.

Under this provision, if the emergency loan is authorized and there is a surplus of funds in the general fund, such funds may be transferred to meet the emergency.

CONCLUSION

It is the opinion of this office that increases in the salaries of certain elected and appointed county officials, by act of the Legislature, can only be met from budgeted funds. If the increases exceed amounts budgeted for county operation the only recourse is by application of the procedures for emergency loans as set forth in [NRS 354.070](#)-354.110.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

252 Administrative Procedures Act; Department of Education—Department of Education of the State of Nevada is an “educational institution” under Chapter 362, Sec. 4(1b), Statutes of Nevada 1965, and thus exempt from the provisions of the act delineating administrative procedures.

Carson City, August 10, 1965

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

You have asked this office whether the Nevada State Department of Education can be considered as an “educational institution” under Chapter 362, Sec. 4 (1b), Statutes of Nevada 1965, and, as such, exempt from the provisions of the act delineating administrative procedures.

ANALYSIS

In Colorado, the same question arose through different channels. The State Board of Education, in *Board of Education of the State of Colorado v. Spurlin*, 349 P.2d 357, sought a declaratory judgment against the State Controller, with respect to whether individual plaintiffs were exempt from civil service. The lower court held they were not exempt. The Supreme Court of Colorado reversed, holding that the provisions of the constitution exempting from classified civil service officers and teachers in educational institutions, not reformatory or charitable in character, included in the exemption the Department of Education of the State of Colorado.

The 1918 Amendment to the Colorado Constitution stated, in part:

The classified civil service of the state shall comprise all appointive public officers and employees and the places which they hold, except the following:

. . . officers and teachers in educational institutions, not reformatory or charitable in character . . .

After the lower court had held Sec. 123-1-3(2) of the 9153 Statutes of Colorado unconstitutional, in that the Legislature was powerless to classify plaintiffs’ employees or officers as being excepted from civil service, the plaintiffs contended in the Supreme Court that “educational institution” is not limited to a particular organization within the walls of which teaching is conducted, but includes an agency which administers the educational system of the state.

The plaintiffs pointed out in their argument to the fact that the term “educational institution” has been broadly construed in numerous cases, citing *Johnson v. McDonald*, 49 P.2d 1017; *Mitchell v. Board of Commissioners*, 152 P.2d 601; *McColl v. Dallas County*, 262 N.W. 824; *Howard v. Independent School System No. 1*, 106 P. 692.

The Supreme Court held that the language of the Constitutional Amendment “not reformatory or charitable in character” supported its viewpoint that the amendment was meant to exclude all educators except those who teach in institutions reformatory or charitable in character.

The opinion concluded that the plaintiffs were entitled to recognition as professional educators, even though much of their work is administrative in nature, and that they were, therefore, “officers and teachers” within the meaning of the exemption, and that the term

“educational institution” was not limited to institutions having classrooms and curricula, but included the Department of Education of the State of Colorado.

The Department of Education of the State of Nevada is similarly situated from a legal viewpoint. The directors, or heads of departments, in the Department of Education are engaged in research and planning, with a view to organizing, improving and coordinating the educational system of Nevada. They conduct educational programs and hold workshops and conferences throughout the State, in which instruction is given to teachers and administrators in local areas.

They must meet qualifications equal to or surpassing the qualifications for a Nevada teacher’s certificate to be eligible for employment.

CONCLUSION

It is therefore the opinion of this office that the Department of Education of the State of Nevada is an “educational institution” under Chapter 362, Sec. 4(1b), Statutes of Nevada 1965, and thus exempt from the provisions of the act delineating administrative procedures.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

253 Indigent Persons; Reimbursement to County for Aid and Relief Furnished—Once a person has been found eligible for financial aid by the board of county commissioners pursuant to [NRS 428](#), a transfer to that county of real property owned by the recipient of such aid is not a necessary condition precedent to the receipt of such aid. If the financial aid has already been granted the recipient cannot be compelled to transfer his real property to the county as reimbursement for such aid.

Carson City, August 11, 1965

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

STATEMENT OF FACTS

Dear Mr. Berry: You have requested from this office an opinion based on the following:

Several persons residing in Storey County are ineligible to receive state welfare or other state financial relief. Consequently, Storey County has provided relief pursuant to [NRS 428](#). Several recipients of this relief own real estate situated in Storey County.

QUESTIONS

1. May Storey County demand a transfer of such property to the county as a condition precedent to the granting of such relief?
2. If financial relief has already been granted pursuant to [NRS 428](#), may Storey County compel a transfer of such property to the county for reimbursement?

ANALYSIS

Under the common law there was no duty upon governmental agencies to provide aid or support to indigent persons. The obligation to support such persons results only from some constitutional or statutory provision imposing legal obligations. Therefore any authority allowing the county reimbursement for such relief granted must be found within the Constitution or statutes of the State of Nevada. See 29 ARL2d 728, Anno. 733; 41 Am.Jur., Poor and Poor Laws, Sec. 2; and 70 CJS, Paupers, Sec. 3. A search has revealed no such authority.

The duties and powers relating to financial aid from a county to an indigent person are found in [NRS 428](#). NRS 428.010 provides:

1. Every county shall relieve and support all paupers, incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported or relieved by their relatives or friends, or by their own means, or by the state hospitals or other state or private institutions.

2. The boards of county commissioners of the several counties are vested with entire and exclusive superintendence of the poor in their respective counties.

[NRS 428.030](#)(2) provides:

The board of county commissioners may either make a contract for the necessary maintenance of the poor person, or appoint such agents as the board may deem necessary to oversee and provide for the same.

[NRS 244.160](#) provides:

The board of county commissioners shall have power and jurisdiction in their respective counties to take care of and provide for the indigent sick of the county in such manner only as is or may be provided by law.

From an examination of these quoted statutes in particular and [NRS 428 in](#) general, it can readily be noted that the boards of county commissioners are vested with discretion in determining which residents are entitled to relief from the county. It is the function of this body, when making this determination, to take into consideration the assets belonging to the indigent applicant. The mere fact that such persons owns real property will not be sufficient cause to deny him aid if such property is not available for his immediate relief or is manifestly disproportionate to his needs. See 98 ALR 866, Anno. 872; 70 CJS, Paupers, Sec. 1(d).

Once the board of county commissioners has determined an applicant eligible for relief from the county as an indigent person, then the county is without power to compel the transfer of property from such indigent to the county, either as a condition precedent to the granting of such relief or for reimbursement for relief previously granted. The only authorized procedure for reimbursement is found in [NRS 428.070](#):

The father, mother, children, brothers or sisters, of sufficient financial ability so to do, shall pay to the county which has extended county hospitalization to any person under the provisions of [NRS 428.030](#), the amount granted to such person.

CONCLUSION

Since neither this statute nor any other statute or constitutional provision authorizes the actions contemplated by the two questions above, they both must be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

254 Parole and Probation—Chapter 239, Statutes of Nevada 1965, [NRS 209.280](#), [NRS 213.110](#), [120 interpreted](#). Parole statute, being penal in nature, to be strictly construed.

Carson City, August 11, 1965

Mr. George J. Reed, *Secretary, Board of Parole Commissioners, Carson City, Nevada*

Dear Mr. Reed: You have presented to this office an inquiry requesting a definition of “good time” as referred to in Chapter 239, Statutes of Nevada 1965, which amends [NRS Chapter 213.110](#)(1) as amended by the 1965 statute reads:

Subject to the provisions of [NRS 213.120](#), the board shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in the state prison and who shall have served 1 calendar year, less good time credits, of the term for which he was sentenced and who has not previously been more than three times convicted of a felony and served a term in a penal institution, or who is imprisoned in a county jail, may be allowed to go upon parole outside of the building or enclosures, but to remain, while on parole, in the legal custody under the control of the board and subject at any time to be taken within the inclosure of the state prison or county jail.

[NRS 213.120](#)(4) as amended reads as follows:

No prisoner may be paroled until he has served the minimum term of imprisonment provided by law for the offense of which he was convicted, except that any prisoner whose minimum term of imprisonment is more than 1 year, other than a prisoner who has been sentenced of rape to a term of not less than 5 years which may extend to life, may be paroled at any time after the expiration of one-third of such minimum term, less good time credits, if he has served not less than 1 calendar year, less good time credits.

ANALYSIS

“Good time” can be legally determined to mean all of the credits as defined in [NRS 209.280](#). For example, on a minimum sentence of 5 years, parole could be granted at 20 months of penal servitude less the good time defined in [NRS 209.280](#) which was earned during that 20 months, including credits allowed by regulations for diligence in labor or study which surpasses the general average, and for the donation of blood for charitable purposes.

It is to be understood that Chapter 239, Statutes of Nevada 1965, being penal in character, is to be strictly construed. Therefore, the provisions for parole after the serving of one-third of the minimum sentence does not apply to Sections 1, 2 and 3 of [NRS 213.120](#) as amended in Chapter 239. Therefore it still holds true that:

1. No prisoner imprisoned under a verdict or judgment and sentence of life imprisonment without possibility of parole shall be eligible for a parole.
2. No prisoner imprisoned under a verdict or judgment and sentence of life imprisonment shall be paroled until he has served at least 7 calendar years.
3. No prisoner imprisoned under a verdict or judgment and sentence of imprisonment for a term less than life pursuant to a statute which provides that the sentence shall be served without possibility of parole shall be eligible for parole.

Nor does it apply as is made clear from Section 4, to a prisoner who has been sentenced for rape to a term of not less than 5 years which may extend to life.

It is also true that the statute does not apply to the felonies listed in Section 5 of [NRS 213.120](#) added by Chapter 239, Statutes of Nevada 1965.

It may be further pointed out that the statutory and regulatory “good time” credits defined in [NRS 209.280](#) of course advance the date of parole of prisoners who are an exception to [NRS 213.120](#)(4) and Section 5 as amended by Chapter 239, Statutes of Nevada 1965, only to that point determined to be the minimum sentence less good time credits, except that no prisoner imprisoned under a verdict or judgment of life imprisonment shall be paroled until he has served at least 7 calendar years.

[NRS 209.280](#) is headed “Credits On Terms Of Imprisonment.” Therefore, we feel that all credits earned as defined in this statute advance the time of statutory release. But when statutory release is to be granted it appears by [NRS 176.410](#)(4) that upon the expiration of the sentence of

imprisonment the duty is imposed on the warden to release the prisoner with a brief report of his proceedings hereunder, saying whether the release or termination of imprisonment was by death, legal discharge or otherwise.

Just what steps toward release are to be taken in cases of indeterminate sentences are not clear, but it would appear that where release rather than parole is the object, that the Board of Pardons would be the mediator and not the Parole Board.

CONCLUSION

It is therefore the opinion of this office that “good time” as designated in [NRS 213](#) is credit as defined in [NRS 209.280](#); that such credits advance the date of parole for prisoners who are an exception to [NRS 213.120](#)(4) and Section 5 as amended, only to that point determined to be the minimum sentence less good time credits, with the exception of a sentence of life imprisonment, and that statutory release is within the purview of the warden and Board of Pardons.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

255 Irrigation Districts; Taxation—Pershing County Water Conservation District may not pay money to Lander County in lieu of taxes the county would receive but for the fact that the U.S. government owns the land and is exempt from taxation.

Carson City, August 13, 1965

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

STATEMENT OF FACTS

Dear Mr. Holden: The Pershing County Water Conservation District leases land located in Lander County from the U.S. Government together with water rights, and subleases portions of the land to private individuals for community pasture. Since title to the land is vested in the federal government, it is exempt from taxation. ([NRS 328.180](#), [NRS 361.050](#) and Nevada Constitution, Ordinance (3).) There has been interest in the possibility of having the federal government release the land so as to enable it to be placed on the county tax rolls. The district, in order to avoid such action, proposes to pay moneys out of its general fund to Lander County in lieu of the taxes that would be paid if the federal government did not own the property. You ask the following question.

QUESTION

Does the water district have the power to pay moneys out of its general fund to Lander County in lieu of taxes on properties along the Humboldt River, which now belong to the federal government and from whence the water district acquired the water rights which supply the Rye Patch Dam?

ANALYSIS

Initially, it is well to point out that there is no tax presently imposed in lieu of which payment could be made. As indicated in the statement of facts, the property is exempt from taxation, except as provided in [NRS 539.317](#). We are not concerned with this latter statute.

[NRS 539.507](#) to [539.517](#), inclusive, provided for the establishment of the general fund and specify the expenditure authorized from it. Nowhere is the district authorized by law to pay a sum in lieu of a tax on property that is exempt from taxation. Furthermore, all land and property of the district is exempt from property tax ([NRS 361.060](#)). The tax exemption is a matter of law and is the public policy of this State. See: 51 Am.Jur., Taxation, Sections 504, 557 and 569.

Since it would be contrary to the law and public policy of the State for the district to pay tax on its own exempt property, it is our opinion that it cannot pay money in lieu of a tax on property owned by the federal government and exempt from taxation.

You ask three other questions we do not feel need an answer from this office.

CONCLUSION

It is our opinion therefore that the Pershing County Water Conservation District may not pay money to Lander County in lieu of taxes the count would receive but for the fact that the U.S. government owns the land and is exempt from taxation.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Daniel R. Walsh, *Deputy Attorney General*

256 Used Car Dealers; Sales Tax—(1) Finance companies which repossess cars, based on notes secured by chattel mortgages and title in their possession, are not liable for licensing and registration as used care dealers under Chapter 527, Statutes of Nevada 1965. (2) Garages, body shops, and vehicle storage companies, who gain possession of motor vehicles under statutory lien laws, and sell to satisfy their lien, are not used car dealers and therefore not liable as used car dealers under Chapter 527, Statutes of Nevada 1965. (3) Sales of repossessed cars are “occasional sales” as defined in [NRS 372.035](#) and are therefore exempt from taxes under Chapter 372 NRS.

Carson City, August 18, 1965

Mr. Louis P. Spitz, *Director, Department of Motor Vehicles, Carson City, Nevada*

Dear Mr. Spitz: You have directed to this office an inquiry as follows:

1. Are garages, body shops, vehicle storage companies, who sell more than three vehicles per year under the Nevada lien law, subject to registration and licensing as a dealer with the Department of Motor Vehicles?
2. Are finance companies, rental companies, etc., subject to registration and dealers licensing with the Department of Motor Vehicles before they can dispose of repossessions and older vehicles from their fleets?

ANALYSIS

Let us first refer to Chapter 527, Statutes of Nevada 1965. Section 5 states:

Used vehicle dealer means any person engaged in the business of selling or exchanging used vehicles for profit, or who buys and sells, or exchanges, three or more used vehicles in any one calendar year.

Does the transaction entered into by banks and finance institutions on the financing of used cars constitute a purchase?

If it does, then financial institutions would be subject to the licensing and registration provisions of Chapter 482 NRS as amended by Chapter 527 of the 1965 Statutes. If the banks' transactions do not constitute a purchase, then they are exempt.

While it is true that financial institutions in Nevada lend money on notes secured by chattel mortgage son used cars, receive evidences of title pending full payment by purchaser, and sell the

same upon default, they do not buy or purchase the cars in the sense intended by the 1965 Statute.

There is a strong doubt in the mind of the Attorney General as to whether the procedure outlined above constitutes the bank, or financial institution, a buyer, We do not feel the Legislature intended to so define them. The transaction involving the used care dealer, the purchaser, and the financial institution is in the nature of a security transaction.

It is clear that the State cannot prohibit the ordinary business of buying and selling cars or used motor vehicles. It may however regulate a business to promote the health, safety, morals, or general welfare of the public. It cannot be seriously disputed that the motor vehicle industry has grown to huge proportions in both the State and nation. Motor vehicles, once luxuries, are not necessities. The handling of motor vehicles has become a complex business. The sale of new automobiles is closely tied in with the purchase, trade and sale of used cars. The possibility of practices detrimental to the public welfare may have been, and undoubtedly was, a factor in passage of the act.

However, banks are not primarily engaged in the buying or selling of used cars. Their connection with such vehicles arises only in connection with the procedures heretofore outlined, and is only incidental to their principal business. The evils sought to be remedied by the legislation enacted at the last session of the Legislature was not aimed at, or directed toward, the motor vehicle transactions which involve banks or financial institutions. Their sales are occasional and sporadic.

Garages, body shops, vehicle storage companies, and others who sell three or more used vehicles, and who operate under the lien laws set forth in [NRS 108.267-108.360](#), do not come within the purview of the law. They do not buy the vehicles under the plain meaning of that word, but obtain possession under a statutory right.

One further word. We feel that financial institutions are exempt, insofar as the sale of repossessed vehicles is concerned, from the taxes imposed by Chapter 372 NRS on the ground they are occasional sales.

CONCLUSION

It is therefore the opinion of this office that finance companies which repossess cars, based on notes secured by chattel mortgages and title in their possession, and sell the same, are not liable for licensing and registration as used car dealers under Chapter 527, Statutes of Nevada 1965.

It is the further opinion of this office that garages, body shops and vehicle storage companies, which gain possession of motor vehicles under statutory lien laws, and sell to satisfy their lien, are not used car dealers and therefore not liable for licensing and registration as used car dealers under Chapter 527, Statutes of Nevada 1965.

Sales of repossessed cars are “occasional sales” as defined in [NRS 372.035](#) and are therefore exempt from taxes under Chapter 372 NRS.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

257 Jurors; Compensation—Under [NRS 6.150](#), as amended by Chapter 168, Statutes of Nevada 1965, all trial and grand jurors are entitled to receive \$6 for each day in attendance, and \$10 per day after being sworn and actually serving.

Carson City, August 17, 1965

Honorable William J. Raggio, *District Attorney, Washoe County, Reno, Nevada*

Attention: Gene Barbagelata, *Assistant District Attorney*

Dear Mr. Raggio: Your office has requested an opinion interpreting certain provisions of [NRS 6.150](#), as amended by Chapter 168, Statutes of Nevada 1965. Specifically, your inquiry is: When, under this section as amended, does a juror start receiving the compensation of \$10 per day for service as a juror?

ANALYSIS

Prior to the 1965 amendment of [NRS 6.150](#), each person summoned for jury duty received \$6 per day for each day he was in attendance, plus mileage. Its amount continued as his compensation even though he was later sworn. The 1965 Legislature saw fit to increase the allowance to \$10 per day after the juror was sworn and actually serving. Par. 2 of Chap. 168, amending the earlier act, reads:

Each grand juror and trial juror in the district court or justice court *actually sworn and serving* shall receive \$10.00 per day each as full compensation for each day of service. (Italics supplied.)

At the act now stands, there is a clear distinction between a juror in attendance and one who is actually sworn and serving. Presumably, the Legislature felt that those in the latter category are called upon for a greater expenditure of time, effort and inconvenience than they would be if merely in attendance. Plain reasoning convinces us that this is true. It is therefore only just and equitable that those jurors actually sworn and serving should be compensated in the increased amount of \$10 per day. To us the amendment is clear and fully and unequivocally states the legislative intent. The Nevada State Supreme Court has ruled that when the meaning of a statute is clear, there is no occasion for construction. In *Re Hegarty's Estate*, [47 Nev. 369](#); 222 Pac. 793.

CONCLUSION

We can only conclude that it is only after a juror has been sworn and is actually serving that he is entitled to receive the sum of \$10 per day for his services.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: C.B. Tapscott, *Chief Assistant Attorney General*

**258 Public Utility Companies; Mill Tax on Gross Revenues From Intrastate Operations—
Assessment on revenues from wholesale sales proper, even though rates set by Federal
Power Commission.**

Carson City, August 19, 1965

Mr. J.G. Allard, *Chairman, Nevada Public Service Commission, Carson City, Nevada*

STATEMENT OF FACTS

Dear Mr. Allard: NRS Section 704.033 requires the Public Service Commission to levy a tax of two mills on each dollar of gross operating revenues derived from intrastate operation by each public utility in Nevada subject to the jurisdiction of the Nevada Public Service Commission. There are some wholesale sales made by some utilities to other utilities for resale to ultimate consumers. Some of these wholesale sales are to electrical power, the rates of which are regulated by federal authority. In some of these cases, the power is generated in Nevada, sold here, but transported out of this State for retail sale to ultimate consumers outside the State of

Nevada, and some power is transported into this State for retail sale to Nevada ultimate consumers.

QUESTIONS

1. Is it proper for the Nevada Public Service Commission to assess the mill tax, required by [NRS 704.033](#), upon the gross receipts from such wholesale sales?
2. If the answer to Question No. 1 is negative, what disposition may be made of collections heretofore exacted which were based upon the gross revenues derived from such sales?
3. If it is proper to assess the mill levy on wholesale sales, may assessments again be levied at the distribution level?

ANALYSIS

At the outset, it should be noted that [NRS 704.033](#) does not mention either “wholesale” or “retail sales.” That section provides only that a tax of not more than two mills shall be assessed on each dollar of gross operating revenue derived from the intrastate operation of all public utilities subject to the jurisdiction of the Nevada Public Service Commission.

It should also be borne in mind that the section in question is concerned only with *gross revenues of each utility subject to the jurisdiction of the Nevada Public Service Commission* (except motor vehicle carriers subject to [NRS Chapter 706](#)), and the tax in mills to be levied thereon. It must follow therefore that if the tax is valid, all subject utilities are liable for the regulatory tax, irrespective of whether their gross revenues from intrastate business are derived from *retail* or *wholesale* sales. It is *gross revenues* we are concerned with, *not the type of sale*. We emphasize again that the tax is not levied on the commodity dispensed by the utility, but upon the gross receipts of the utility derived from intrastate business.

The fact that some of the rates of the subject utilities are determined and fixed by federal authority does not preclude the Public Service commission from levying the regulatory tax on such utilities; for we are not here concerned with tariffs or rates, but with regulatory measures for the safety and welfare of the people of Nevada, and the funds necessary for such regulation and investigations. It is an exercise of police power.

In a United States Supreme Court case, *Inter-Island Co. v. Hawaii*, 305 U.S. 306, the court was concerned with a similar problem.

In that case, the Territory of Hawaii had recovered a judgment for regulatory taxes on behalf of its Public Utilities Commission. The carrier contended that since it was engaged in interstate and foreign commerce, the Shipping Act of 1916 enacted by Congress ousted the Public Utilities Commission of Hawaii of all jurisdiction whatsoever over the defendant carrier, and all others similarly situated. The court rejected the contention and held: That although the shipping act did deprive the territorial commission of authority to regulate rates, such act did not divest the territorial commission of power to investigate such carriers “as to rates and other matters, either for the exercise of its own permitted supervisory powers or for presentation of the public’s case before appropriate governmental bodies.”

In this same case at the Circuit Court level, 96 Fed.2d 412, at page 419, the court said, in answer to the contention that levy of the regulatory tax was an illegal burden on imports and exports:

The fees are not laid on the property imported or exported, on the proceeds thereof or on the privilege of importing or exporting. The fact that appellant must pay a fee based on receipts from transporting articles imported and exported by others, has only an indirect and remote effect, if any, on the imports and exports.

It is important to note also that in the *Inter-Island* case 5 percent of appellant’s receipts were derived from carriage of mails and other services for the United States. Appellant contended that the fees were a burden on an instrumentality of the United States, and therefore void. The court rejected the contention and said: “We are of the opinion that the fees affected, only remotely the operations of the United States.” (Citing: *Alward v. Johnson*, 282 U.S. 509.)

It was also contended in the Inter-Island case, at the United States Supreme Court level (305 U.S. at p. 314), that the challenged tax was prohibited by the Fifth Amendment, because “no investigation, supervision, or regulation of petitioner was in fact made by the commission.” The court rejected the contention, saying:

A general tax designed to effectuate a plan for control and supervision of public utilities need not be apportioned among the taxpayers according to the actual services performed directly for each. Such a requirement would seriously impair the effective application and operation of general tax systems. Services performed by the Hawaiian Public Utilities Commission were for the benefit of the public as a whole and are not any the less services beneficial to petitioner because its business has not been given any special assistance.

It is important to note, that the mill tax in question is not a revenue producing measure, but is a reasonable exercise of the police power, designated to promote the public health and welfare of this State. This being so, the amount collected by reason of the mill tax may not inordinately exceed the amount needed to defray the expense of the functions delineated by [NRS 704.039](#). That the amount produced by the regulatory tax is not excessive, is irrefutably demonstrated by the fact that substantial sums have been appropriated during each past legislative session to supplement the amount produced by the mill tax in order to furnish the Public Service Commission with sufficient finances to carry out its duties.

For example, the following amounts were appropriated during the preceding general sessions for the following fiscal years:

1961-62	\$44,674.00
1962-63	\$49,010.00
1963-64	\$67,580.00
1964-65	\$67,779.00
1965-66	\$41,000.00
1966-67	<u>\$41,000.00</u>
Total for period	\$311,043.00

CONCLUSIONS

Question No. 1: It is patently clear that the regulatory mill tax in question is valid, and may and should be applied to the gross revenues from both wholesale and retail sales made in intrastate commerce; for, as pointed out supra, the tax is levied on gross revenues, not on a particular type of sale.

Question No. 2: The answer to the first question being in the affirmative, the second question needs no answer.

Question No. 3: This question has been partially answered by the answer to Question No. 1; however, the answer must be in the affirmative; but we emphasize again that the tax is not upon any commodity or any type of sale. It is solely upon gross revenues derived from intrastate operations. Accordingly, if the total gross revenues are partly from retail and partly from wholesale operations in intrastate commerce, the mill tax should be levied upon such total gross revenues.

We have repeatedly mentioned “intrastate commerce” simply because the statute in question only authorizes the tax to be applied to gross revenue derived from *intrastate* operations.

There are many United States Supreme court cases, however, sustaining a regulatory tax similar to the one in question, even though the tax applied to both intrastate and interstate revenues, or though the tax applied solely to interstate taxes, provided that other statutes provided for a similar tax on utilities rendering an intrastate business.

The essential requirements of validity are (1) that the tax be not excessive so as to raise more funds than are necessary for the functions to be performed by the utility commission, and (2) that there be not unfair discrimination between intrastate and interstate utility companies.

For further authorities see:

Charlotte etc. Rly. Co. v. Gibbes, 142 U.S. 386.
New York v. Squire, 145 U.S. 175.
Western Union Tel. Co. v. New Hope, 187 U.S. 419.
Atl. And Pacific Tel. Co. v. Philadelphia, 190 U.S. 160.
Pure Oil Co. v. Minnesota, 248 U.S. 158.
Mackay Tel. & Cable Co. v. Little Rock, 250 U.S. 94.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Gabe Hoffenberg, *Chief Deputy Attorney General*

259 University of Nevada; Public Lands—The owner of property has the duty to place a fence upon his property to prevent grazing cattle from entering upon it. Any damage done to such fence by the owners of cattle would result in a cause of action by the University. When the general public has used a road for a period of time longer than 15 years, the property is subject to a prescriptive easement which cannot be obstructed by any fence. The control of wild animals and hunting is vested in the Legislature, and the statutes enacted by that body require private property to be enclosed before hunting can be prohibited. (Modified by AGO 285, 12-6-65.)

Carson City, August 24, 1965

Mr. N. Edd Miller, *Chancellor, University of Nevada, Reno, Nevada*

STATEMENT OF FACTS

Dear Mr. Miller: You have requested from this office an opinion based upon the following:

The University of Nevada has acquired property known as the Whittell Forest land. It is the intention of the University to conduct biological research and related studies upon such land. At this time, the University is desirous of erecting an electric fence on such property for the purpose of preventing the cattle in the area from entering upon such property. When the property was acquired by the University, there was a road passing over it which had been used by the general public and ranchers in the area for as far back as 1862. The University would wish to restrict the use of this road. Since students will be working and studying on the land during the fall, the University wishes to restrict hunting on and about the property in the interest of safety.

From this statement of facts, there are three general areas needing an answer: (a) problems relating to the fence; (b) problems relating to the road on such property, and (c) problems relating to hunting. This is the order in which the questions will be answered.

QUESTION A

Regarding the erection of this fence, you have asked the following questions:

1. Is the erection of the proposed electric fence authorized under the laws of Nevada when its purpose is to both keep animals belonging to others off the University property, and contain one or more head of cattle belonging to the University of Nevada within the bounds of the fence?
2. Would the University of Nevada be liable for any injuries suffered as a result of cattle coming in contact with the proposed electric fence?
3. Would the University of Nevada have a cause of action if the owner of cattle interfered with or damaged the fence in an effort to aid cattle in bypassing the fence to pass to other unfenced property?

ANALYSIS

It was the rule of the common law that every man was bound at his peril to keep his cattle on his own premises. In many of the states (especially those in the West) it has been held that the rule of the common law requiring the owner of cattle to keep them at home was not in accordance with the condition of the country or the customs of the people, and it was therefore held that the owner of cattle incurred no liability by permitting his cattle to range at will over uninclosed lands or over lands not guarded by such a fence as prescribed by law. See 4 Am.Jur. 2d Animals, Sec. 49. Nevada is such a state. In 1893 the Legislature passed the statute which is now entitled [NRS 568.300](#), which reads as follows:

1. It shall be unlawful for any person to herd or graze any livestock upon the lands of another without having first obtained the consent of the owner of the lands so to do. The person claiming to be the owner of such lands shall have the legal title thereto, or an application to purchase the same with the first payment made thereon.

2. The livestock which is herded or grazed upon the lands of another, contrary to the provisions of subsection 1, shall be liable for all damages done by such livestock while being unlawfully herded or grazed on the lands of another, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor. The livestock may be seized and held by a writ of attachment, issued in the same manner as provided in chapter 31 or 71 of NRS, as security for the payment of any judgment which may be recovered by the owner of such lands for damages incurred by reason of violation of any of the provisions of this section. The claim and lien of a judgment or attachment in such an action shall be superior to any claim or demand which arose subsequent to the commencement of the action.

3. *This section shall not apply to any livestock running at large on the ranges or commons.* (Italics supplied.)

Two different classes of grazing cattle are contemplated by this statute. First, those which are actually herded or grazed onto the lands of another, and second, those which are running at large and wander onto the land of another. Considering the former class first, we see that Sections 1 and 2 of the above quoted statute forbid the owner of cattle to actually herd them onto the land of another without consent.

In support of this are the following cases:

Dangberg v. Ruhenstroth (1902), [26 Nev. 455](#), 460;
Jensen v. Pradere (1916), [39 Nev. 466](#);
Pyramid Land and Stock Co. v. Pierce (1980), [30 Nev. 237](#);
Tobin v. Gartiez (1920), [44 Nev. 179](#);
Cook v. Maremont-Holland Co., [75 Nev. 380](#).

Thence it follows that any owner of cattle grazing in the area situated in close proximity to the land in question would be liable for any damage caused to the property of the University, if such cattle were grazing thereon without the consent of the University. Since the consent of the owner of the property is needed, there would be no prohibition against the owner of property erecting a fence on his property to show his denial of consent.

Considering now the second class of cattle above mentioned, this office comes to the same conclusion. Section 3 of the above quoted statute provides that Sections 1 and 2 shall not apply to cattle running at large. Hence, the owner of property has no cause of action for trespass or damage done to his property by such cattle. This means that if the owner of property wishes to keep such cattle off his property, he must fence them out. This is the section of the statute which is contrary to the common law above mentioned. It follows from this section that the University of Nevada has the duty and therefore the right to place a fence upon its property for the purpose of keeping cattle “ranging at large” off its land.

Whether or not the University should erect an electrically charged fence will be dealt with in answering the second question.

In determining the answer to the second question, caution and prudence must control. While there is no law prohibiting the erection of an electric fence in the area involved, the possibility of resulting injury both to livestock, human beings, and real property would be greatly increased. It cannot be doubted that electricity is a dangerous element. The sole purpose of installing an electric fence is to have a more effective means of deterring trespassers by causing a painful shock to result upon contact with such fence. Likewise, it cannot be doubted that electricity is capable of causing fires. Hence, there is the danger of forest and range fires resulting from any malfunction of the electrical system.

For these reasons, rather than concepts of law, it is the opinion of this office that caution and prudence would dictate that an ordinary fence, rather than one charged with electricity, should be erected upon the property in question.

As an aid in the construction of the fence, I direct your attention to [NRS 569.450\(2\)](#):

1. No person, firm or corporation shall be entitled to collect damages, and no court in this state shall award damages, for any trespass of livestock on cultivated land in this state if such land, at the time of such trespass, shall not have been enclosed by a legal fence as defined in subsection 2.

2. A legal fence is defined for the purposes of this section as a fence with not less than four horizontal barriers, consisting of wires, boards, poles or other fence material in common use in the neighborhood, with posts set not more than 20 feet apart. The lower barrier shall be not more than 12 inches from the ground and the space between any two barriers shall be not more than 12 inches and the height of top barrier must be at least 48 inches above the ground. Every post shall be so set as to withstand a horizontal strain of 250 pounds at a point 4 feet from the ground, and each barrier shall be capable of withstanding a horizontal strain of 250 pounds at any point midway between the posts.

We now proceed to an analysis of the third question asked. A person becomes liable of removing or destroying a fence belonging to another person to the same extent as a person removing or destroying any kind of property which does not belong to him. A detailed citation of authority supporting this conclusion is not deemed necessary.

Besides civil liability for the damage or destruction done to a fence, some states have enacted a statute which renders the person causing such damage subject to criminal sanctions. The Nevada Legislature passed such a statute in 1911. [NRS 206.060](#) reads as follows:

1. Any person or persons opening and passing through gates or bars when gates or bars are placed in fences enclosing fields, or in fences partly enclosing lands, and not shutting and fastening the same, shall be deemed guilty of a misdemeanor.

It is therefore concluded by this office that both civil and criminal liability attaches for any negligent or willful damage done to the fence by any persons.

QUESTION B

Considering the road located on the property, you have asked whether or not it is a public right-of-way or if access to it may be restricted.

ANALYSIS

The law is well settled that an easement cannot be acquired across property owned by the State. [NRS 322.050](#) provides in part “. . . Easements over or upon any lands which are used by any office, department, board, commission, bureau, institution or other agency of the State of Nevada may be granted only with the concurrence of such agency.” See 28 CJS Easements, Section 9(a). However, when the State purchases property which is subject to an easement, it takes title to that property with all its infirmities.

The road in question has been used by ranchers in the area for ingress and egress, to and from sources of water to which they have a right, for many decades. The general public has also used this road for camping, pleasure riding, and hunting purposes. Because this use of the road by ranchers and the general public has been continuous for a period longer than 15 years, a prescriptive easement has been established. See [NRS 40.090](#). The road in question is now an established right-of-way, available for the general public. As such, the University of Nevada does not have the right to obstruct it by the erection of a fence. In 28 CJS Easements, Sec. 98, the rule is expressed:

The owner of the servient estate may erect fences along the sides of the way, provided the right of passage is not thereby obstructed. He cannot erect fences across or within the way so as to obstruct it entirely.

QUESTION C

Attention is now directed to the third and final section of your request—hunting control.

You have asked the following question: Does the University have the right to prohibit the general public from hunting upon the property in question?

ANALYSIS

There are two statutes applicable and which must be examined. [NRS 503.240](#) makes it “unlawful for any person to shoot or discharge firearms or to hunt upon or within any *enclosed* grounds which are private property and where signs are displayed forbidding such hunting or shooting . . .” [NRS 503.250\(1\)](#) states “It shall be unlawful for any person to hunt with bow and arrow, gun, dog or trap upon occupied, cultivated and *fenced* property of another without first obtaining written permission from the owner, occupant or agent thereof.” (Italics supplied.)

From an examination of these statutes, it appears that only “enclosed” or fenced and cultivated property may be posted and declared to be off limits to hunters. Attorney General’s Opinion 311, 1957, supports this conclusion. Also, see *Flick v. Nevada Fish and Game Commission* (1959), [75 Nev. 100](#), which held inter alia, that wild game in this State, not domesticated and in its natural habitat, is part of the natural resources belonging to the people, that it is subject to the State’s control.

It is therefore concluded that only if the University encloses the property can it restrict the property from hunters. This would require the property to be enclosed with a fence and then “no hunting” signs placed thereon.

CONCLUSION

(A) The University of Nevada has the right to place a fence upon their property for the purpose of keeping livestock off. Prudence and good sense would require an ordinary fence rather than an electrically charged one be erected.

(B) The property in question is subject to a prescriptive easement which cannot be obstructed by a fence.

(C) In order to prohibit hunting upon the property in question, it must be enclosed and posted with “no hunting” signs.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

260 Minors; Entertainers; Theater-Restaurants and Lounges—[NRS 202.030](#), [202.060](#), and [202.070](#), are not applicable to entertainers who are minors, and who do not loiter in lounges or theater-restaurants where spirituous liquors are sold after the conclusion of their act.

Carson City, September 8, 1965

Honorable John Chrislaw, *District Attorney, Douglas County, Minden, Nevada 89423*

Dear Mr. Chrislaw: You have inquired of this office as to whether minors can be employed as entertainers in places where spirituous liquors are sold, referring particularly to lounge shoes and theater-restaurants .

You call attention to the fact that many of the top entertainers have, as members of their group, entertainers under the age of 21.

ANALYSIS

There are three sections of our statutes which I believe are applicable.

[NRS 202.030](#) reads as follows:

Any person under 21 years of age who shall loiter or remain on the premises of any saloon where spirituous, malt or fermented liquors or wines are sold is guilty of a misdemeanor and shall be punished by a fine of not less than \$25 nor more than \$100.

Nothing in this section shall apply to:

1. Establishments wherein spirituous, malt or fermented liquors or wines are served only in conjunction with regular meals and where dining tables or booths are provided separate from the bar; or
2. Any grocery store or drugstore where spirituous, malt or fermented liquors or wines are not sold by the drink for consumption on the premises.

[NRS 202.060](#) reads as follows:

Any proprietor, keeper or manager of a saloon or resort where spirituous, malt or fermented liquors or wines are sold, who shall, knowingly, allow or permit any person under the age of 21 years to remain therein is guilty of a misdemeanor, and shall be punished by a fine of not less than \$25 nor more than \$100. Nothing in this section shall apply to:

1. Establishments wherein spirituous, malt or fermented liquors or wines are served only in conjunction with regular meals and where dining tables or booths are provided separate from the bar; or
2. Any grocery store or drugstore where spirituous, malt or fermented liquors or wines are not sold by the drink for consumption on the premises.

[NRS 202.070](#) reads as follows:

Any proprietor or keeper of a saloon or resort where liquors are sold, who shall sell or give to any minor any spirituous or malt liquors, or who shall permit any minor to lounge or remain therein, shall be liable to the parent or guardian of such minor in damages, which may be collected by a civil action in a sum to less than \$50 nor more than \$1,000.

Let it first be noted that in [NRS 202.030](#) the prohibition is against allowing minors to loiter in places where alcoholic beverages are sold. The word "loiter" is defined by Webster as to "delay," "linger," "tarry," "lag behind." It is clear that the intention of the Legislature was to prevent juveniles from frequenting places where spirituous liquors are sold. It used the word "loiter" because there are occasions when even juveniles must pass through such an establishment, or go into one in search of adults.

It is to be noted that the act does not apply to minors who dine in places where liquor is sold, because the law specifically exempts establishments who sell liquor only in conjunction with regular meals and where dining tables or booths are provided separate from the bar.

Thus it can be rationalized legally that if entertainers who are minors do not loiter in lounges where liquor is sold, but leave that section of the premises immediately upon conclusion of their act, they have violated the law, and it is equally discernible that proprietors, keepers or managers of premises are not liable under [NRS 202.060](#), and the penalties under [NRS 202.070](#), when the circumstances outlined hereinbefore arise.

CONCLUSION

It is therefore the opinion of this office that [NRS 202.030](#), [202.060](#), and [202.070](#), are to applicable to entertainers who are minors, and who do not loiter in lounges or theater-restaurants where spirituous liquors are sold after the conclusion of their act.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

261 Nevada Historical Society—Necessary expenses for the care, maintenance and preservation of state buildings and grounds, including any grounds and buildings of the Nevada Historical Society, which are incurred during any biennium, and which could not be foreseen at the legislative session immediately prior thereto so as to be included in the biennium budget provided therefor, must be paid by the State of Nevada, by an through the Superintendent of Buildings and Grounds out of the State's Buildings and Grounds Fund.

Carson City, September 28, 1965

Miles N. Pike, Esq., *President, Nevada Historical Society, State Building, Reno, Nevada*

STATEMENT OF FACTS

Dear Mr. Pike: The Nevada Historical Society contemplates the construction of a building suitable for its purposes, and has under consideration a site located at Ninth and Lake Streets, Reno, Nevada, known as Evans Park. The City of Reno presently owns said park but has proposed making a conveyance of all or a substantial part thereof, to the Historical Society as a building site. Expenses for construction will be provided from a \$260,000 payment which the society will receive from the Washoe county Fair and Recreation Board for and on behalf of Washoe County when the board has realized proceeds from the sale of revenue bonds which it has been authorized to issue pursuant to Chapter 239, Statutes of Nevada 1965.

Under the provisions of Chapter 495, Statutes of Nevada 1965, Section 1, the \$260,000 which the Fair and Recreation Board is directed to pay over to the Historical Society must be used exclusively for constructing, furnishing and equipping a building to serve the society's purposes, with no provision for maintenance expenses. Neither does the 1965-66—1966-67 budget passed by the 1965 Legislature include such expenses. This situation gives rise to the following question:

QUESTION

Would the State of Nevada be required to maintain all or a part of Evans park should it be conveyed to the Nevada Historical Society for the purposes mentioned?

ANALYSIS

The Nevada Historical Society is recognized as a state institution. Its operation is provided for by legislative appropriation the same as other state agencies, and it performs services beneficial to the people of the State. Under the provisions of [NRS 353.255](#) all state appropriations must be specifically applied, and under [NRS 353.260](#), any deficiency spending is prohibited. It therefore

becomes obvious that because of the provisions of these sections and of Chapter 495, Statutes of Nevada 1965, Section 1, hereinabove mentioned, that the Historical Society may not legally spend any of the funds coming into its hands from either its 1965 budget or the building fund payment which it will receive from the Washoe County Fair and Recreation Board for maintenance purposes. Expenses for this purposes must come from another source.

Under [NRS 331.070](#), the specific buildings over which the Superintendent of Buildings and Grounds has jurisdiction are enumerated under Section 1, subsections (a), (b), (c), (d), (e), and (f). Subsection (g) of that section also gives him jurisdiction over “all other state buildings, grounds and properties not otherwise provided for bylaw.” In connection with the upkeep of such properties, [NRS 331.080](#)(1) provides as follows:

The superintendent shall have authority to expend appropriated funds to meet expenses for the care, maintenance and preservation of the buildings, grounds, and their appurtenances mentioned in [NRS 331.070](#), and for the repair of the furniture and fixtures therein.

In the opinion of this office, these sections were designated to provide a means of meeting expenses incurred in maintaining state buildings and grounds, which expenses could not be foreseen at the time of setting up the budget for any biennium during which they might arise.

CONCLUSION

It is our conclusion that in the event the Nevada Historical Society acquires any site contemplated for the erection of a building thereon to be used for its needs and purposes, any necessary expenses which may be incurred for the maintenance, care and preservation of both the site and building must, during the remainder of the present biennium, unless by special session the Legislature should make an appropriation therefor, be paid by the State of Nevada, by and through the Superintendent of Buildings and Grounds, out of the Buildings and Grounds Fund.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: C.B. Tapscott, *Chief Assistant Attorney General*

262 County Fire Protection Districts; [NRS 474.510](#) Construed—A tax levied upon all real property located within a county to be used for the support and maintenance of a county fire protection district is within the \$5 tax limitation found in Article X, Section 2 of the Nevada State Constitution.

Carson City, October 4, 1965

Hon. Edward G. Marshall, *Clark County District Attorney, Court House, Las Vegas, Nevada*

STATEMENT OF FACTS

Dear Mr. Marshall: Based upon the following, you have requested from this office an opinion:

Clark County is considering the establishment of a county fire protection district. In an effort to finance such a district a special tax levy upon the real property located within Clark County is proposed, pursuant to [NRS 474.510](#).

QUESTION

Would a tax levied for the purpose of supporting a county fire protection district come within the \$5 constitutional tax limitation?

ANALYSIS

The answer to your question depends upon a determination of whether or not the proposed county fire protection district, and taxes levied for its support, would be for a “public purpose,” or if it would be for a “special or local purpose.” If it is the former, the proposed assessment would be within Article X, Section 2 of the Constitution of the State of Nevada.

The total tax levy for all *public purposes*, including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents of one dollar of assessed valuation. (Italics supplied.)

The cases which have made an attempt to define “public purposes” are legion. Each of them has arrived at the same conclusion, which has most recently been stated in *DeArmond v. Alaska State Development Corporation*. (Alaska, 1962), 376 P.2d 717, 721.

At the outset we observe that the phrase “public purpose” represents a concept which is not capable of precise definition. We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs. Whether a public purpose is being served must be decided as each case arises and in the light of the particular facts and circumstances of each case.

It is stated in McQuillin, *Municipal Corporations*, Vol. 16, Sec. 45.01:

As to whether police and fire protection in municipalities are functions peculiarly local, or of state-wide concern, subject to regulation by the state, are matters upon which the courts are not in agreement.

McQuillin, *Municipal Corporations*, Vol. 16, Sec. 44.35 when considering the question, “What is a public purpose”:

This cannot be answered by any precise definition, further than to state that if the object is beneficial to the inhabitants and directly connected with the local government it will be considered with favor as a corporate or public purpose.

Directing our attention to some of the more often cited cases concerned with fire protection and its “local or public” nature, we find:

St. Lucie County-Fort Pierce Prevention and Control District v. Higgs (Fla. 1962), 141 So.2d 744, 746. An action by a fire prevention district for a declaratory judgment determining whether homesteads could be subjected to a tax to be levied for maintenance of the district. Court held: “We agree with the learned circuit judge that the levy is a tax and not a special assessment for the reason he gave, namely, that no parcel of land was specially or peculiarly benefited in proportion to its value, but that the tax was a general one on all property in the district for the benefit of all.”

Luhrs v. City of Phoenix (Ariz. 1938) 83 P.2d 283. Held that fire protection was a governmental function and hence a matter of statewide concern.

Barth v. Village of Shorewood (Wis. 1938) 282 NW 89. Held: The matter of firemen’s pensions is of statewide concern. Cited other cases with the same holding.

Iben v. Borough of Monaca (Pa. 1945) 43 A.2d 425, 427. “Both police and fire protection are not only of local concern but are matters in which the general public have a vital interest.”

In McQuillin, *Municipal Corporations*, Vol. 16, Sec. 44.36 is found the following: “Among the purposes held public so that taxes may be imposed therefor are the following: * * * furnishing fire protection * * *.”

It appears at this point that the proposed assessment could well be considered as an assessment for a “public purpose” and hence within the constitutional tax limitation found in Article X, Section 2 of the Nevada State Constitution.

Attention will now be directed to applicable Nevada authority.

In 1956 this office issued an opinion (Attorney General's Opinion No. 187) wherein it was held that a special tax levy for the support of a forest fire protection district was not within the constitutional limitation for the reason that "it is a tax imposed for the protection and benefit of only those persons owning property within the district involved. No part of any tax collected pursuant to the act may be applied toward the maintenance or operation of either state, county, municipal, or township government, but shall be used for the sole purpose of the prevention and suppression of fires in such organized district."

In Attorney General's Opinion No. 46, April 19, 1951, this office answered the following question: Would the tax in the Mosquito Abatement District Act come under the \$5 limit, or would it be considered an assessment? In that opinion it was stated: "The tax on the property owners is a special tax, and is not to be included within the \$5.00 limit. The tax contemplated is for the administration of a particular act and no money derived from the act goes to the support of the government of the State; hence it is clearly a special tax."

Attention is called to Attorney General's Opinion No. 342, August 14, 1946, wherein it was held taxes collected pursuant to the Board of Stock Commissioners Act were to be collected from veterans, since it was not a special tax and they were not entitled to an exemption. The reasoning of the opinion was, "No part of the money derived from the so-called tax provided in the Act goes to the support of the government of the State."

It is the opinion of this office that the facts and circumstances with which we are here concerned can be distinguished from those in the above cited Attorney General's Opinions.

First: The weight of authority favors the proposition that fire protection is a public purpose.

Second: *All* of the real property located in Clark County would be assessed and not merely a fractional portion thereof.

Third: An entire political "subdivision" of the State of Nevada, that is, Clark County, would be protected against a destructive force and hence a county governmental function would be served.

Fourth: No parcel of land located within Clark County is to be specially or peculiarly benefited in proportion to its value.

CONCLUSION

It is concluded by this office that the proposed assessment on all real property located in Clark County pursuant to the provisions of [NRS 474.510](#), for the support of a county fire protection district, would be an assessment for a "public purpose" and hence come within the tax limitation found in Article X, Section 2 of the Nevada State Constitution.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

263 Bureau of Vital Statistics; Death Certificate—Where peril is encountered which might lead to death, such as by drowning, and witnesses can testify that a person entered water but never emerged, death certificate should issue, even though body is not recovered.

Carson City, October 6, 1965

Mr. John Sullivan, *Department of Vital Statistics, State Department of Health, Carson City, Nevada*

Dear Mr. Sullivan: You recite the following facts: Four boys were scuba diving in what is known as Devil's Hole, in Nye County, when two of the four did not come to the surface. There is no outlet to the underground water at a place other than where the two boys disappeared. Their entry into the water was witnessed, and while witnesses waited 2 hours the lost boys never

returned to the surface, and to date their bodies have not been recovered. They are presumed to be dead, but in view of the fact that no bodies have been recovered you hesitate to issue a death certificate. A question of insurance arises where the insurance company demands a death certificate before paying the proceeds of the insurance policy.

ANALYSIS

[NRS 440.360](#) reads as follows:

Authentication of personal and statistical particulars. The personal and statistical particulars of the death or stillbirth certificate shall be authenticated by the name of the informant, who may be any competent person acquainted with the facts.

[NRS 259.050](#)(3) provides as follows:

The holding of an inquest, as provided by this chapter, shall be within the sound discretion of the district attorney, or district judge of the county, and such inquest need not be conducted in any case of death manifestly occasioned by natural cause, suicide, accident or when it is publicly known that the death was caused by a person already in custody. However, an inquest shall be held unless the district attorney or district judge certifies that no inquest is required.

A coroner's jury has reached the conclusion that the two boys who dived into the waters of Devil's Hole, and who never resurfaced, came to their deaths by drowning. You are in receipt of that report.

The presumption set forth in [NRS 52.070](#)(26) that a person not heard from in 7 years is dead arises in most instances where no witness can testify as to death, as where a ship is lost at sea with no survivors and the person whose death is at issue was presumed to be aboard. Whether he was or not, after 7 years, if he has not been heard from, the presumption arises.

American Jurisprudence holds that there may be particular circumstances which are known to have arisen where a person faced a specific peril or came in range of some impending or imminent danger which might be reasonably expected to destroy life, such as exposure to drowning. (16 Am.Jur. 25, § 27.)

In certain instances the courts have held that death may be presumed prior to the 7-year period even where there were no witnesses. In *Fidelity Mutual Life Assn. v. Mettler*, 185 U.S. 308, 46 L.Ed. 922, the court found that evidence which showed that deceased had been camping near a river, that his footsteps led into the river but none came out, was sufficient to establish that the person drowned.

In *Re Tharnburg's Estate* (1949), 208 P.2d 349, decedent was in a plane crossing the ocean. The plane was never heard of after its departure. It was held that the passengers could be presumed dead.

Similar cases hold that where direct or circumstantial evidence can be shown to indicate that the missing persons encountered an imminent peril which could have resulted in their death, and they were not seen or heard from the presumption of death prior to the lapse of 7 years arose. Such cases are:

John v. Burns, 67 So.2d 765;
Kansas City Life Ins. Co. v. Marshall, 268 P. 529;
Brownlee v. Mutual Benefit Health & Accident Assn., 29 F.2d 71;
Veselsky v. Bankers Life Co., 248 Fed.App. 176.

In the case at issue there were witnesses who saw the boys dive, and who remained at the scene of the dive for more than 2 hours without witnessing the reappearance of the divers.

CONCLUSION

It is the opinion of this office that death certificates should issue based on information furnished by reliable informants under [NRS 440.360](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

264 Sales and Use Tax; Young Men's Christian Association—The Young Men's Christian Association is a charitable institution and as such the gross receipts from the sale of materials and supplies (a) to that institution, and (b) by the institution are exempt from the sales tax, provided that the materials and supplies are bought or sold in carrying out the object and purpose of the Young Men's Christian Association.

Carson City, October 11, 1965

Hon. Thomas M. Godbey, *609 Avenue L, Boulder City, Nevada*

STATEMENTS OF FACTS AND QUESTION

Dear Mr. Godbey: The letter and your postscript dated October 1, 1965, requests "some research regarding the sales tax as it applies to eleemosynary and religious groups." Your interest is primarily in the Young Men's Christian Association, Las Vegas, Nevada. Therefore this opinion will be directed to this organization's problem.

ANALYSIS

There can be no question that the Young Men's Christian Association is devoted to "charitable purposes" as this term is used in Article X, Section 1 of the Nevada Constitution, and that it is an ". . . organization created for religious, charitable, or eleemosynary purposes" as these words appear in [NRS 372.325](#), Section 5 (Statutes of Nevada 1955, page 762).

In support of the above assertion I quote the rule as set out in 10 Am.Jur., Charities, § 136, p. 686, as follows:

A Young Men's Christian Association has been held to be a public, as distinguished from a private, charity. . . . The question as to the nature of the Young Men's Christian Association . . . has chiefly arisen in cases involving exemptions from taxation, and it is generally held that property used for carrying out the object and purpose of such an association is used for a charitable purpose within the provisions of a statute exempting such class of property from taxation.

. . . In some jurisdictions, however, it has been held that such an association is not a charitable association as to entitle it to exemption from taxation under such a provision.

What then is the holding in Nevada? As early as 1911 our Legislature adopted the following:

[NRS 361.110](#) Exemptions of certain organizations. The buildings, with their furniture and equipment, and the lots of ground on which they stand, used therewith and necessary thereto, of the Nevada Art Gallery, Inc., the Young Men's Christian Association, the Young Women's Christian Association, the American National Red Cross or any of its chapters in the State of Nevada, the Salvation Army Corps, the Girl Scouts of America, the Camp Fire Girls, Inc. and the Boy Scouts of America shall be exempt from taxation; but when any such property is used for purposes other than those of the Nevada Art Gallery, Inc., the Young Men's Christian Association, the Young Women's Christian Association, the American National Red Cross or any of its chapters in the State of Nevada, the Salvation Army Corps, the Girl Scouts of America,

the Camp Fire Girls, Inc. or the Boy Scouts of America, and a rent or other valuable consideration is received for its use, the same shall be taxed.

[See also Statutes of Nevada 1911, p. 127.]

Bruce v. Young Men's Christian Association, [51 Nev. 378](#), considered the above statute and other matters. This quotation from the opinion, as well as the above quoted statute, may well have established the rule in our State that the Young Men's Christian Association is established for religious, charitable or eleemosynary purposes:

1. The evidence which was rejected was offered to support an affirmative defense pleaded in the answer to the following effect: That the principal objects for which the defendant was formed, as stated in its articles of incorporation, are to develop the Christian character of its members and to improve the spiritual, mental, social, and physical conditions of young men; that defendant has no capital stock; that no person has or can derive private pecuniary profit therefrom, and that it has never paid and does not pay any salary or compensation to any of its directors or officers, or to any persons except employees; that the building belonging to defendant and used by it in promoting its chief aim was erected on land donated to the defendant in order that said building might be erected thereon; and that said building was erected and equipped with funds secured from gifts, donations, and contributions made by individuals impelled by charitable, benevolent and philanthropic motives; that, in furtherance of its primary purposes, the defendant has carried on in said building religious courses of instruction along educational lines, and has had addresses and lectures on education, moral, social, and other subjects; that it maintained a gymnasium and conducted gymnasium classes therein and maintained a swimming pool and other facilities for sports and physical exercise, and has conducted and permitted others to conduct social activities therein; that defendant, in order to promote its primary purposes, frequently permitted members of the general public, who were not members thereof, to use its said building, including its gymnasium, swimming pool, and general facilities, free of charge, or at a nominal charge, and that all of the members of defendant were and are entitled to use all of its facilities, and that they pay membership dues which in amount are wholly insufficient to cover the cost of maintenance and of carrying on its activities, which said members are entitled to enjoy.

We think the court committed prejudicial error in rejecting the evidence offered. While we do not think it necessary to pass upon the question as to whether the legislature is passing the act in question conclusively determined the defendant to be a charitable institution, it is certainly indicative of that idea. The defendant is not a municipal corporation, nor is it religious or educational, and, since it had authority to exempt only one other class of institutions, and those charitable, a strong inference may be drawn that such was the class in which the legislature in adopting the act in question placed the defendant. But aside from the classification which the legislature made, if any, we are clearly of the opinion that the defendant is a charitable organization in case the tendered proof is established. [Citing cases.]

Proceeding therefore on the premise that a Young Men's Christian Association is a charitable organization, we need only to check its tax exemptions as they are set out in our Constitution and statutes.

Article X of the Nevada Constitution under the heading "Taxation," Section 1, provides in part as follows:

No inheritance or estate tax shall ever be levied, and there shall be excepted such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

[Article X, Section 1 has been amended four times, the last see Statutes of Nevada 1961, p. 825 which retains the above quotation.]

More directly in point is [NRS 372.325](#), the material portion of which is:

. . . There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible property to: 5. Any organization created for religious, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

For further guidance we have Attorney General's Opinion No. 61 (June 5, 1959) holding (headnote):

Sales by charitable hospitals of tangible personal property, incidental to their rendition of services, exempt from tax under act. The State, all political subdivisions thereof and county public hospitals similarly exempt. Proceeds from occasional transactions or activities of religious or charitable organizations for such purposes also exempt.

CONCLUSION

The Young Men's Christian Association is a charitable institution and as such the gross receipts from the sale of materials and supplies (a) to that institution, and (b) by that institution, are exempt from the sales tax, provided that the materials and supplies are bought or sold in carrying out the object and purpose of the Young Men's Christian Association.

[Note: Your request for an opinion was most general in its terms and by necessity the above is not specifically addressed to any given set of facts. It is however a guide which will be helpful to any attorney representing the Young Men's Christian Association.]

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Donnell Richards, *Deputy Attorney General*

265 County School Districts—The proceeds of the sale of school bonds are not to be used for the purchase of new school buses.

Carson City, October 12, 1965

Honorable Edward G. Marshall, *District Attorney, Clark County, Clark County Courthouse, Las Vegas, Nevada 89101*

Dear Mr. Marshall: You have directed to this office the following question:

Does the Clark County School District have the authority to purchase school buses with school bond fund proceeds?

ANALYSIS

[NRS 387.170](#) and [NRS 387.175](#) create the "county school district fund," and provide the source of money for that fund. [NRS 387.205](#) sets forth the purposes for which the funds may be spent. Subsection (e) of that statute reads "Transportation of pupils, including the purchase of new buses." Only if the proceeds from the sale of school bonds are deposited in this fund, may they be used for the purchase of school buses.

We fine in [NRS 387.335](#):

1. The board of trustees of a county school district may, when in its judgment it is advisable, call an election and submit to the electors of the county school district the question whether the

negotiable coupon bonds of the county school district shall be issued and sold for the purpose of raising money for the following purposes, *and no others*:

(d) Purchasing necessary school equipment. (*Italics supplied.*)

Since the proceeds of the sale of bonds are not to be deposited in the “county school district fund” (see [NRS 387.175](#)), and since the money in that fund is to be used for “the purchase of new buses,” it is the opinion of this office that the proceeds from the sale of school bonds are not to be used for the purchase of new buses.

The fact that such proceeds may be used for the purchase of “necessary school equipment” does not authorize the purchase of buses in view of the fact that [NRS 387.205](#) specifically states that buses are to be purchased from the “county school district fund.”

CONCLUSION

The school district is authorized to purchase new school buses from funds in the county school district fund, but not from the proceeds of the sale of school bonds.

Respectfully submitted,

HARVEY DICKERSON, Attorney General

266 Public Hospitals; Residency Training—State law does not provide for the issuance of temporary permits to students participating in a residency training program who do not meet requirements of Chapter 630 NRS.

Carson City, October 15, 1965

Kenneth F. Maclean, M.D., *President, State Board of Medical Examiners, 3660 Baker Lane, Reno, Nevada*

Dear Dr. Maclean: You have set forth in a letter to this office dated October 1, 1965, that the Southern Nevada Memorial Hospital has established a residency training program and that participants in such program are both native and foreign citizens.

You ask whether the Nevada State Board of Medical Examiners, under existing law, may issue temporary permits to such students limited to the time of training, usually 90 days.

ANALYSIS

You call attention to [NRS 630.280](#)(9), which provides that “The issuance of a permit to serve as a medical officer shall in no way obligate the Board to grant any regular license for the practice of medicine, surgery and allied specialties in Nevada.” However, this provision is not applicable unless considered in context with the other provisions of the statute. For example, no temporary permit to serve as a medical officer could be issued to other than a citizen of the United States, or of Canada, who shall have declared his intention to become a citizen of the United States.

[NRS 630.260](#) and [NRS 630.270](#) are historical only, because of the very express terms of [NRS 630.270](#)(4) which reads as follows:

A practitioner of any mode or system of diagnosis or treatment of disease to be regulated under this section and [NRS 630.260](#) who has been in practice immediately before March 28, 1949, shall be required to register with the board within 6 months from March 28, 1949, and shall be permitted to continue his practice under a temporary license without examination. This in no way obligates the board to grant him a permanent license, and he shall be required to obtain a permanent license under the provisions of this chapter within a period of 18 months after

March 28, 1949. If he does not become so licensed within the time specified, and does not comply with the provisions of this chapter as otherwise set forth, he shall be subject to the penalties of this chapter, except that any person practicing any branch of medicine or mode or system of treatment or diagnosis in Nevada immediately and continuously for a period of over 10 years before March 28, 1949, may be licensed on proof of the same and payment of the stipulated fee, without examination.

It can readily be seen that [NRS 630.260](#) and [NRS 630.270](#) expired as of 18 months after March 28, 1949, and are no longer applicable.

[NRS 630.020](#) defines the practice of medicine, surgery, and obstetrics as follows:

1. As used in its chapter, “practice of medicine, surgery and obstetrics” means:
 - (a) To open an office for such purpose; or
 - (b) To give surgical assistance to any person; or
 - (c) To suggest, recommend, prescribe or direct for the use of any person any drug, medicine, appliance or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, bodily injury or deformity.
2. It shall also be regarded as practicing medicine within the meaning of this chapter if anyone shall use in connection with his name the words of letters “M.D.,” or any other title, word, letter, or other designation intended to imply or designate him as a practitioner of medicine or surgery or obstetrics in any of its branches.

Thus it can be seen that surgeons or physicians engaged in the residency training program at Southern Nevada Memorial Hospital would be engaged in the practice of medicine, surgery, and obstetrics.

[NRS 630.150](#) makes it unlawful for any person to practice medicine, surgery, or obstetrics without a license and [NRS 630.160](#) provides for certification by the board, specifying that the applicant must be a citizen of the United States or a citizen of Canada who has declared his intention to become such citizen, have served as an intern for at least a year in a hospital recognized for intern training by the American Medical Association, or who has engaged in the actual practice of medicine for over 7 years immediately prior to March 28, 1949.

Nowhere in the act does there seem to be any authority for the board to establish rules and regulations presently in effect which would bypass the foregoing requirements.

CONCLUSION

It is therefore the opinion of this office that there is no authority under the statutes for issuing temporary permits to students participating in a residency training program at Southern Nevada Memorial Hospital, unless they meet the requirements of Chapter 630 of NRS.

Respectfully submitted,

HARVEY DICKERSON, Attorney General

267 Attorney General’s Opinion No. 266, Dated October 15, 1965, Modified—Citizen of United States, or citizen of Nevada who shall have declared his intention to become citizen of United States, though graduate of foreign school, may be granted temporary certificate for purpose of completing residency training program at a Nevada hospital.

Carson City, October 20, 1965

Kenneth F. Maclean, M.D., *President, State Board of Medical Examiners, 3660 Baker Lane, Reno, Nevada*

Dear Dr. Maclean: The further question has arisen with regard to your inquiry of October 1, 1965, as to whether temporary certification for a residency training period could be given to an American citizen, or a Canadian citizen, who has declared his intention to become a United States citizen, even though such applicant was not a graduate of an American or Canadian medical school recognized by the American Medical Association.

If the applicant is a graduate of a foreign school, but is a citizen of the United States, or a Canadian, who shall have declared his intention to become such citizen, and who is not an application for a certificate to practice medicine, surgery, and obstetrics in Nevada on a permanent basis, but only for the purpose of completing the residency training program, a temporary permit may be granted to such applicant by the Nevada State Medical Board.

CONCLUSION

Attorney General's Opinion No. 266, dated October 15, 1965, is modified to this extent, and this extent only.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

268 Nevada Commission on Peace Officer Standards and Training—Chapter 342, Statutes of Nevada 1965, interpreted.

Carson City, October 22, 1965

Honorable William P. Beko, *District Attorney, Nye County, Nye County Courthouse, Tonopah, Nevada 89409*

Dear Mr. Beko: This will acknowledge receipt of your letter dated October 8, 1965, in which you request this office to interpret certain sections of AB 390, Chapter 342, Statutes of Nevada 1965.

Chapter 342, Statutes of Nevada 1965, creates a "Commission on Peace Officer Standards and Training," and vests in such commission, inter alia, the power to ". . . adopt and (may) from time to time amend rules establishing minimum standards relating to physical, mental and moral fitness, which shall govern the recruitment of any city, county, or state agency employing peace officers."

It must be noted at the outset, that at the time this opinion is being written, such rules have not been promulgated by the commission.

You have asked the following questions:

1. After the adoption of the rules and regulations establishing minimum standards relating to physical, mental, and moral fitness for all city, county or state peace officers, may a city, county or state agency recruit or employ a peace officer who does not meet the standards adopted by the commission?

The answer to this question is a qualified "no." The entire act is written in terms of "recruitment" and "training." Nowhere in the act are there provisions relating specifically to persons currently employed by either city, county, or state agencies as peace officers. To allow a city, county, or state agency to recruit a person, as that term is commonly understood, not meeting the minimum standards to be adopted by the commission would be to circumvent the entire purpose of the act.

The second phase of your question, that is, would the city, county, or state agency have the right to employ a person not meeting the minimum standards, presents a more difficult query. Here we must consider the persons currently employed as peace officers, but who would not meet the minimum standards. To answer this question, we must concern ourselves with the retroactive effect of the regulations to be adopted by the commission.

Administrative regulations may be of two types, first *legislative* and second *interpretative*. A legislative rule is the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body. In the case of an interpretative rule, the legislative body has not delegated power to make a rule which will be binding upon the courts. See Davis, Administrative Law Treatise, Vol. 1, Secs. 5.03, 5.05. The regulations to be adopted by the commission will be *legislative rules* since they fall squarely within the above definition.

While it is true that legislative rules may operate retroactively, such an effect shall be looked at with scrutiny. Due process prevents retroactive legislation deemed unreasonable. See Davis, Administrative Law treatise, Vol. 1, Sec. 5.08. It is the opinion of this office that to apply the regulations to be adopted by the commission retroactively would constitutionally violate the rights of currently employed peace officers, in that they have vested contractual rights; that the application of the minimum standards to the currently employed peace officers could possibly eliminate a large segment of the peace force, leave the citizens of this State inadequately protected, and cause general chaos. Hence, it is concluded by this office that the minimum standards to be adopted by the commission shall not apply to and bind the peace officers currently employed by cities, counties or state agencies.

2. Would the standards so adopted by the commission apply retrospectively to peace officers employed at the time of the adoption of such standards?

In view of the answer to question No. 1, it is not deemed necessary to deal with an involved analysis of this question. Suffice it to say the answer, in the opinion of this office, is "no."

3. If your answer to Question No. 2 is negative, would the standards adopted by the commission prevent the employment of a peace officer not meeting such standards, but already employed by a city, county, or state agency, by another law enforcement agency?

The act with which we are here concerned is phrased in terms of "recruitment and training," and makes no reference to currently employed peace officers. The word "recruitment" has been dealt with but slightly in the cases concerned with this problem. *Schenck v. U.S.*, 39 S.Ct. 247, 249 U.S. 47, 63 L.Ed. 470; and *Fairchild v. U.S.*, 265 F 580, both interpret the word as meaning "*gaining fresh supplies.*" This interpretation would lead to the conclusion that peace officers currently employed would not be "recruits" and hence the standards adopted by the commission would not apply to them. In *Fowler v. Selectmen of Danvers*, 90 Mass. 80, is found the following:

"Recruiting expenses" as used in a statute ratifying, confirming and making valid the acts and doings of cities and towns in paying or agreeing to pay bounties and recruiting expenses for soldiers furnished by them, should be construed to mean only the costs and charges which had occurred in procuring or enlisting troops *for future service*, and could have no reference to expenditures for or on account of those who had previously enlisted and were already in the Army. (Italics supplied.)

It is the opinion of this office that persons transferred from another city, county, or state agency, and who are already enjoying the status of a "peace officer," are to not be bound by the standards to be set by the commission. However, if such person shall acquire the status of a peace officer solely because of the transfer, that is if he was employed in some other capacity by the transferring agency, then he shall have to meet the minimum requirements the same as any other "recruit."

4. After the adoption of standards of training by the commission, it is mandatory that all peace officers employed by a city, county, or state agency receive such training?

The answer to this question depends upon the same principles as discussed in the analysis of question No. 1. For the reasons set forth therein, it is the opinion of this office that the standards of training to be set by the commission do not operate retrospectively, and currently employed peace officers need not receive such training.

5. Assuming your answers to Questions 1 and 4 are in the affirmative, what method of enforcement is available to assure compliance?

The answer to Question No. 1 was a qualified "no," and the answer to Question No. 4 was an unqualified "no." Therefore, a detailed answer to this question is not deemed necessary. However, as to the newly recruited peace officers who must meet the minimum standards of physical, mental and moral fitness and receive the training to be established by the commission, the method of enforcement may be found in S.B. 221, Chapter 362, Statutes of Nevada 1965, Sec. 5:

Unless otherwise provided by law, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, such regulations shall have the force of law and be enforced by all peace officers. In every instance, the power to adopt regulations to carry out the particular function is limited by the terms of the grant of authority under which the function was assigned. The courts shall take judicial notice of every regulation duly adopted and filed under the provisions of sections 7 and 8 of this act from the effective date of such regulation.

CONCLUSION

1. All persons recruited as peace officers must comply with the minimum standards of physical, mental and moral fitness.

Persons already employed as peace officers by cities, counties, or state agencies do not have to comply with the regulations since such regulations operate prospectively and not retrospectively.

2. Currently employed peace officers need not meet the requirements to be established by the commission when they transfer from one agency to another, unless they did not enjoy the status of peace officer prior to the transfer.

3. The commission may enforce its adopted regulations pursuant to the terms of S.B. 221, Chapter 362, Statutes of Nevada 1965.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

269 Mobile homes are taxable only at the domicile of the owner until they have acquired a factual permanent situs elsewhere.

Carson City, October 29, 1965

Honorable Joseph O. McDaniel, *District Attorney, Elko County, Elko, Nevada*

Dear Mr. McDaniel: Reference is made to your letter of October 13, 1965, wherein you state that several residents of Eureka County are employed by the State Highway Department and construction companies on construction projects in Elko County. These residents of Eureka County have moved mobile home to Elko County and reside therein during the duration of such construction projects. The mobile homes in question have been situated in Elko County prior to July 1, 1965, and continue to be located therein. The owners of such mobile homes have paid a personal property tax in Eureka County and are not being pressed by officials of Elko County to

pay a property tax in Elko County. You request the opinion of this office as to whether these mobile homes may be taxed in Elko County.

QUESTION

Does Elko County have the right or authority to assess and collect a personal property tax on mobile homes presently situated in Elko County where the owners thereof are domiciled in Eureka County and where their presence in Elko County is for the purpose of working on construction projects, upon which construction projects said owners are employed?

ANALYSIS

Chapter 217, Statutes of Nevada 1963, provides for the collection by county assessors of personal property taxes on mobile homes instead of the collection by the Department of Motor Vehicles of said personal property taxes on mobile homes.

The said Chapter 217, in Section 1, defines mobile home:

“Mobile home” means every trailer designed or equipped for living purposes.

The said Chapter 217, in Section 3(5), provides:

Notwithstanding the provisions of subsection 1, the department shall not collect the personal property tax on any mobile home. Such tax shall be collected by the county assessor as provided in Chapter 361 of NRS.

[NRS 361.505](#)(1) provides:

Each county assessor, when he assesses the property of any person or persons, company or corporation liable to taxation who does not own real estate within the county of sufficient value, in the county assessor’s judgment, to pay the taxes on both his or their real and personal property, shall proceed immediately to collect the taxes on the personal property so assessed. The person paying such taxes shall not be thereby deprived of his right to have such assessment equalized, and if, upon such equalization, the value is reduced, the taxes paid shall be refunded to such person from the county treasury, upon the order of the board of county commissioners, in proportion to the reduction of the value made. (Italics supplied.)

From the foregoing, it is now established that personal property taxes on mobile homes are assessed and collected by each county assessor, but it must first be established that the property of any person or persons, company or corporation is *liable to taxation within the county*; that is, that such property has acquired a legal situs for taxation within such county.

The maxim “*mobilia sequenter personam*” does not apply with respect to the taxation of tangible personal property. The taxable situs of movables is at the owner’s domicile except where such property has acquired a factual, permanent situs elsewhere.

It follows that the power of the domicile under that maxim is not abrogated in respect to property which may be temporarily absent from the domicile of the owner.

Brock & Co. v. Los Angeles County (Cal.), 65 P.2d 791.

Cream of Wheat Co. v. Grand Forks County (1920), 253 U.S. 325

In *Travis v. Dickey* (Okla. 1924), 222 Pac. 527, it was held that tank cars owned by a resident of Oklahoma and leased to an Oklahoma corporation, which used the cars for transporting its products out of the state, were taxable to the owner of the cars in the county of his domicile in Oklahoma, in the absence of a showing that the cars had acquired an actual permanent situs elsewhere.

The power and authority of the domicile to tax has been sustained with respect to construction machinery and implements temporarily employed in another state in construction work.

Brewster & Sons v. Borough of Bogota (N.J.), 90 Atl. 2d 58.
Capital Constr. Co. v. Des Moines (Iowa 1931), 235 NW 476.

This latter rule seems to be directly in point with the question under discussion. For in the last cited case, the court stated that because of the nature of such property, "it is not capable of acquiring an actual permanent situs in any particular state," other than the owner's domicile. As to the mobile homes in question, they are owned by residents of Eureka County, who have paid the tax thereon in that county, and they undoubtedly intend to return to Eureka County as soon as the Elko County job is completed.

Domicile of the owner is a most important and often the controlling factor. "It is prima facie the place of taxation. In the absence of statutes to the contrary, and of anything to show it has acquired an actual situs elsewhere, the general rule is that for the purpose of taxation all personal property has its situs at the domicile of the owner."

St. Louis v. Wiggins Ferry Co., 78 U.S. 423.
Re Adams (Iowa), 149 NW 531.

It must ever be borne in mind that all taxes are levied and collected under the authority of legislative acts; that while the State's power of taxation is plenary, that of its subdivisions is strictly limited within the legislative grant of power to assess and levy taxes.

Pac. T. & T. Co. v. Wooster (Wash.), 34 P.2d at p. 453.
Phoenix v. Arizona Sash & Door Co., 293 P.2d 438 (amended) 295 P.2d 854.
Sommers v. Patton (Ill.), 78 NE2d 313.
Texas Prud. Ins. Co. v. Dallas, 282 SW2d 723.

It should also be noted that what money shall be raised by taxation, what property shall be taxed, and the situs for taxation of moveables, and what exemptions shall be granted, rests exclusively with the Legislature, without any limitations except those imposed by the Constitution.

Greaves v. Houlton Water co. (Me.), 59 Atl.2d 217.

From the wealth of authorities in this field of law, it is patently clear that no political subdivision of a state has any taxing authority whatever except that expressly granted them by legislative acts.

The chaos that may result from a contest between counties over the right to tax is clearly demonstrated in the case of *Ashland Oil & Refining Co. v. Dept. of Revenue* (Ky.), 256 SW2d 359. In that case, 27 different counties along the Ohio and Mississippi Rivers attempted to tax the fleet of boats and barges operated by the plaintiff owner, or aliquot parts thereof. The court properly rejected all claims of the taxing authorities, except those in the domicile of the owner, and in which he had declared all said property for the purpose of taxation. In discussing the reason for their holding, the court said:

There is no statutory authorization for allocating tangible personal property of a resident taxpayer among several counties and taxing districts where the property has acquired no permanent situs in a county other than the residence of the taxpayer * * *. If an apportionment method is desirable to the time honored procedure which has been followed in the past, it is a matter for legislative rather than administrative or judicial correction.

One may well ask the question, what is permanent? Or when does personality lose its temporary existence and acquire a permanent situs for tax purposes in a county other than that of the owner's domicile?

In many cases, those questions may pose perplexing problems for the courts; the question would in each case be one of fact. However, in the instant case, the nature of the moveables sought to be taxed furnishes aid in the solution of the problem.

As in the Brewster and Des Moines cases involving construction equipment, it seems apparent that the intention of the owners of the mobile homes as soon as the highway project in Elko County is completed, is to return with them to the county of the owner's residence, namely Eureka County. It is our considered opinion that, in this matter, the period of time the mobile homes remain in Elko County is not controlling; for clearly the owners thereof intend to keep the mobile homes in Elko in order to live in them only until the highway project is completed and no longer. How then can it be said that they have acquired a tax situs in Elko County? The fact that the moveables were physically in Elko on critical tax dates, has no controlling effect either; they simply were nonexistent in Elko for tax purposes. This is something akin to unweaned calves and lambs; for until they are weaned, they simply do not exist as far as taxes are concerned. (See: Attorney General's Opinion No. 110, February 11, 1964.)

In a leading Nevada case, *Barnes v. Woodbury*, [17 Nev. 383](#), the court said:

The revenue laws are framed with the idea that there should be a harmonious system to govern and control cases of this character.

The facts of the case were as follows:

Plaintiff resided in Eureka and was the owner of a large number of cattle which he wintered on his home place in Eureka County. From April 1, 1881, to November 1, 1881, he permitted them to graze upon public domain in White Pine County, where he owned no real property, and also in Eureka county, where his home ranch was located. While the cattle were grazing within White Pine County during the assessable period, they were assessed by the assessor of that county. The court answered White Pine's contention by saying: "The mere fact that at the time of the assessment they were grazing within the boundaries of White Pine county, and at various times did so graze during the assessing season, does not necessarily determine that the cattle were within said county for the purpose of taxation. * * * They (the cattle) were not abiding within, nor did they belong in, White Pine County, in such a sense as to become incorporated with the wealth of that county, or to make them a part of its personal property."

The property was, in the eye of the law, within Eureka County for the purpose of taxation, because it belonged there, and it was so situated "as to make it a part of the wealth of that county." Citing: *Conley v. Chedic*, [7 Nev. 336](#).

See also: *Ford v. McGregor*, [20 Nev. 446](#), and *Whitmore v. McGregor*, [20 Nev. 451](#), stating the same rule of law.

Further citations would serve only to lengthen this opinion. We are convinced after thorough research that the foregoing opinion correctly expresses the law applicable to the matter discussed.

CONCLUSION

It is the considered opinion of this office that Elko County does not have the right or authority to assess and collect a personal property tax upon the mobile homes referred to in your letter of October 13, 1965.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

270 Municipal Ordinances—A proposed ordinance that would prohibit use of all sewer meters in connection with the City of Sparks Sewage System, including those already in use

under authority of a prior ordinance, would be contrary to the provisions of both the United States Constitution and the Nevada Constitution prohibiting impairment of contracts.

Carson City, October 26, 1965

David B. Henry, *City Manager, City Hall, 222 12th Street, Sparks, Nevada*

STATEMENT OF FACTS

Dear Mr. Henry: Home owners and business establishments in the City of Sparks, Washoe County, Nevada, have been for many years, pursuant to municipal ordinance, assessed charges for city sewage service on the basis of measurements made by flow devices or meters. Under the City of Sparks Sewer Financing Act (Chapter 124, Statutes of Nevada 1963), issuance of general obligation bonds was authorized for the purpose of improving, extending, and bettering the city's sewer system. The act authorized the collection of tolls for furnishing sewer service, with the restriction that such tolls be reasonable and uniform for the same type, class and amount of service, and gives the city council the alternative of basing toll rates upon either, (1) measurements by sewage flow devices, or (2) any one or a combination of factors existing in connection with the use of the property served, such as the amount of water consumed, number of water outlets, number and kind of plumbing or water fixtures, number of persons using the service, and others. All tolls collected under the acts must be applied toward diminishing the amount necessary annually for retiring the bonds.

The city council presently has under consideration the enactment of an ordinance prohibiting the use of all sewer meters in connection with the city's sewer system. This gives rise to certain questions, including those hereinafter stated and which this office is asked to resolve.

QUESTIONS

1. Is the Sparks City Council empowered to enact an ordinance providing for the prohibition, both prospective and retroactive, of all sewer meters used in connection with the city's water system?
2. Is the city council legally authorized to require the discontinuance of all water meters now in use in the system, and also to prohibit their future use?

ANALYSIS

As to what constitutes a retroactive law or an ordinance, the United States Supreme Court, in *Society v. Wheeler*, 2 Gall. 105, (Federal Case No. 13156), an early case said:

Upon principal every statute which takes away or impairs vested rights acquired under existing laws or crates a new obligation, imposes a new duty, or attaches a new liability in respect to transactions or considerations already past, must be deemed retrospective.

Measured by this definition which has been widely adopted by courts throughout the United States, the proposed ordinance would undoubtedly be retroactive in effect. Under both the United States Constitution and the constitutions of all the states, rights incident to contracts may not be impaired without due process of law (See Article I, Section 10, Paragraph 1, United States Constitution; Article I, Section 15, Nevada Constitution). Through the oratorical presentation of Daniel Webster in the famous Dartmouth College Case, this constitutional guaranty was brought to life and significance in American jurisprudence where it has since been upheld and cherished. And by reason of its existence, vested rights that have been created by a lawfully and duly enacted ordinance cannot constitutionally be disturbed without due process of law. McQuillin, *Municipal Corporations*, 3rd Edition, Volume 5, Section 1919, Page 524. Neither may an ordinance under which the vested right is claimed be repealed so as to deprive one of his property, impair the obligation of his contract, unreasonably discriminate against him, or

otherwise violate his constitutional rights. McQuillin, *Municipal Corporations*, 3rd Edition, Volume 6, Section 21.15, page 196.

An existing ordinance under which a vested right was created may be disturbed by modification or repeal without violating the aforementioned constitutional guaranty, only when the right to do so was reserved in the existing ordinance, or is done in the proper exercise of the police power, or by and with the consent of the person or persons claiming the right. McQuillin, *Municipal Corporations*, 3rd Edition, Volume 6, Section 21.06, Page 185; 63 CJS 837, Section 1158.

A reading of the city ordinance currently in effect with reference to the use of sewer meters shows that it fails to reserve any right to repeal that particular provision, nor is there any evidence or indication that those authorized by the ordinance to use such meters ever agreed to repeal of the provision. Whether its repeal would be a proper exercise of police power is a question of both law and fact.

Police power has been variously defined by courts of different jurisdictions. Perhaps none of the definitions given it have been absolutely complete or accurate because of ever changing conditions. In *State v. Cromwell*, 9 NW 2d 914, (ND), the term was generally defined as follows:

The “police power” is that power inherent in every sovereignty to govern men and things under which the legislature may, within constitutional limitations, prohibit all things hurtful to the comfort, safety, and welfare of society and prescribed regulations to promote the public health, morals, and safety, and to add to the general public convenience, prosperity and welfare.

It is apparent from the above quoted definition, and which is well borne out by numerous other authorities, that “police powers” must be confined to the regulation of those matters chiefly which promote and protect the safety, morals, health, welfare, and general convenience of the public. In the opinion of this office, the prohibition of the use of sewer meters in the city’s sewage system would not contribute in any way to any of these. At most, it appears that such prohibition could accomplish no more than effect uniformity in the method of measuring the sewage flow upon which the schedule of toll rates is based. This falls far short of promoting or protecting the welfare, health, safety, morals, etc., of the public, as we see it.

Although the act, in Section 14, sets forth that its passage is necessary to secure and preserve the public health, safety, convenience, and welfare of the people of the State of Nevada, and makes it mandatory that it be liberally construed to effect its purpose, nevertheless, the legislature apparently had in mind the possibility of vested rights created pursuant to prior statutes and ordinances and fully provided for their protection. This is evident from Section 10 of the act which reads in part:

. . . the powers conferred by this act shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this act shall not affect the powers conferred by any other law. No part of this act shall repeal or affect any other law or part thereof, it being intended that this act shall provide a separate method of accomplishing its objective and not an exclusive one, and this act shall not be construed as repealing, amending or changing any such other law.

CONCLUSION

Based upon the great mass of law on the subject of retroactive statutes and ordinances, of which those authorities hereinabove cited constitute but a very few, this office is in full accord with the opinion of the Sparks City Attorney, dated September 17, 1965, to the effect that the proposed ordinance would be unconstitutional. Further, it is our opinion that: (1) The Sparks City Council is without authority to enact an ordinance prohibiting the further use of sewer meters already connected to its sewage system, but may prohibit their use by ordinance as to all properties which may in the future be served by the system, and (2) The Sparks City Council is without legal authority to require discontinuance of those meters presently in use in connection

with its sewage system, nor under existing law and/or stated conditions, to prohibit their future use.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: C.B. Tapscott, *Chief Assistant Attorney General*

271 Taxation—Refund allowed on motor vehicle fuel tax for off-highway use limited to fuel consumed in commercial aircraft only.

Carson City, October 27, 1965

Mr. Robert L. Lawless, *Secretary, Nevada Tax Commission, Carson City, Nevada*

Dear Mr. Lawless: Reference is made to your letter of September 16, 1965, requesting the opinion of this office as to whether the provisions of A.B. 255, Section 13, now Chapter 435, Section 13, Statutes of Nevada 1965, require that refunds be allowed for fuel consumed in aircraft used for other than commercial purposes.

Chapter 435, Section 13 (A.B. 255, Section 13), Statutes of Nevada 1965, provides:

The tax derived from motor vehicle fuel used in aircraft shall be distributed after payment of refund claims for fuel consumed in commercial aircraft as provided in [NRS 365.370](#) and [494.043](#) in the following manner: * * *.

[NRS 365.370](#) provides:

Any person who shall export any motor vehicle fuel from this state, or who shall sell any such fuel to the United States Government for official use of the United States Armed Forces, or who shall buy and use any such fuel for purposes other than in and for the propulsion of motor vehicles, and who shall have paid any tax on such fuel levied or directed to be paid as provided by this chapter, either directly by the collection of such tax by the vendor from such consumer or indirectly by the addition of the amount of such tax to the price of such fuel, shall be reimbursed and repaid the amount of such tax so paid by him.

[NRS 494.043](#) provides:

1. Claims for refunds of taxes paid on fuels used as aviation fuels shall be made within the time and in the manner provided in [NRS 365.370](#) to [365.440](#), inclusive.

2. Notwithstanding the provisions of [NRS 365.430](#), all such claims shall be paid from the aviation fuels tax refund account upon claims presented by the Nevada tax commission, approved by the state board of examiners and allowed and paid as other claims against the state are paid.

You state that A.B. 255, as originally introduced, contained the following provision in Section 5, Subsection 5:

No refund of motor fuel taxes shall be made for off-highway use of motor vehicle fuel consumed in aircraft, other than commercial aircraft.

The Legislature, in final passage of A.B. 255, deleted Section 5, Subsection 5, and passed the bill containing Section 13 hereinabove set forth.

You further state that it is your understanding that the intent of the Assembly Committee was to provide refunds for motor fuel consumed in all aircraft.

The definition of "commercial aircraft" for refund purposes as adopted by the Nevada Tax Commission is as follows:

An aircraft is a commercial aircraft, for refund purposes, if it is employed for financial profit, and the direct primary use and aim is for this purpose. The refund claimant must be the actual consumer of the motor vehicle fuel.

The use of an aircraft for transportation to facilitate a user's business, which is unrelated to the profit derived from the use of the aircraft is not such a use as to place the aircraft within the definition of commercial aircraft for refund purposes.

The burden of proof as to whether aircraft use is commercial or noncommercial, as defined by the Nevada Tax Commission, shall rest on the refund claimant.

If the use of an aircraft is dual, that is commercial and noncommercial the refund claimant must maintain records, satisfactory to the Nevada Tax Commission, to show the purpose of each flight in order to substantiate his claim for refund on fuel used in commercial flights.

QUESTION

Does the provision outlined in Chapter 435, Section 13, require that refunds be allowed for fuel consumed in aircraft used for other than commercial purposes?

ANALYSIS

The question which your request actually presents is whether motor vehicle fuel taxes for motor vehicle fuel consumed in any aircraft are subject to refund. The statute in question provides for refund of motor fuel taxes for fuel consumed in commercial aircraft and thus the question must be resolved on the meaning of the word "commercial."

Black's Law Dictionary defines "commercial" as relating to or connected with trade or commerce in general. Webster's Dictionary defines "commercial" as of or pertaining to commerce mercantile, having profit as a primary aim.

The word "commercial" may be defined as of or pertaining to commerce, having financial profit as a general aim. *City of Anchorage v. Berry*, 145 F.Supp. 868.

Ordinarily, the word "commercial" as used in a statute should be declared by the court to mean that which the Legislature had in mind by use of the word in the particular statute. *Colorado Contractors Association v. Public Utilities Commission*, 269 P.2d 266.

The authorities, hereinabove set forth, leave no doubt that when the statute specifies that no refund of motor vehicle fuel taxes shall be made for off-highway use of motor vehicle fuel consumed in aircraft other than commercial aircraft, it means commercial aircraft only and not a refund for motor fuel consumed in any or all aircraft. The provision applies to commercial aircraft only.

The inquiry herewith states that it was the understanding that the intent of the Assembly Taxation Committee was to provide refunds for motor fuel consumed in all aircraft. Consideration of the legislative intent in this instance is completely unnecessary since the language of the statute is clear and unambiguous.

Crawford, in his treatise on Statutory Construction, states on page 249:

* * * when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The court should seek to carry out this purpose rather than to defeat it. *Of course, if the language is unambiguous and the statute's meaning is clear, the statute must be accorded the express meaning without deviation* since any departure would constitute an invasion of the province of the legislature by the judiciary. (Italics supplied.)

It thus may be reiterated, that consideration of legislative intent may not be determined except by the express wording of the statute where the language of the statute is clear and unambiguous. Only the Legislature could make any changes in this statute authorizing refunds for fuel consumed in all aircraft.

CONCLUSION

The provision outlined in Chapter 435, Section 13, Statutes of Nevada 1965, does not require that refunds be allowed for fuel consumed in aircraft used for other than commercial purposes.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Gabe Hoffenberg, *Chief Deputy Attorney General*

272 Public Employees Retirement Act, Chapter 286, Nevada Revised Statutes, [NRS 286.470](#) Interpreted—Time spent as mayor of a city incorporated under the general corporation laws, Chapter 266 NRS, cannot be credited for purposes of participation in State Retirement System.

Carson City, October 27, 1965

Mr. Kenneth Buck, *Executive Secretary, Public Employees Retirement Board, Carson City, Nevada 89701*

Dear Mr. Buck: You have furnished this office with the following facts:

A hypothetical person became mayor of a city on June 15, 1957, and continued in such position to 1965.

You request an opinion as to whether or not such a person may receive retirement credit for his 8 years as mayor of the city.

If he is to qualify, he must have done so under [NRS 286.470](#), which was the law prior to July 1, 1965, and which reads as follows:

1. Notwithstanding the provisions of [NRS 286.320](#), service in the capacity of a member of the legislature, as a commissioner of a county participating in the system, or as a councilman of an incorporated city participating in the system, shall be service to be credited for retirement under this chapter * * *.

ANALYSIS

In terms of the above, then, the mayor in question must have been a member of the council in order to benefit under the Public Employees Retirement Act.

The general rule is to be found in 37 Am.Jur. "Municipal Corporations," § 58, page 671, and § 62, page 675.

Section 58, page 671:

When the statutes provide that the mayor shall preside at meetings of the municipal council, he is a constituent part of the council for certain purposes, and he sits and acts therein, but he is not in any sense a member of the council unless the statutes expressly so provide.

Section 62, page 675:

The fact that a statute or charter gives the mayor the right to cast the deciding vote in case of a tie does not of itself make him a member of the council for any other purpose. On the other hand, where an official is made a member of the council by its charter or statute, the fact that he is given the right to vote only in case of a tie does not affect his membership.

To illustrate the theory as set out in Am.Jur., the present charter of the city, Chapter 240, Statutes of Nevada 1965, beginning at page 438, provides:

Article I, Sec. 1(4) "Councilman" refers to each member of the city council including the mayor * * *.

Article V, Sec. 12(1) The mayor shall be: * * *

(d) A member of the council.

Article V, Sec. 12(2) The mayor shall: * * *

(e) Have no administrative duties.

Article VI, Sec. 14(1) The legislative power of the city is vested in a city council consisting of the mayor and four councilmen.

We conclude then that the present "mayor" under the city manager type of government, as adopted in the 1965 charter of the city, is by statute expressly made a part of the city council and is entitled to participate in the State Retirement System.

Under the general law for the incorporation of cities, Chapter 266 NRS, the mayor was not a part of the city council, and is, therefore, deprived of the privilege as mayor of receiving credit for 8 years of service for purposes of participation in the State Retirement System. The equities here suggest legislative action.

CONCLUSION

Time spent as mayor of an incorporated city participating in the Public Employees Retirement Act, Chapter 286, Nevada Revised Statutes, prior to July 1, 1965, cannot be credited for the purposes of participation in the State Retirement System unless he is made a member of the council by its charter or by statute.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Donnell Richards, *Deputy Attorney General*

273 Board of Trustees of Lincoln County School District, Powers and Duties; Chapter 393, "School Property," [NRS 393.080](#), [NRS 393.120](#), and [NRS 393.130](#) Interpreted—Trustees are ministerial officers and as such must look to the statutes for their powers and duties. Statutes do not empower trustees to equip and build school buildings themselves; hence, it is not permissible.

Carson City, October 29, 1965

Honorable Roscoe H. Wilkes, *District Attorney, Lincoln County, Pioche, Nevada*

Dear Mr. Wilkes: You have requested an opinion respecting which you have outlined the statement of facts and question as follows:

The Board of Trustees of Lincoln County School District in furtherance of its building program has issued and sold, in conformity with the statutes, negotiable coupon bonds and the proceeds of the sale are now available for the purpose of constructing the proposed

improvements. The moneys so made available, however, have proved insufficient, giving rise to the problem as set out in your letter as follows:

QUESTION

After having twice legally invited and opened bids for the construction of school buildings and other facilities, and after twice having received no bid within the available money, may the board of trustees of a county school district construct school buildings and other school facilities, using moneys obtained from the sale of general obligation bonds, by force account?

ANALYSIS

We will look first at the background material, considering (a) the power of the Legislature, and (b) the duties of the school board, including its power to make contracts, and then (c) the statutes which apply.

(a) The Legislature: 47 Am.Jur., "Schools," § 7, p. 300, sets out:

Power and Duty of Legislature. Very generally, the legislature is required by constitutional provisions to provide a school system whereby all children may receive an education. These provisions vary somewhat, but commonly require the legislature to provide a general and uniform system of common schools, * * *. Under these provisions, or indeed even in their absence, the establishment and regulation of public schools rest primarily and completely with the legislative department, and all school authorities are created by and are subordinate to the legislative will. (See, generally, Nevada Constitution, Art. 11, Sec. 2.)

(b) The School Board: Continuing from 47 Am.Jur., "Schools," we read the following: section 29, p. 316:

Generally; Nature of Office. The affairs of schools and school districts are usually entrusted to state or local officers variously known as superintendents, trustees, directors, and the like. In some jurisdictions, boards of education are public corporations, created by statute for public educational purposes. * * * Doubtless, in many instances, in the performance of their duties they may exercise a discretion or judgment quasi-judicial in character, but they are to judicial officers within the meaning which that term generally has, nor are they executive officers, *but they are "ministerial" officers* * * *. (Italics supplied.)

Section 13, p. 306:

Powers and Duties. School districts have been declared corporations of the most limited powers known to the law. All who deal with them are charged with notice of the scope of their authority. It may be generally stated that the powers of school districts are only those which are expressly conferred or are implied as necessary to the carrying out of declared objects and purposes. Such powers are, of course, subject to the complete control of the legislature, which may increase, modify, or abrogate them at will in the exercise of its general authority to establish and regulate the public-school system.

Section 48, p. 329:

* * * Subject to the general limitation that school districts have only such powers that the statutes confer expressly or by necessary implication, school districts may make contracts. And school directors or trustees, being agents of the district, within the limits of their powers may bind the district by contract. * * *

Section 48, p. 399:

* * * Persons dealing with the school district are chargeable with notice of the limitation on its power to contact. * * *

Trustees, or members of boards of education, then, are ministerial officers, who perform ministerial duties, which duties have been defined in Black's Law Dictionary as: "One regarding which nothing is left to discretion—a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist."

(c) The statutes which apply specifically to the problem at hand appear in Chapter 393 NRS, under the heading "School Property," and are as follows:

[NRS 393.080](#):

The board of trustees of a school district shall have power:

1. To build, purchase or rent schoolhouses and other school buildings, including but not limited to teacherages, gymnasiums and stadiums, and dormitories and dining halls as provided in [NRS 393.090](#).

[NRS 393.120](#):

Whenever the board of trustees of a school district decides to erect a new school building which is to cost more than \$1,000, or to repair, alter or add to any existing school building, which repair, alteration or addition is to cost more than \$1,000, and approval of the plans, if required, has been obtained as provided in [NRS 393.110](#), the board of trustees shall, for the purpose of securing bids, publish at least once a week for 2 weeks in some newspaper of general circulation published in the school district, or, if there is no such newspaper, then in some newspaper of general circulation circulated in the school district, a notice calling for bids, stating the work to be done, or materials or supplies to be furnished, and the time when and the place where bids will be opened.

[NRS 393.130](#):

1. In all cases where more than \$1,000 is to be expended upon the erection of any school building, or upon the repair, alteration or addition to any school building, the board of trustees shall award the contract for such work to the person making the lowest and most satisfactory firm offer for the work.

2. After the procedure for notice calling for bids, as provided in [NRS 393.120](#), has twice been followed, if no satisfactory bid is received, the board of trustees may receive proposals and enter into a contract on the basis of such proposals for the construction or repair of, alteration of or addition to the school building on a cost-plus-a-fee basis, without further notice calling for bids.

A careful reading of the above statutes reveals the exact procedure which the board of trustees must follow. Your question indicates you have "twice legally invited and opened bids * * * and have received no bid within the available money." Your present situation is then governed by [NRS 393.130](#) and leaves you but one alternative: "* * * if not satisfactory bid is received, the board of trustees may receive proposals and enter into a contract on the basis of such proposals for the construction or repair of, alteration of or addition to the school building on a cost-plus-a-fee basis, without further notice calling for bids."

CONCLUSION

Trustees, or members of boards of education, or member of boards of trustees, by whichever name or names they may be designated, are ministerial officers and must look to the applicable statutes for their powers and duties. Those statutes in the case at hand do not empower trustees to equip and build school buildings themselves; hence, it is not permissible.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Donnell Richards, *Deputy Attorney General*

274 Public Officers—An executive or administrative officer employed by a political subdivision of Nevada, who is convicted of a felony while so employed, is forever banned from holding any public office in this State.

Carson City, October 29, 1965

Mr. James F. Wittenberg, *State Personnel Administrator, Carson City, Nevada*

Dear Mr. Wittenberg: You have requested of this office a determination as to whether a public officer employed by any political subdivision of this State who pleaded “guilty” to a felony involving the disposition of public property, could at some time subsequent to such plea be employed in the State of Nevada in a public office.

ANALYSIS

[NRS 197.230](#) reads as follows:

Conviction of public officer forfeits trust. The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state.

On March 4, 1921, the Attorney General of Nevada held in Opinion No. 7, that a convict receiving a pardon was restored to full civil rights and could be employed as constable in Nye County.

Numerous authorities are cited in support of this determination. However, in the cases cited, the person committing the offense was not at the time of the offense a public officer.

[NRS 283.440](#) provides for removal of public officers for malfeasance or nonfeasance in office. In Attorney General’s Opinion No. 236 dated October 28, 1918, this office held that removal under this statute did not constitute conviction of a felony, and that therefore one who had been so removed was not disbarred from becoming a candidate for or from holding a public office. While not applicable in the case cited in your letter, it is included herein for your future guidance.

Our Legislature adds to the penalty imposed as a result of the criminal law, the penalty of forfeiture of office and disqualification from ever afterward holding any public office in its State. The words, “ever afterward” brook of no other interpretation than that regardless of a pardon subsequent to conviction, the offender cannot hold public office in Nevada for the rest of his natural life.

In Chapter 197 NRS, a public officer is defined as an executive or administrative officer (See [NRS 197.090](#)).

CONCLUSION

It is therefore the opinion of this office that an executive or administrative officer employed by a political subdivision of Nevada who is convicted of a felony while so employed, is forever barred from holding any public office in this State.

Respectfully submitted,

275 Any city or political subdivision of the State of Nevada may purchase negotiable interest-bearing United States Treasury or Federal Agency securities for their account and keep such securities with the out-of-state purchasing bank for safekeeping under certain conditions herein specified.

Carson City, October 29, 1965

Mr. James A. Callahan, *City Attorney, City of Winnemucca, Professional Building, Winnemucca, Nevada*

Dear Mr. Callahan: Reference is made to your letter of October 20, 1965, wherein you request the opinion of this office as to whether the City of Winnemucca may take advantage of the offer and method proposed by a local bank to the end that a maximum amount of interest may be obtained pending the use of this money for the construction of sewage facilities, which money is now on deposit with the local bank in Winnemucca, Nevada. The local bank has offered the city a method whereby the city may purchase U.S. Treasury securities, so that this money may draw a maximum amount of interest until required for payment of the construction of the sewer facilities.

The method to be followed is as follows:

1. The municipality decides how much money it would like to invest and for what period of time and what security to purchase in order to best fit its needs at that time.
2. The treasurer, city manager or other authorized official calls the bank and requests that the bank purchase the U.S. Treasury or Federal Agency security for *their* account and to charge the cost for these securities to their account with the bank.
3. The bank then calls a recognized government bond dealer in New York or San Francisco and purchases the desired securities in the *name* of the municipality, as a customer of the bank.
4. The securities are then held in safekeeping for the county or city in the same city as where they were purchased in order to eliminate the high insurance cost of mailing *negotiable* securities. The safekeeping arrangement is transacted with the local bank's major correspondent bank in that city. The municipality then receives a safekeeping receipt from the New York bank showing that the securities are being held for *their* account as a customer of the local bank. This is also confirmed in a followup letter from the local bank to the county or city treasurer showing that these securities belong to that municipality, *not* the bank.
5. When these securities reach maturity, or are sold prior to maturity by authorization of the county or city official, the proceeds from this redemption or sale are credited to the public entity's account with the bank. The public official authorizes such prior sale by a telephone call to the local bank and a followup letter.
6. All coupons on the securities being held in safekeeping are clipped on their appropriate due dates and the interest is credited to the municipality's account at the local bank.

QUESTION

May the City of Winnemucca, or any political subdivision of the State of Nevada, purchase negotiable interest-bearing United States Treasury or Federal Agency securities for their account and keep such securities for safekeeping with the out-of-state purchasing bank for the account of the City of Winnemucca, or any political subdivision of the State of Nevada, in order to eliminate the high insurance cost of mailing said securities back and forth from the purchasing bank to the City of Winnemucca, or any political subdivision of the State of Nevada, and in order to earn interest on such funds until the time it is necessary to use such funds for the purpose designated for its use?

ANALYSIS

There is no problem as to the authority of the City of Winnemucca, or any political subdivision of the State of Nevada, to purchase United States Treasury or Federal Agency securities. This authority is contained in [NRS 355.170](#), wherein it is provided:

1. A board of county commissioners or the governing body of an incorporated city may purchase:

(a) Bonds and debentures of the United States, the maturity dates of which shall not extend more than 10 years from the date of purchase;

(b) Farm loan bonds, consolidated farm loan bonds, debentures, consolidated debentures and other obligations issued by federal land banks and federal intermediate credit banks under the authority of the Federal Farm Loan Act, 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021 to 1129, inclusive, as now or hereafter amended, and bonds, debentures, consolidated debentures and other obligations issued by banks for cooperatives under the authority of the Farm Credit Act of 1933, 12 U.S.C. §§ 1131 to 1138e, inclusive, as now or hereafter amended;

when, in the opinion of the board of county commissioners or the governing body of the city, there are sufficient moneys in any fund or funds in such county or city, the use of which for the purpose of purchasing the type of bonds herein referred to will not result in the impairment of such fund or funds for the purposes for which the same were created.

2. When the board of county commissioners or governing body of the city has determined that there are available moneys in any fund or funds for the purchase of bonds as set out in subsection 1, such purchases may be made and the bonds paid for out of any one or more of the funds, but the bonds shall be credited to the funds in the amounts purchased, and the moneys received from the redemption of such bonds, as and when redeemed, shall go back into the fund or funds from which the purchase money was taken originally.

While it has already been determined that a city or a political subdivision of the state may purchase United States Treasury or Federal Agency securities, nevertheless consideration must be given to whether or not the keeping of such securities for safekeeping with an out-of-state bank is authorized under the provisions of the Nevada Revised Statutes.

The provisions for the deposit of city funds and county funds in banks and the location of such banks within the state are provided in [NRS 266.515](#) and [NRS 356.120](#). [NRS 266.515](#) provides:

1. The treasurer, or the county treasurer when acting as ex officio city treasurer, *shall keep all money belonging to the city* separate and distinct from all other moneys held by him for any other purpose or fund whatsoever, and may, when a private or an incorporated bank is located in such city, deposit, with unanimous consent of his bondsmen, *city funds in such bank or banks upon open account*. When no such bank or banks exist in such city, he may deposit, with the unanimous consent of his bondsmen, city funds with any private or incorporated bank in the State of Nevada. (Italics supplied.)

2. Such accounts shall be kept in the name of the city in such manner as the governing board of the city may prescribe and under such terms and conditions for the protection of the funds as the governing board may determine, not inconsistent with other laws of the State of Nevada regulating the deposit of public funds.

3. The balances in banks, as certified to by the proper officer thereof, and by the oath of the city treasurer, may be counted as cash.

[NRS 356.120](#) provides:

With unanimous consent of his bondsmen, a county treasurer may:

1. When a private or an incorporated bank is located at the county seat, *deposit county funds in such bank or banks upon open account*. (Italics supplied.)

2. When no such bank or banks exist at the county seat, deposit county funds with any private or incorporated bank in the State of Nevada.

[NRS 266.515](#) provides that city funds shall be deposited in a bank or banks located in the respective city, or if no bank exists in the respective city, then in any bank in the state upon open account; and [NRS 356.120](#) provides that county funds may be deposited in a bank located at the county seat, or if no bank exists at the county seat, then in any bank located in the State. The statutes set forth above provide for the deposit of funds on open account, whereas our question herein concerns the deposit of United States Treasury and Federal Agency securities purchased in the name of the city or political subdivision of the state with an out-of-state bank merely for safekeeping and for the convenience of the city or political subdivision of the state.

Where the United States Treasury or Federal Agency securities are held for safekeeping in an out-of-state bank for the account of the city or political subdivision of the state, with the city or political subdivision of the state having the exclusive and unconditional ownership and control of said securities, such deposit for safekeeping for the convenience of the city or political subdivision is not prohibited by our statutes.

CONCLUSION

The City of Winnemucca, or any political subdivision of the State of Nevada, may purchase negotiable interest-bearing United States Treasury or Federal Agency securities for their account and keep such securities for safekeeping with the out-of-state purchasing bank for the account of the City of Winnemucca, or any political subdivision of the State of Nevada, in order to eliminate the high cost of mailing such securities back and forth from the purchasing bank to the City of Winnemucca, or any political subdivision of the State of Nevada, in order to earn interest on such funds until the time it is necessary to use such funds for the purpose designated for its use, provided the City of Winnemucca, or any political subdivision of the State of Nevada, retains exclusive and unconditional ownership and control of said securities.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Gabe Hoffenberg, *Chief Deputy Attorney General*

276 Financial Support of the School System, [NRS 387.045](#)—Article XI, Sections 2 and 10 of the Constitution of the State of Nevada interpreted as they relate to Section 205(a)(1) of Public Law 89-10 cited as “Elementary and Secondary Education Act of 1965.” State Department of Education may accept the funds appropriated by the Congress of the United States for the implementation of the Elementary and Secondary Education act of 1965, and make such funds available to the school districts providing the moneys are designated as federal moneys and kept in separate funds so their expenditure can be identified at any time.

Carson City, November 5, 1965

Mr. Byron F. Stetler, *Superintendent of Public Instruction, Department of Education, Carson City, Nevada 89701*

Dear Mr. Stetler: You have requested an opinion from this office regarding the following question:

Will it be possible for the State Department of Education to accept the funds appropriated by the Congress of the United States for the implementation of the Elementary and Secondary Education act of 1965, and make such funds available to the school districts, providing the

moneys are designated as federal moneys and kept in separate funds so their expenditure can be identified at any time?

ANALYSIS

The explanatory material which you have furnished in detail indicates that the problem evolves from and requires an interpretation, as viewed in terms of Article XI, Sections 2 and 10 of the Constitution of the State of Nevada, [NRS 387.045](#), of Public Law 89-10, which may be cited as “Educational and Secondary Education Act of 1965.” The portions of the federal act to be discussed are:

Section 205(a)(1):

Section 205(a)—A local educational agency may receive a basic grant or a special inactive grant under this title for any fiscal year only upon application therefor, approved by the appropriate state educational agency, upon its determination (consistent with such basic criteria as the Commissioner may establish).

(1) That payments under this title will be used for programs and projects * * * (a) which are designed to meet the special educational needs of educationally deprived children in school attendance areas having high concentrations of children from low-income families * * *;

(2) That, to the extent consistent with the number of educationally deprived children in the school district of the local educational agency *who are enrolled in private elementary and secondary schools*, such agency has made provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate. (Italics supplied.)

In order then for “a local educational agency” to receive the financial benefits made available by the act, it must make provision for “. . . educationally deprived children . . . who are enrolled in private elementary and secondary schools (such as dual enrollment, educational radio and television, and mobile educational services and equipment) . . .”

This requirement may easily result in a violation of Article XI, Sections 2 and 10 of the Constitution of the State of Nevada, [NRS 387.045](#) (and also of Section 4 of Article I of the United States Constitution).

Briefly, Article XI, Sections 2 and 10, and [NRS 387.045](#) provide:

Section 2. Uniform System of Common Schools, The legislature shall provide for a uniform system of common schools by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Section Ten. No Public Funds to be used for Sectarian Purposes. No public funds of any kind or character whatever, State, County, or Municipal, shall be used for sectarian purpose.

[NRS 387.045](#) Restrictions on the use of Public School Moneys.

1. No portion of the public school funds or of the money specially appropriated for the purpose of public schools shall be devoted to any other object or purpose.

2. No portion of the public school funds shall in any way be segregated, divided or set apart for the use or benefit of any sectarian or secular society or association.

The above was held to be basic law in this jurisdiction in *State of Nevada v. Hallock*, [16 Nev. 373](#), decided in January of 1882, denying the claim of the Nevada orphan asylum for money under the act “for the relief of the several orphan asylums of this state” (Statutes of Nevada, 1881, p. 122) on the ground that the money would be used “for the relief and support of a sectarian institution, and in part, at least, for sectarian purposes . . .”

This basic concept has been reiterated and amplified most recently in Attorney General’s Opinion No. 209 (9-12-56), No. S-16 (12-31-62) and No. 67 (9-5-63). It is forbidden, to

paraphrase the Constitution and statutes, to allow instruction of a sectarian character; to use for sectarian purposes public funds, State, county or municipal; to segregate, divide or set apart for the use or benefit of any sectarian or secular society or association any portion of the public school funds.

As a practical matter, we must, quoting from the Hallock case, p. 388, “. . . separate the legitimate use (of funds) from that which is forbidden.” After an examination of the authorities, nothing is to be found therein which indicates any ground upon which this office should not be in agreement with the procedure you have outlined in your letter of October 4, 1965.

CONCLUSION

The State Department of Education may accept the funds appropriated by the Congress of the United States for the implementation of the Elementary and Secondary Education Act of 1965, and make such funds available to the school districts providing the moneys are designated as federal moneys and kept in separate funds so their expenditure can be identified at any time.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Donnell Richards, *Deputy Attorney General*

277 Limited partnerships; Offering of Limited partnerships for Sale—The sale of limited partnership interests to more than 24 persons necessitates registration with the Secretary of State in accordance with the provisions of [NRS Chapter 90](#).

Carson City, November 12, 1965

Honorable John Koontz, *Secretary of State, Carson City, Nevada*

STATEMENT OF FACTS

Dear Mr. Koontz: You have requested from this office an opinion based upon the following:

It has come to the attention of your office that there are certain limited partnerships which propose to operate in the State of Nevada and desire to sell partnership interests to more than 24 persons. These partnerships are questioning the right of the Secretary of State to have them comply with [NRS Chapter 90](#) which provides that they would have to register as sellers of securities.

QUESTION

Does the sale of more than 24 limited partnership interest require the persons selling the interests to register with the Secretary of State in accordance with the provisions of Chapter 90 of NRS?

ANALYSIS

[NRS 90.070](#) defines the persons who are to register under the act. A partnership, an association, and unincorporated organizations are among those listed in the definition of persons who are to register if the other requirements of the statute apply.

[NRS 90.060](#) states that an issuer is any person who issues or proposes to issue a security. Certain exceptions are set forth which do not apply to limited partnership interests.

The principal question centers around the interpretation of [NRS 90.090](#) which is set forth as follows:

1. “Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-

trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .

It is noted that a limited partnership interest is not included in the definition of a security. However, is such a partnership interest a certificate of interest or participation in any profit-sharing agreement, or it is an investment contract?

In order to answer this question some consideration must be given to the rules of interpretation of security regulations. It has generally been held that statutes regulating the sale of securities should be liberally and not narrowly construed. 163 ARL 1050, 1052, citing *Securities and Exchange Commission v. W.J. Howery Co.*, 328 U.S. 293, 90 L.Ed., 163 ALR 1043, 66 S.Ct. 1100, citing cases from federal and state jurisdictions.

In determining whether a particular instrument is a security within the meaning of a regulator statutes, the court will look to the substance of a transaction, and the relationship between the issuer and the security holder is more important than the form of security.

Thus, in *Securities & Exch. Commission v. Universal Serv. Asso.* (1939; CCA 7th) 106 F.2d 232 (writ of certiorari denied in (1940) 308 U.S. 622, 84 L.Ed. 519, 60 S.Ct. 378), the court said:

One of the recognized purposes of the Securities Act is to compel full disclosure of the truth, and the form of arrangements or transactions, whether they be styled sales of commodities, agencies, leases, applications, endowments, or by any other name must be tested by the rule of substance. It is true that when Congress attaches consequences to form, such as the precise wording of an instrument, or the corporate device for tax purposes, the courts may not regard substance as controlling. But in this case we are controlled by an act of Congress which is intended to prevent overreaching and to mandate “fair disclosure”; and the congressional expressions relating to “securities” are so broad and all inclusive that we must recognize that the congressional intention is to give effect to substance and not to form. (163 ALR, 1053.)

What is the substance of the transaction in a limited partnership where the investor makes an initial investment and is bound contractually to make subsequent monthly investments over a given period of time? Or what is the substance and relationship between the issuer and the security holder where an investor makes an investment in any limited partnership which contemplates the conduct of a public enterprise by others designated general partners in the hope of proceeds or profits in which the limited partner is to share?

Even if the limited partnership does not issue a certificate of interest a contract is involved and in our opinion investment in such a partnership would constitute an investment contract.

A contract is a promissory agreement between two or more persons that creates, modifies, or destroys a legal relation (Black’s Law Dictionary, 4th Edition, page 394). The limited partnership interests are created by contract between the parties and are sold for the purpose of investment. Therefore, these interests are investment contracts and are securities as defined by [NRS 90.090](#).

Other definitions in [NRS 90.090](#) may also be broad enough to include limited partnership interests as securities, but in view of the foregoing it is not necessary to discuss them in this opinion.

CONCLUSION

The sale of limited partnership interests to more than 24 persons necessitates registration with the Secretary of State in accordance with the provisions of [NRS Chapter 90](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Don W. Winne, *Deputy Attorney General*

278 Public, Private, and Sectarian Schools—The enrollment of a private or parochial school pupil in public schools, because classes are available in the public schools which are to offered in the private or parochial schools, would violate Section 10 of Article XI of the Nevada Constitution.

Carson City, November 15, 1965

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

Dear Mr. Stetler: You have set forth the following facts:

Public schools are receiving requests from parents of children who are regularly enrolled in parochial schools asking if their children can be permitted to enroll in public school classes which are not offered in the parochial school. The pupil would continue as an enrollee of the parochial school for the major portion of his educational program. This situation would set up a relationship of “shared time” between the Church and State in the instruction of the pupil.

You then ask its office whether the enrollment o a pupil under the conditions outlined in the foregoing statement would be legal under the Constitution of the State of Nevada.

ANALYSIS

On September 12, 1956, in Attorney General’s Opinion No. 209, this office held that home instruction for private or parochial school students by public school teachers when such students were ill, was unconstitutional.

We have to reason to differ with that opinion in the present instance and we again point out the reasons.

Section 10 of Article XI of the Nevada Constitution provides: “No public funds of any kind or character whatever, state, county or municipal, shall be used for sectarian purposes.” And subsection 2 of Section 94 of the 1956 School Code, as the same is shown in Chapter 32 of the 1956 Statutes of Nevada provides, “No portion of the public school funds shall in any way be segregated, divided or set apart for the use or benefit of any sectarian or secular society or association.” ([NRS 387.045](#)). Subparagraph (b) of paragraph 3 of Section 459 of the same law provides, “3. . . . Nothing in this section shall be so construed as: . . . (b) To give such private schools any right to share in the public school funds apportioned for the support of the public schools of this state.” ([NRS 394.130](#)).

Parents have the right under our constitutional form of government to make a choice as to whether their children shall be educated in the public schools, private schools, or parochial schools. Those who choose private or parochial schools cannot be heard to complain that their children are denied certain privileges which are extended to pupils attending public schools, and this includes instruction in classes which are not offered in the parochial schools. These parents are aware at the time they enroll their children in parochial schools or private educational institutions that the classes are not offered in these schools. There is nothing to prevent them, should they so desire, from removing their children from the parochial or private school and enrolling them in a public school.

The constitutional and statutory provisions against the use of public funds for educational purposes in private and parochial schools are as deep seated and deep rooted as our form of government.

CONCLUSION

It is therefore the opinion of this office that the enrollment of a private or parochial school student in public schools, because classes are available in the public schools which are not

offered in the private or parochial schools, would violate Section 10 of Article XI of the Nevada Constitution.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

279 County Agricultural Associations—A county agricultural association does not have the authority to sell property situated within the district pursuant to [NRS 547.090](#), but must comply with [NRS 321.335](#).

Carson City, November 15, 1965

Hon. D.M. Leighton, *Humboldt County District Attorney, Winnemucca, Nevada 89445*

Dear Mr. Leighton: In your letter dated November 9, 1965, you have called our attention to the following facts: The Humboldt County Agricultural Association of Agricultural District No. 3 holds title to certain real property located in the City of Winnemucca. This land was acquired by the district approximately 40 years ago by deed from the City of Winnemucca. The board of directors of the agricultural association has concluded that such property is inadequate to meet the future needs of the association and therefore have attempted to sell the property. Bids were requested and one was received. The board of directors of the association agreed to sell. It was the opinion of the board of directors that they had such authority and based this opinion upon [NRS 547.090](#), the applicable part of which reads:

An agricultural association may: * * *

4. Purchase, hold and lease real property, with such buildings and improvements as may be erected thereon, and may sell, lease and dispose of the same at pleasure. The real property shall be used by the agricultural association for the purpose of holding exhibitions of horses, cattle and other livestock, and the agricultural, horticultural, viticulture, mechanical, manufacturing and domestic products of the district, with a view to the improvement of all the industries in the agricultural district.

The purported sale has since been attacked; such attack is based upon the contention that the sale should have been conducted pursuant to the terms of Chapter 321 of NRS. [NRS 321.335](#) provides in part:

1. Notwithstanding any other provision of law, except [NRS 321.450](#) ([NRS 321.450](#) has not application here) after April 1, 1957, all sales of land to which the State of Nevada or any department, agency *or institution* thereof has title, except the department of highways, including lands theretofore subject to contracts of sale which have been forfeited, shall be governed by the provisions of this section.

2. Whenever the state land register deems it to be in the best interests of the State of Nevada that any lands owned by the state and not used or set apart for public purposes be sold, he may cause the same to be sold at public auction or upon sealed bids, for cash or pursuant to contract of sale, as hereinafter provided, at a price not less than the appraised value thereof and in no event at less than \$3 per acre, plus the costs of appraisal and publication of notice of sale. * * *. (Italics added.)

[NRS 547.080](#) provides:

Each agricultural association formed and organized as provided in this chapter is hereby recognized as a *state institution*. (Italics added.)

Based upon the above statement of facts you have asked the following questions:

1. Does the sale of land owned by an agricultural association created by Chapter 547 of NRS come within the provisions for sale of state-owned lands contained in Chapter 321?
2. Does the sale of land acquired by an agricultural association from private ownership come within provisions of Chapter 321?
3. Are there any statutory provisions regulating sales of public land by local boards and governing bodies which apply to sales by an agricultural association?

ANALYSIS

In determining the proper procedure that an agricultural association is to follow when disposing of land we must concern ourselves with the rules of statutory construction. It is obvious that we have two conflicting statutes. One, [NRS 547.090](#) giving the agricultural association the power to dispose of the property, and the other, [NRS 321.335](#), vesting the State Land Register with the same power. Since these statutes relate to the same subject matter they may be considered in *pari materia*. Generally such statutes are to be considered together in an effort to determine the legislative intent. *See State v. Esser* (1913), [35 Nev. 429](#).

However when two statutes relate to the same subject matter, but there is an irreconcilable conflict between the new provisions and the prior statutes relating to the same subject matter, the former will control as it is the later expression of the Legislature. *See Sutherland, Statutory Construction, Vol. 2, Sections 5201 and 5202.* The Nevada Supreme Court has adhered to this rule. In *State v. Esser*, *supra*, at 435 it is stated: "Insofar as the two sections relate to the same subject matter they are in *pari materia* and should be construed together. Insofar as there is any irreconcilable conflict between the two sections, the section last to become a law controls the provisions of the earlier enactment." *State v. Brodigan*, [37 Nev. 245](#), 249: "Under rules of statutory construction the court may consider prior existing law upon the subject under consideration * * *." *State v. Tax Commission*, [38 Nev. 112](#), 116: "The two acts of the legislature should be construed together, so as to give effect to the language of both, as far as consistent, and, where a conflict is apparent, the later statute will control."

[NRS 547.090](#), under which the Humboldt County Agricultural Association of Agricultural District No. 3 sold the land in question, first appeared in the statutes of this State in 1885 and was amended so as to read substantially as it currently appears in 1889. [NRS 321.335](#), the statute which is in conflict with [NRS 547.090](#) and upon which those attacking the sale base their argument, was first enacted in 1957 and amended in 1961 to read as it now appears. Because of the rules of statutory construction above set forth, and the decisions of the Nevada Supreme Court, the later enacted statute must control and be considered as a statement of the current legislative intent.

CONCLUSION

It is therefore the considered opinion of this office that question number one must be answered in the affirmative.

The statutes above discussed control the disposition of the questions you present. Nowhere in these statutes is there any mention of the grantor of the property to the State of Nevada or to the agricultural association. Hence it is concluded by this office that question number two must be answered in the affirmative.

The disposition of public lands by agricultural associations is controlled by the statutes above discussed. However, the Legislature enacted Chapter 183, statutes of Nevada 1965. By the terms of Section 3 of this statute an effective moratorium has been placed upon the sale, lease, or exchange of any state lands until the Legislature authorizes the same. Considering this statute, it appears the land in question cannot be conveyed until the Legislature so provides.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Donnell Richards, *Deputy Attorney General*

280 State Legislator; Employment State Service—Member of the Legislature presently in office may accept a position in the service of the State where the salary schedule is established by the Personnel Commission or Department. Also, member of the Legislature presently in office could be appointed to the position of Superintendent of Public Instruction where the salary for such position is set by the State Board of Education. (Modified by AGO 293, Jan. 5, 1966.)

Carson City, November 24, 1965

Honorable R. Guild Gray, *Member, State Legislature, 1120 Cashman Drive, Las Vegas, Nevada*

Dear Mr. Gray: You have inquired of this office as to whether a member of the Nevada Legislature may, during his term of office as a legislator, accept a position in the classified service of the State. You are particularly interested in the positions of Superintendent of Public Instruction and Assistant Superintendent of Public Instruction.

ANALYSIS

This problem must be approached by reference to the Constitution of Nevada and the Statutes of this State, as they affect the selection and appointment of the Superintendent of Public Instruction and his first and second assistant superintendents. In analyzing this problem, we can arrive at a determination which will reflect the law as it applies to all appointments within the classified service.

Article 15, Section 9, of our State Constitution reads as follows:

Sec: 9. Compensation of officers whose compensation fixed by constitution: Increase, decrease. The Legislature may, at any time, provide by law for increasing or diminishing the salaries or compensation of any of the Officers, whose salaries or compensation is fixed in this Constitution; Provided, no such change of Salary or compensation shall apply to any Officer during the term for which he may have been elected.

Article 17, Section 5, fixes the salary of the Superintendent of Public Instruction, but the holder of that office is no longer elected. The Constitution was amended in 1956 so as to remove this State office from the list of elected officers, and in so doing, removed this office from the provisions of Article 17, Section 5, and thus makes inapplicable to this office the restrictions of Article 15, Section 9, of the Constitution. The increase or decrease of the salary of the Superintendent of Public Instruction is within the province of the State Board of Education ([NRS 385.170](#)), which has the power of appointment and dismissal where this office is concerned. The position is, by law, in the unclassified service ([NRS 385.150](#)).

The first Assistant Superintendent of Public Instruction and the second Assistant Superintendent of Public Instruction for Administration are both in the classified service, and thus salaries are allocated in accordance with Chapter 284 NRS.

[NRS 284.170](#) reads as follows:

1. Titles and grades shall be established for each class of employment for use in examining and certifying the names of persons for appointment under this chapter; and a description of the duties and responsibilities exercised by the persons appointed to each of them shall be drawn up;

and minimum qualifications shall be specified of satisfactory performance of the duties of each grade and class.

2. The titles and grades in the several classifications as defined by the specifications of duties and qualifications shall be used for original appointments, promotions, payrolls and all other records affecting the status of personnel.

[NRS 284.175](#) reads as follows:

1. After consultation with appointing authorities and state fiscal officers, and after a public hearing and approval by the commission, the chief shall prescribe rules and regulations for a pay plan for all employees in the classified service.

2. The pay plan and amendments thereto shall become effective only after approval by the commission and the governor.

3. The chief shall prepare a pay plan and ranges for each class, grade or group of positions in the classified service. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed and at such time as necessary funds are made available for such payment.

[NRS 284.180](#) reads as follows:

1. The legislature declares that since uniform salary and wage rates and classifications are necessary for an effective and efficient personnel system, the pay plan shall set the official rates applicable to all positions in the classified service, but the establishment of the pay plan shall in no way limit the authority of the legislature relative to budgeted appropriations for salary and wage expenditures.

2. This chapter shall not be construed to supersede or conflict with existing or future contracts of employment dealing with wages, hours and working conditions.

[NRS 284.185](#) reads as follows:

The state controller or any other state fiscal officer shall not draw, sign, issue or authorize the drawing, signing or issuing of any warrant on the state treasurer or other state disbursing officer, and the state treasurer or other state disbursing officer shall not pay any salary or compensation to any person in the classified or unclassified service of the state unless the payroll or account for such salary or compensation containing the name of every person to be paid shall bear the certificate of the chief or his authorized representative stating:

1. That the persons named in the payroll or account have been appointed, employed, reinstated or promoted as required by law and the rules and regulations established under this chapter; and

2. That the salary or compensation is within the salary or wage schedule fixed pursuant to law.

Those employed in accordance with the foregoing plan received merit increases by promotions to the succeeding step in grade, and the Legislature merely provides, by appropriation, for sufficient moneys to meet salaries fixed by the State Personnel Board. Thus it can be seen that the Legislature does not fix the salaries of those in the classified service, nor do they fix the salary of the Superintendent of Public Instruction, except by limiting the amount which he is to be paid to \$14,400 (Chapter 335 of the 1965 Statutes of Nevada).

The important provision of the Constitution which throws light on your inquiry is Article 4, Section 8, which reads as follows:

No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

The question then arises as to whether an office within the classified service has been created, or the emoluments increased, during the term of the legislator seeking such office. If the office has been created during the legislator's term, whether by the Legislature or by the Personnel Commission, the constitutional prohibition would probably lie. But the emoluments have not been increased in existing personnel positions where any increase in salary is the result of a step-up in grade.

The office of Superintendent of Public Instruction was created many years ago, and the salary is fixed by the State Board of Education, so a legislator could be appointed to this job without violating the Constitutional provision. The same result can be rationalized with regard to the first Assistant Superintendent of Public Instruction, but the second Assistant Superintendent of Public Instruction for administration was created by Chapter 427 of the 1965 Statutes, and the prohibition against a legislator taking this position would lie.

CONCLUSION

It is therefore the opinion of this office that a member of the Legislature presently in office, may accept a position in the classified service of the State where the salary schedule is established by the Personnel Commission or Department.

It is further the opinion of this office that a member of the Legislature presently in office could be appointed to the position of Superintendent of Public Instruction where the salary for such position is set by the State Board of Education.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

**281 State Purchasing Department; Contracts with State Board of Vocational Education—
State Purchasing Department not authorized by law to let contracts for the furnishing of
needed materials and supplies to State Board of Vocational Education for and on behalf of
its rehabilitation facilities, nor is said board legally authorized to enter into any such
contracts. (Modified by AGO 290, December 16, 1965.)**

Carson City, November 23, 1965

Francis Brooks, *Administrator, State Purchasing Division, Carson City, Nevada*

Charles O. Ryan, *Assistant Superintendent for Vocational Rehabilitation, Department of
Education, Vocational Rehabilitation Division and OASI Determinations, Carson City, Nevada*

STATEMENT OF FACTS

Gentlemen: The Nevada Division of Vocational Rehabilitation has under its administration the operation of two rehabilitation facilities, one at Reno, and one at Las Vegas. The program at each provides for vocational evaluation, work adjustment, and training of disabled persons, so as to prepare them for gainful employment in society. Under the programs afforded, these persons are enabled to make several marketable products, many of which are sold to merchants for retail use. It has been pointed out that the capacity and potential of the facilities would permit sufficient production of many articles often needed by various state agencies and which are procured by the State Purchasing Department through competitive bids. It is further submitted that the fulfillment of contracts obtained under such bids would create a more realistic work environment for those participating and also assist in defraying the expenses of the facilities.

QUESTION

May these state rehabilitation facilities bid upon and be awarded contracts through the State Purchasing Department?

ANALYSIS

Both the State Purchasing Department and the Vocational Education Department of which the state rehabilitation facilities are a part, or a subdivision, were created by statutes which define their respective powers and duties. It therefore becomes necessary first of all to look to the appropriate statutes in order to determine the extent of these powers and duties.

The State Purchasing Act was enacted by the legislature in 1951, and now appears in the Nevada Revised Statutes as [NRS Chapter 333](#). In [NRS 333.290\(1\)](#) the method of advertising for bids by the chief of the State Purchasing Department in cases where any charitable, reformatory or penal institution is prepared to supply the article required, is set forth. [NRS 333.290\(2\)](#) makes it mandatory that all products of any institution meeting the conditions prescribed in subparagraph (1) of said section shall be utilized before orders for the materials needed shall be placed under contract or otherwise. However, it is prima facie apparent that the state rehabilitation facility is neither a charitable or penal institution nor a reformatory. Consequently, the facility does not qualify to submit a bid to the State Purchasing Department by reason of the above NRS sections.

In addition to charitable, reformatory, or penal institutions, the legislature has in [NRS 333.300\(1\)](#), specified certain persons or firms who, or which, are qualified and eligible to submit bids to the State Purchasing Department. These are “persons, firms, or corporations in a position to furnish the classes of commodities involved, as shown by its records . . .” Again, it is apparent that the state rehabilitation facility is neither expressly nor impliedly included within this class of eligibles, because it is neither a person, firm, nor corporation. By enumerating specifically those persons and firms who are eligible to make bids on purchase contracts let through the state Purchasing Department, the legislative intent is obvious. Something may not be added or supplied to a statute which the Legislature saw fit to omit in the first place. The situation here falls clearly within the well-known rule of statutory construction, “Expressio unius est exclusio alterius,” which means that the enumeration of certain things in a statute is an exclusion of all those not mentioned. The rule has been recognized and adopted by the Nevada State Supreme Court. *Ex Parte Arascada*, [44 Nev. 30](#), 189 P. 619.

By reason of [NRS 387.055\(1\)](#), the State of Nevada accepted the provisions of the Act of Congress entitled “An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment,” approved June 2, 1920, as amended. Under the provisions of [NRS 387.055\(2\)](#), the State Board for Vocational Education is authorized to accept and direct the disbursement of funds appropriated by Congress to the State of Nevada in connection with the rehabilitation program. It is further provided in [NRS 387.055\(3\)](#) that in accepting the benefits of the Acts of Congress relative to vocational rehabilitation, the State of Nevada agrees to observe and comply with all of their requirements. After a close reading of the 1962 Amendatory Act of Congress, amending the 1920 Act, this office is unable to find any provision thereof requiring any state agency to contract with the rehabilitation facility for the purchase of goods or otherwise.

Furthermore, the facility is governed by the State Board of Vocational Education which has been delegated certain powers under [NRS 388.360](#). The powers therein specifically enumerated do not include that of contracting with other state agencies such as the State Purchasing Department or any others. It is an elementary rule of law that the powers and duties of public officers, including members of boards and commissions, are limited to those delegated to them by the Legislature. The Nevada State Supreme Court in passing upon the powers of boards of county commissioners has given recognition to this rule. *Waite v. Ormsby Co.*, [1 Nev. 370](#); *State v. Washoe Co.*, [6 Nev. 104](#); *Lyon Co. v. Ross*, [24 Nev. 102](#); *State Ex rel King v. Lothrop*, [55 Nev. 405](#).

CONCLUSION

It must be concluded that the State Purchasing Department is not authorized under the laws creating it or setting forth the powers and duties of its officers, to let a contract to the state rehabilitation facility for the furnishing of any materials or goods manufactured by the latter. Neither is the state rehabilitation facility empowered by law to enter into any such contract. Nor do we find that the Congressional Act of 1920, as amended, providing for vocational rehabilitation, supersedes the laws of the State of Nevada in this regard. It appears to have been the intent of Congress that all rehabilitation facilities set up through the states be supported exclusively from federal appropriations.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: C.B. Tapscott, *Chief Assistant Attorney General*

282 Mobile Homes; Chapter 246, Statutes of Nevada 1965, Interpreted—The penalty imposed by Section 9 of Chapter 246, Statutes of Nevada 1965, applies to persons purchasing mobile homes on and after April 1, 1965, and does not apply to those owning their mobile homes as of that date.

Carson City, November 30, 1965

Hon. William Raggio, *District Attorney, Reno, Nevada*

Dear Mr. Raggio: Your office has directed to the Attorney General an inquiry as to the proper interpretation of Chapter 246, Statutes of Nevada 1965. You are particularly interested in whether the penalty provided for in Section 9 of the act applies to the owners of mobile homes.

ANALYSIS

This act became effective on April 1, 1965, and in order to arrive at a considered opinion as to the intent of the Legislature, it is necessary to set forth the pertinent sections of the act. Section 3 of the act reads as follows:

1. Upon receipt of every report of sales of mobile homes from a dealer, the department of motor vehicles shall immediately give written notice to the county assessor of each county in which is contained the address of a purchaser of a mobile home as shown in such report.

2. If the purchaser of a mobile home does not register and license the mobile home upon taking possession, pursuant to the provisions of [NRS 482.397](#), and pay the personal property tax thereon, he shall, within 30 days from the date of purchase of such mobile home:

(a) Pay to the county assessor all personal property taxes levied against such mobile home and its contents; or

(b) Satisfy the county assessor that he owns real estate within the county of sufficient value, in the county assessor's judgment, to pay the taxes on both his real and personal property.

Section 9 then reads as follows:

1. If the purchaser of a mobile home fails to comply with provisions of paragraph (a) or (b) of subsection 2 of section 3 or with the provisions of sections 4 or 6 of this act within the required time the county assessor shall collect a penalty in the sum of \$25, which shall be added to the tax and collected therewith.

2. If any person required to pay a personal property tax under the provisions of sections 3, 4 or 6 of this act neglects or refuses to pay such tax on demand of the county assessor, the county

assessor or his deputy shall seize the mobile home upon which such taxes are due and proceed in accordance with the provisions of [NRS 361.535](#).

Does Section 3 refer to a mobile home owner as distinguished from a purchaser? We think not. The pertinent referral in Section 3, subsection 1, refers to “sales of mobile homes” in requiring reports from dealers. Subsection 2 of Section 3 refers to a “purchaser of a mobile home” registering and licensing the mobile home and paying the personal property tax thereon.

Section 9 imposes the penalty of \$25 on *purchasers* of mobile homes who fail to comply with paragraphs (a) and (b) of subsection 2 of Section 3.

This act is not retroactive. It applies to those who purchase mobile homes on and after April 1, 1965. It does not apply to current owners at that date.

CONCLUSION

It is therefore the opinion of this office that the penalty imposed by Section 9 of Chapter 246, Statutes of Nevada 1965, applies to persons purchasing mobile homes on and after April 1, 1965, and does not apply to those owning their mobile homes as of that date.

Respectfully submitted,

HARVEY DICKERSON, Attorney General

283 Clark County Obligation Bond commission Has No Jurisdiction and Should Not Be Concerned With Assessment District Bonds—Revenue bonds, usually discussed as improvement bonds, payable from the income, revenue, or proceeds of the enterprise or project to build or operate for which they are issued, which bonds have general obligation backing, should be submitted to the commission. Chapter 508, Statutes of Nevada 1965, interpreted.

Carson City, December 3, 1965

Honorable Edward G. Marshall, *District Attorney, Clark County, Las Vegas, Nevada*

Dear Mr. Marshall: You have requested an opinion on the following:

QUESTIONS

1. Whether or not “double-barreled” revenue bonds having general obligation backing have to be submitted to the Clark County General Obligation Bond Commission?
2. Whether or not said commission has any jurisdiction or should be concerned with assessment district bonds?

ANALYSIS

The commission derives its authority from Chapter 508, Statutes of Nevada 1965, beginning at page 1433. The portions of this chapter with which we are concerned here are:

Sec. 3. 1. There is hereby created in each county a general obligation bond commission, * * *.

Sec. 5. Before any proposal to issue general obligation bonds may be submitted to the electors of a county, incorporated city or town, unincorporated city or town, school district, or other district or political subdivision (excluding the state) pursuant to chapters 350 or 387 of NRS or any other law, or before any other formal action may be taken preliminary to the issuance of any general obligation bonds, their proposed issuance must receive the favorable vote of a majority of the members of the general obligation bond commission of the county in which it is situated. In the case of a joint school district or other district embracing all or part of two or more counties,

the proposal must receive such favorable vote in the county or counties in which a majority of its assessed valuation is situated.

The commission, then, is to concern itself with just one type of bond, namely, general obligation bonds, and bonds which do not fall within this classification need not be presented to the commission. Our problem, therefore, resolves itself into one of basic definitions.

General Obligation Bonds: This type has been defined in *De Loach v. Scheper*, 198 SE 409, 118 S.C. 21, as follows:

General obligation bonds of a township are bonds payable from an unlimited ad valorem tax on all taxable property.

They are “* * * general obligations of the issuing body payable from its general resources raised by taxation * * *.” 43 Am.Jur., Public Securities and Obligations, Sec. 282. P. 495.

Assessment District Bonds: *Hartz v. Truckenmiller*, 293 NW 568, 228 Iowa 819, in considering drainage lands of a special assessment district held:

Drainage bonds issued by a county under statutes providing that each bond should show that it was to be paid only by a tax assessed, levied and collected on land within a drainage district were not “general obligation bonds.”

We suggest as a useful guide in these matters this language taken from 43 Am.Jur., Public Securities and Obligations, Sec. 282 at page 495:

With reference to the problem whether public bonds are general obligations of the issuing body payable from its general resources raised by taxation or are special obligations retireable from special funds only, generalization is difficult and likely unwarranted, because in each instance the solution is probably controlled by the specific organic provisions, statutes, charters, and ordinances under authority of which the bonds were issued, * * *.

In each instance we must look to “the specific organic provisions, statutes, charters, and ordinances under authority of which the bonds were issued.” (Italics supplied.)

As an illustration, Chapter 167, Statutes of Nevada 1947, at page 553, created the Las Vegas Valley Water District. In outlining the purpose of the act, the title sets out, in part: “* * * and to provide for the issuance of district bonds to be paid solely from the operating revenue of such district.”

Applying the rule of *De Loach v. Scheper*, cited above, the pertinent statute, in its title, shows that each bond of the Las Vegas Valley Water District is to be paid solely from the revenues of the district. They are *not* to be paid from an unlimited ad valorem tax on all taxable property of the issuing body and, therefore, are not general obligation bonds, but rather “Special Assessment” bonds to be paid solely from special assessments levied against the property in the improvement district affected by the improvements. The Clark County General Obligation Commission, in terms of Chapter 508, Statutes of Nevada 1965, is not empowered to act upon or consider this special assessment bond.

Your first query, “whether or not ‘double-barreled’ revenue bonds having general obligation backing have to be submitted to said commission,” poses a point which may require judicial determination to resolve. The presumption is that reference is made to the type of bond discussed in 43 Am.Jur., Public Securities and Obligations, Sec. 283 at page 497:

Under the statutes in force in some states, under statutes relating to particular issues of improvement bonds in some jurisdictions, although not to other issues, and under the terms and provisions included in improvement bonds themselves, such bonds may be issued so as to constitute a general obligation of the issuing subdivision or district payable from its general resources raised by taxation, provided the special assessments levied against the property owners

benefited by the improvement turn out to be inadequate to retire the claims of the bondholders. *
* *

A further discussion of “double-barreled” revenue bonds, which may be helpful, is set out in *Fowler v. Superior*, 85 Wis. 411, 54 NW 800, 33 ARL at page 1423:

Bonds issued to raise money for the construction of free turnpike roads were held to create an indebtedness within the meaning of the debit-limit provisions of the Constitution, although a special fund or resource was provided by assessment for their payment, and notwithstanding the fact that in most cases the assessment would ultimately prove collectable in sums sufficient to pay the debt and interest, where it was so provided that no other fund might be used for the same purpose.

From the above we note that we have a bond which provides: first, for a special assessment levied against the property owners benefited by the improvements; second, for general obligation backing, and that such bonds have been held in the Fowler case “to create an indebtedness within the debt-limit provision of the Constitution.” Hence, we conclude that a “double-barreled” bond, since the full faith and credit of the issuing body is in the final analysis pledged, and due to its other and above distinctive features, is in essence a bond of general obligation and as such should be submitted to the Commission.

CONCLUSION

We, therefore, conclude:

1. “Double-barreled” revenue bonds having general obligation backing should be submitted to the Clark County General Obligation Bond Commission.
2. The said commission has no jurisdiction and should not be concerned with assessment district bonds.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Donnell Richards, *Deputy Attorney General*

284 Nevada Tax Commission; [NRS 367.030](#) as Amended by Chapter 356, Statutes of Nevada 1965, Construed—A bank leasing real property, with title to the fee in another, is not entitled to a deduction of the value of that real property when computing the assessment value of the shares of stock in such bank.

Carson City, December 6, 1965

Mr. Robert Lawless, *Secretary, Nevada Tax Commission, Carson City, Nevada*

Dear Mr. Lawless: You have presented to this office the following statement of facts: A certain bank located in the City of Reno has entered into an agreement as lessee, for the lease of certain premises located in the City of Reno for a period of 10 years, with an option to extend the lease for an additional 10-year period. By the terms of the lease the lessor is to pay all property taxes assessed upon the original structure existing at the time the lease was executed. By the terms of the lease the lessee was given the right to construct an addition to the present structure by extending the south end of the building into and upon the existing parking lot. The lessee has exercised its right to construct the addition and has paid all costs of construction and has further agreed to pay all taxes assessed upon such additional structure. There is no option to purchase

either the original structure of the addition; title to the addition is vested in the lessor. No additional rents are to be charged the lessee due to the construction of the addition.

QUESTION

Based upon the above statement of facts, you have presented the following question: Is the bank, as lessee, entitled to a deduction in arriving at its net stock value for assessment purposes for the new structure under the provisions of Chapter 367 of NRS as amended by Chapter 356, Statutes of Nevada 1965?

ANALYSIS

[NRS 367.030](#), as amended by Chapter 356, Statutes of Nevada 1965, provides in part:

* * * * *

2. All such shares shall be assessed at their full cash value on October 1, first deducting therefrom the proportionate value of the real property belonging to the bank, subsidiary bank building corporation or affiliate bank building corporation and the amount or value of such mortgages and trust deeds owned by the bank and on which the bank has paid the taxes or authorized the assessment thereof in its name, at the same rate and no greater than that at which other moneyed capital in the hands of citizens and subject to taxation is assessed by law.

From the above statute it appears that if the property in question is “real property belonging to the bank,” the deduction is proper. The words “belonging to” are interpreted as meaning “owned by.” Cases of ancient vintage so holding are:

State v. Fox, 35 NW 874 (Iowa, 1890): The word “belong” is aptly used to denote ownership. *Christensen v. Robinson*, 99 P. 458 (Utah, 1909): This case cited and agreed with the definition given in *State v. Fox*. More recent cases are: *State Land Settlement Board v. Henderson*, 241 P. 560 (Calif. 1925): “Belong” means unqualified ownership. *Wells v. Ward*, 207 SW 2d 698 (Texas, 1948): Case held the word “belong” connotes title or ownership. *Jones v. Bodley*, 27 A.2d 84 (Delaware, 1942): “Owner” is the real and primary meaning of the word “belong.” *Miller v. Feldstein*, 206 A.2d 66 (Penna. 1964): This case was concerned with an interpretation of a levy statute and in the course of the opinion it was held: “The words ‘belong to,’ ‘title’ and ‘ownership’ * * * have their usual and ordinary meaning and relate to the appropriate ownership or proprietorship of the goods and chattels in question.

Suffice it to say the above cited cases represent the overwhelming number of cases that hold the words “belong to” are interpreted as meaning “owner or ownership.” We must now direct our attention to the definition of owner. Here we have a more difficult problem, for this word has many legal definitions, none of them general enough to apply to all general situations. In Black’s Law Dictionary, 4th Edition, page 1259, it is stated when defining “owner,” “The person in whom is vested the ownership, dominion or title of property; proprietor.” Cases cited. “The word is not infrequently used to describe one who has dominion or control over a thing, the title to which is in another.” Cases cited. “The term is, however, a nomen generalissimum (a name of the most general kind; a name of the most general meaning) and the meaning is to be gathered from the connection in which it is used, and from the subject matter to which it is applied.” Cases cited. “The *primary meaning of the word as applied to land is one who owns the fee and has the right to dispose of the property*, but the term also includes one having a possessory right to the land or the person occupying or cultivating it.” Cases cited. (Italics supplied.)

There is some Nevada authority holding the word “owner” may be applied to any defined interest in real estate, including a leasehold interest. See *Tobin v. Gartiez* (1920), [44 Nev. 179](#), 191 P. 1063, and *State v. Wheeler* (1896), [23 Nev. 143](#). I do not feel these cases to be controlling, however. For support of this contention, see Attorney General’s Opinion No. 150 (Oct. 29, 1914) stating: “The real estate belonging to any bank is assessable in the same manner and form as other real estate is assessed to the owners thereof. If a bank acquires property under foreclosure, and the deed thereto is recorded before the fixing of the county tax rate by the Commissioners, such property should be assessed to the bank, rather than to the previous owner thereof.” See also Attorney General’s Opinion No. 61 (August 25, 1921) holding: “(W)e have to advise you that

under the provisions of this section the bank is entitled to have deducted the value of all real estate owned by it on which it pays taxes, situate in this State from the value of the shares in said bank.”

This position is buttressed by the holding in *State ex rel. Marshall & Ilsley Bank v. Leuch*, 144 NW 1122 (Wis. 1914). This case was concerned with the deduction of leased premises in which a bank operated and conducted banking operations, in an effort to arrive at the assessable value of the stock. The facts in that case reveal that the bank merely leased the premises. Under these circumstances the court ruled the bank was to be the “owner” of the premises and hence could not deduct the value of the building under the statute which was written in terms of “ownership.” The court did state, “Where a bank has *permanently invested a part of its assets in land by purchasing the fee thereof at a fair valuation*, that sum so permanently invested must necessarily be represented in the gross valuation fixed by the assessor on the total bank stock. So when the bank stock is taxed as the statute provides, the land is to all intents and purposes fully taxed at that time. The land itself remains on the tax roll, however, and is assessed and taxed just the same as other land, * * *. So in order to avoid double taxation the Legislature has adopted the expedience of reducing the valuation of the capital stock by the amount of the valuation of the land. This is quite plain, simple, and eminently fair * * *” (Italics supplied.)

The above quoted rule is controlling in the instant case.

CONCLUSION

It is therefore the opinion of this office that a bank leasing real property with title to the fee in another is not entitled to a deduction of the value of that real property when computing the assessment value of the shares of stock in such bank.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

285 University of Nevada; Easements, Trespass—Prescriptive easement does not arise unless it is established that the property is used adversely, continuously, openly and peaceably for a period of five years. The University of Nevada may post wildlife area owned by it to prohibit unauthorized people from trespassing. (Modifies AGO 259, 8-24-65.)

Carson City, December 6, 1965

Mr. N. Edd Miller, *Chancellor, University of Nevada, Reno, Nevada*

Dear Mr. Miller: On August 24, 1965, this office issued Opinion No. 259, wherein it was stated that the general public has a prescriptive easement over a road traversing property owned by the University of Nevada, because the general public has used the road continuously for a period of longer than 15 years. We are not informed that there is little evidence to establish the use by the general public and that the use mainly has been by ranchers for ingress and egress to and from sources of their water rights. You ask whether the public has a prescriptive right to use the road under these circumstances. You also ask whether the University may post the land to prohibit trespassers from entering.

QUESTIONS

1. Does the general public have a prescriptive easement over the road across the George Whittell Forest and Wildlife Area?
2. May the University of Nevada post this area to prohibit unauthorized people from trespassing?

ANALYSIS

The elements of an easement by prescription are five years' adverse, continuous, open and peaceable use. *Stex v. LeRue*, [78 Nev. 9](#) (1962). The application of these principles to the facts now presented does not disclose the ripening of a prescriptive right in favor of the general public. However, if ranchers and others had used the road for ingress and egress under the criteria above described, prior to the time the University acquired title to the land, a prescriptive right may have arisen in their favor.

The answer to the first question is negative.

As far as prohibiting trespass, it is elementary that every unauthorized entry upon the land of another is a trespass. However, before penal sanctions may be imposed, certain steps must be taken by the owner of the property. The sanctions and steps are set forth in [NRS 207.200](#), reciting as follows:

1. Every person who * * * shall willfully go or remain upon any land after having been warned by the owner or occupant thereof not to trespass thereon, shall be guilty of a misdemeanor.

2. Every owner or other occupant of any land shall be deemed to have given sufficient warning against trespassing, within the meaning of this section, who shall post in a conspicuous manner on each side thereof, upon or near the boundary, at intervals of not more than 700 feet, signs, legibly printed or painted in the English language, warning persons not to trespass.

If the University posts the land pursuant to this statute, it may prohibit people from trespassing.

CONCLUSION

Prescriptive easement does not arise unless it is established that the property is used adversely, continuously, openly and peaceably for a period of 5 years. The University of Nevada may post wildlife area owned by it to prohibit unauthorized people from trespassing.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Daniel R. Walsh, *Deputy Attorney General*

286 Las Vegas Valley Water District—Powers relative to sale, lease, grant, or exchange of real property; kind and amount of consideration required therefor; franchise rights in use of city streets. City of Las Vegas—Police power over city streets; privilege of installing water lines not a property right for which city may charge or which may be sold or exchanged.

Carson City, December 6, 1965

Mr. Sidney R. Whitmore, *City Attorney, City of Las Vegas, Las Vegas, Nevada*

STATEMENT OF FACTS

Dear Mr. Whitmore: A large tract of land owned and used by the Las Vegas Valley Water District, and all or most of which is encompassed within the city limits of the city of Las Vegas, lies in almost a direct line between the central part of the city and certain of its subdivisions located to the southwest. Streets leading in that direction must of necessity circumvent this tract of land in order to reach these subdivisions. City planning officials of Las Vegas believe that a

direct approach to this area of the city by a street right-of-way, would not only better serve the convenience of the residents of that section but that such street is an immediate necessity in order to assist in solving the city's ever-increasing traffic problems. In this connection several questions have been submitted for determination by this office.

QUESTIONS

1. Is the water district authorized to sell, lease, license, or grant a street right-of-way over its property, or permit the use in any manner of a part thereof, to or by the City of Las Vegas?
2. If such authority exists, could the consideration for such right-of-way or other use of the district's real property be for other than cash in an amount equivalent to its full market value?
3. Is the city authorized to make a charge for use of its streets by the district in the installation of its water lines?
4. If such authority exists, may the district sell, lease, or grant an easement for, or otherwise permit the use of a right-of-way across its land in exchange for the privilege of occupying and using the city's streets for such installation?

ANALYSIS

At the outset it should be pointed out that the City of Las Vegas and the Las Vegas Valley Water District is each a separate and distinct legal entity. The city exists by virtue of a special act of the Legislature as a municipal corporation. It may and does exercise such powers as are specifically granted by the Legislature either by charter or by legislative acts. The district was formed by the voters of the Las Vegas area of Clark County, Nevada, pursuant to the provisions of Chapter 167, Statutes of Nevada 1947, as amended, which is also a special act.

The essential function of the district is to provide for the procurement, storage, distribution and sale of water for irrigation, municipal and domestic uses in the Las Vegas area. Certain powers have been granted it, which, insofar as they pertain to the acquisition, use or disposition of property, are specifically set forth in Sec. 1, Par. 4, of the act as follows:

To take by grant, purchase, gift, devise, or lease, or otherwise, and to hold, *use, enjoy and to lease or dispose of*, real or personal property of any kind within or without the district *necessary or convenient to the full exercise of its power.* (Italics supplied.)

No procedure for exercising the power of leasing or disposing of property is prescribed in the act except for what appears in Sec. 1, Par. 13 thereof which authorized the district:

To make contract, . . . and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.

In the original act and also as amended by Chapter 130, Statutes of Nevada 1949, the Legislature made the provisions thereof exclusive, including the sections above quoted, by enacting Sec. 19 thereof, the pertinent part of which reads as follows:

This act shall in itself constitute complete authority for the doing of the things herein authorized to be done. The provisions of no other law, either general or local, except as provided in this act, shall apply to doing of the things herein authorized to be done

The inadequacy of the provisions of Sec. 1, Par. 4 and Par. 13 as above quoted, to serve as a guide in disposing and otherwise dealing with property belonging to the district is readily apparent. Presumably the Legislature thought likewise when it enacted Chapter 388, Statutes of Nevada 1955, which as amended by Chapter 138, Statutes of Nevada 1957, is hereinafter cited as [NRS 277.050](#). This authorizes the sale, lease, or exchange of real property between public agencies of the State, and prescribes the procedure and the limitations under which the same may be made. The term "public agency" is defined in [NRS 277.050\(1\)\(a\)](#) as including both a "public corporation" and a "public district." Since the incorporated City of Las Vegas is a public

corporation and the Las Vegas Valley Water District is a public district, both come clearly within the purview of this act.

In our opinion [NRS 277.050](#) must be construed as supplementing rather than repealing the earlier provisions with reference to disposition of the district's property as provided for under Sec. 1(4) and Sec. 1(13) of the 1947 act. Certain well recognized rules of construction are most applicable to the situation. Statutes relating to the same subject matter are in pari materia and should be construed together. Sutherland Statutory Construction, Vol. 2, (3rd Ed.), P. 529, *See also State v. Esser*, [35 Nev. 429](#), 129 P. 557; *State v. Eggers*, [36 Nev. 373](#), 136 P. 100; *Kondas v. Washoe Co. Bank*, [50 Nev. 181](#), 204 P. 1080. Where however, a conflict is apparent between two such statutes, the later one controls. Sutherland Statutory Construction, Vol. 2, (3rd Ed.) P. 532. Its rule was followed by the Nevada State Supreme Court in *State v. Nevada State Tax Commission*, [38 Nev. 112](#), 145 P. 905. Where the provisions of a general and special statute covering the same subject matter conflict, the special statute must prevail. Sutherland Statutory Construction, Vol. 2, (3rd Ed.), P. 542. *See Wainwright v. Bartlett*, [51 Nev. 170](#), 271 P. 689.

In 1947 the Legislature again dealt with the subject matter of the authority and procedure relative to disposition of real property by public agencies by enacting Chapter 365, Statutes of Nevada 1947, hereinafter cited as [NRS 277.060](#). This authorizes water districts, along with certain other public agencies therein enumerated, to enter into contracts with another public agency, subject to certain limitations, providing among other things, for the payment for "lands" and "rights in land." By Par. 5 thereof this act is made supplemental to any other law, and the legislative intent is there announced that it shall provide a separate method for accomplishing its objectives and not an exclusive one. By reason of this particular mandate and the rules of construction of statutes in pari materia as hereinabove discussed, this section, insofar as its provisions are applicable, also constitutes a part of the law and procedure relative to the disposition of real property and/or rights therein by the water district.

We are not unmindful of the fact also that by Chapter 496, Statutes of Nevada 1965, the legislature amended [NRS 277](#) of which [NRS 277.050](#) is a part, by adding new sections providing for cooperative agreements with other states and liberalizing the extent and procedure for entering into cooperative agreements between public agencies of this State. Certain provisions of this amendment may likewise be applicable to sale, lease or exchange transactions of real property belonging to public agencies where a cooperative agreement is involved.

The power of the water district to sell, lease, or otherwise dispose of real property under Chapter 167, Statutes of Nevada 1947, as amended, and particularly Sec. 1(4) and Sec. 1(13) thereof, is to be exercised pursuant to these sections as read in conjunction with the applicable provisions of [NRS 277.050](#), [NRS 277.060](#), and Chapter 496, Statutes of Nevada 1965, and all sales, leases, exchanges, or other dispositions made are subject to all limitations and restrictions there imposed. Pertinent among these limitations are [NRS 277.050\(2\)\(b\)](#), [NRS 277.050\(2\)\(a\)](#), and [NRS 277.050\(3\)\(b\)](#), providing for conditions, terms, and procedure in making leases or selling or exchanging property; [NRS 277.060\(3\)\(b\)](#) providing the conditions and terms of contracts for payment for lands leased or sold; and Sec. 5, Par. 2, Sec. 6, Par. 2, Sec. 7, Sec. 8, Pars. 1 and 2, and perhaps others, of Chapter 496, Statutes of Nevada 1965. In our opinion, these limitations and restrictions are mandatory. It is a general rule that mandatory statutes prescribing a mode of exercising or enjoying a power or grant are strictly construed. Sutherland Statutory Construction, Vol. 3, (3rd Ed.), P. 100.

Based upon the foregoing statutes and authorities, it is the opinion of this office that the water district is empowered to sell, lease, or exchange any of its real property, or any right to the use thereof or therein, including easements, subject to and in strict conformity with all limitations and restrictions imposed by applicable laws. We find nothing in the law however making it compulsory for the district to exercise this power. We are aware too, of other restrictions against any disposition of the district's real property imposed by covenants of bonds issued for financing its operations. We feel that it is not within the province of the Attorney General's office to express any opinion as to their effect in this matter. Nor do we express any opinion as to whether or not the use to which the city desires to make of any part or portion of the water districts land, is a more necessary public use than that to which it has already been appropriated, so as to bring

the property within the purview of [NRS Chapter 37](#), pertaining to eminent domain, as amended by Chapter 380, Statutes of Nevada 1965. In that connection however, attention is called to a determination by the Nevada Supreme Court in *Teacher Bldg. Co. v. City of Las Vegas*, [68 Nev. 307](#), 232 P.2d 119 (1951).

We come now to a determination as to whether the consideration for an easement or right-of-way across the water districts land may be for other than cash. This question is partly answered by the provisions of [NRS 277.050\(3\)\(b\)](#) permitting an exchange for other property or for part cash and part property. In either event the consideration is required to be equivalent to the assessed valuation of the property of the selling or exchanging agency. Still to be determined however, is the question as to whether real or personal property is required in transactions where property is accepted by the district as a part or all of the consideration for the sale or exchange of real property.

Although [NRS 277.050\(3\)\(b\)](#) fails to specify the kind of property which the district or other public agency must accept as such consideration, the section heading clearly indicates that only real property is acceptable. This heading in substance and intent follows that expressed in the title to Chapter 388, Statutes of Nevada 1955, as amended, from which the NRS section is taken. That title confines the exchange of property between public agencies to real property only. Words within the body of the act itself must be restricted to the same meaning expressed or indicated in its title as no act may be broader than its title. Sutherland Statutory Construction, Vol. 1, (3rd Ed.), P. 300. *See also State v. Douglas*, [46 Nev. 121](#), 208 P. 422.

Further inquiry is made as to whether or not the district may sell, lease, exchange, grant a right-of-way, easement, or permit use of its land otherwise, in exchange for the privilege of using and occupying the city's streets for installation of its water lines. Since the right to install water lines under a city street is by nature a right in land which meets the requirements of [NRS 277.055\(3\)\(b\)](#) as to considerations, its acceptance by the district in exchange for easements, rights-of-way, or for sale price or lease in, through, for or of its land would be legal in our opinion, provided the city is authorized to exchange such right. As we understand and interpret the provisions of Chapter 167, Statutes of Nevada 1947, Sec. 19 thereof as amended by Chapter 130, Statutes of Nevada 1949, and as further amended by Chapter 402, Statutes of Nevada 1957, the water district was granted a franchise for the installation of its water lines under the streets of any municipal corporation to which it may furnish water. Insofar as we can determine, this franchise has never been revoked, cancelled, abandoned, diminished, or otherwise terminated, and in our opinion it is still in full force and effect.

In the absence of a constitutional prohibition, the Legislature has paramount power and control over all highways, streets, and alleys in the State, and may therefore grant franchises for their use and occupancy by a public service corporation without compensation to or consent of the municipality concerned. McQuillin, Municipal Corporations, Vol. 12, (3rd Ed.), P. 45. And it is generally held that the municipality retains only the power in such cases to impose such police regulations as are reasonably necessary for protection of the public health, safety, morals, and welfare. 23 Am.Jur. 732. The legislative franchise to the water district having divested the City of Las Vegas of any property rights in the use and occupancy of its streets for the installation of the district's water lines, the city is now powerless to dispose of such rights. It may not exchange something it no longer has, nor may the district accept something as consideration which it already possesses. Since the city is without ownership of the right under discussion, it follows that it is not authorized to make a charge to the district for exercising a right pursuant to its franchise.

CONCLUSION

From the foregoing statutes, decisions, and law, we make the following conclusions:

Question No. 1 is answered in the affirmative. Under the authority of Chapter 167, Statutes of Nevada 1947, Sec. 1(4) and Sec. 1(13), as supplemented by [NRS 277.055](#), [NRS 277.060](#), and Chapter 496, Statutes of Nevada 1965, and subject to the limitations and restrictions thereof, the Las Vegas Valley Water District may sell, lease, or exchange any of its property to or with another public agency, or grant such agency an easement therein for a right-of-way or other use.

Question No. 2 is also answered in the affirmative. [NRS 277.050\(3\)\(b\)](#) authorizes acceptance of (1) cash, (2) other property, or (3) part cash and part real property, as and for consideration for the purchase price of any real property belonging to the district. Only real property having a value equivalent to the assessed valuation of the property so sold will suffice.

Question No. 3 must be answered in the negative. The water district is privileged under a franchise right granted under Chapter 167, Statutes of Nevada 1947, as amended, to use the streets of Las Vegas for installation of its water facilities. It is subject only to such fees as may reasonably be assessed in the exercise of the city's police power.

Question No. 4 is likewise answered in the negative. Since the right to install water facilities has already been granted to the district under its franchise, the city has nothing in the nature of a property right which it can sell, exchange, or otherwise dispose of. Neither could the district accept something as consideration for the exchange of any of its real property which it already owns.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: C.B. Tapscott, *Chief Assistant Attorney General*

287 Department of Education; Federal Funds—The State Board of Education may establish the conditions by which the Department of Education may enter into a nonprofit corporation for the purpose of accepting federally appropriated funds, pursuant to PL 89-10.

Carson City, December 14, 1965

Mr. Byron F. Stetler, *Superintendent of Public Instruction, Department of Education, Carson City, Nevada*

Dear Mr. Stetler: You have presented to this office the following question and request an official legal opinion.

QUESTION

Does either the State Board of Education or the State Department of Education have the authority to enter into agreements with sister states or political subdivisions of those states for the purpose of establishing a nonprofit corporation or organization?

ANALYSIS

The purpose of such nonprofit corporation or organization is to receive funds made available by the federal government, pursuant to PL 89-10, commonly known as the "Elementary and Secondary Education Act of 1965," approved April 11, 1965. More particularly, the portion of PL 89-10 under which funds are made available is Title IV, Section 2(a)(1) which follows:

The Commissioner of Education (hereinafter in this Act referred to as the Commissioner) is authorized to make grants to universities and colleges and other public or private agencies, institutions, and organizations and to individuals, for research, surveys, and demonstrations in the field of education (including programs described in section 503(a)(4) of the Elementary and Secondary Education Act of 1965), and for the dissemination of information derived from education research (including but not limited to information concerning promising educational practices developed under programs carried out under the Elementary and Secondary Education Act of 1965) and, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C.

529; 41 U.S.C. 5), to provide by contracts or jointly financed cooperative arrangements with them for the conduct of such activities; except that no such grant may be made to a private agency, organization, or institution other than a nonprofit one.

It appears the Nevada State Department of Education has been invited to join with neighboring states to become a party in forming two nonprofit corporations. One of these corporations has as its primary goal, the establishment of a laboratory to be situated at the University of Utah, and the other with the establishment of the Southwest Regional Laboratory, which would more directly affect the Clark County School District, the Nevada Southern University, and the State Department of Education.

Chapter 338(1), Statutes of Nevada 1965, states as follows:

Chapter 387 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The state board of education is hereby authorized to accept and apportioned to the State of Nevada or the school districts of the State of Nevada under the Elementary and Secondary Education Act of 1965.

Chapter 488(7), Statutes of Nevada 1965, states:

In addition to the expenditures authorized in section 1, the state department of education is hereby authorized to accept and direct the disbursement of any and all funds appropriated and apportioned to the State of Nevada or the school districts of the State of Nevada under the Elementary and Secondary Education Act of 1965, or any equivalent federal statute, during the fiscal years beginning July 1, 1965, and ending on June 30, 1966, and beginning July 1, 1966, and ending on June 30, 1967, and may make such applications and agreements and give such assurances to the Federal Government and conduct such programs as may be required as a condition precedent to receipt of funds under the Elementary and Secondary Education Act of 1965, or any equivalent federal statute.

The first above copied statute authorizes the State Board of Education to accept federal funds, and the second statute authorizes the State Department of Education to accept federal funds.

Clearly, it was the intent of the Legislature in enacting the above statutes to allow the State of Nevada to participate in and benefit by the federal funds made available by PL 89-10.

Directing our attention now to whether or not the State Board of Education may be a member of a nonprofit corporation, we find that [NRS 385.100](#), Sections 1 and 2 state:

1. The state board of education shall prescribe regulations under which contracts, agreements or arrangements may be made with agencies of the Federal Government for funds, services, commodities or equipment to be made available to the public schools and school systems under the supervision or control of the state department of education.

2. All contracts, agreements or arrangements made by public schools and school systems in the State of Nevada involving funds, services, commodities or equipment which may be provided by agencies of the Federal Government, shall be entered into in accordance with the regulations prescribed by the state board of education and in no other manner.

CONCLUSION

The State Board of Education has the authority to prescribe the regulations and guide liens so as to enable the Board of Education to become a member of the proposed nonprofit corporation for the purpose of receiving available funds according to PL 89-10. This conclusion is in conformity with AGO 276 (11-5-65), which held inter alia, "The State Department of Education may accept the funds appropriated by the Congress of the United States for the implementation of the Elementary and Secondary Education Act of 1965.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

288 Apprenticeship; Discrimination, Certification—(1) State Apprenticeship Council does not have exclusive jurisdiction over complaints of discrimination concerning an apprentice employed under an approved apprenticeship agreement; (2) A person not registered under the State Apprenticeship Program may not be issued a certificate of completion by the State Apprenticeship Council; (3) A company operated apprenticeship program may not be approved and certified by the State Apprenticeship Council or its director, until its standard of operation and apprenticeship agreement have been approved by the council or its director in its behalf.

Carson City, December 14, 1965

Mr. Charles E. Springer, *Chairman, Nevada State Apprenticeship Council, 200 South Virginia Street, Reno, Nevada*

Dear Mr. Springer: Chapter 610 of NRS provides for the establishment of a voluntary apprenticeship program under apprenticeship agreements with employers and apprentices and approved by the State Apprenticeship Council. The Labor Commissioner, as ex officio State Director and Secretary of the council, is authorized to administer the program with the advice and guidance of the State Council and to approve the apprenticeship agreements. The commission is also authorized to set up conditions and standards of training for the agreements and to perform such other duties as are necessary to carry out the intent of Chapter 610.

[NRS 610.150](#)(8) provides that each agreement shall contain a statement that no apprentice shall be discriminated against with respect to hire, advancement, compensation, or other terms, conditions, or privileges of employment because of race, color, creed or national origin. If it appears that the terms of such an agreement are violated the State Council may investigate, hold hearings and make a determination concerning such violation. This decision may be appealed to the State Labor commissioner within 10 days after it is rendered, whose decisions is final if an appeal is not taken to the courts within 30 days after the commissioner's decision. You ask our opinion on three questions dealing with this program.

QUESTIONS

1. Whether the State Apprenticeship Council has the exclusive right to investigate and hold hearings concerning discrimination against apprentices employed under an approved apprenticeship agreement.
2. Whether individuals not registered under the State Apprenticeship Program may be issued a certificate of completion by the State Apprenticeship Council.
3. Whether a company-operated apprenticeship program may be approved and certified by the State Council or its director when the standards of operation and apprenticeship agreement are not signed and approved by the council or the director.

ANALYSIS

In 1964 the well known Federal Civil Rights Law was enacted. This law prohibits, among other things, discrimination in apprenticeship programs. It also provides that the federal government will defer action on such matters for a certain length of time to the states if the individual states have effective state laws to cope with the problem.

In 1965 the Nevada Legislature enacted the Nevada Civil Rights Act through the passage of Assembly Bill No. 404, now cited as Chapter 332, Statutes of Nevada 1965. This act was adopted insubstantial compliance with the federal law and also prohibits discrimination in any

apprenticeship program. Under this act an aggrieved person may either apply directly to the courts or take his complaint to the Nevada Commission on Equal Rights of Citizens, which is empowered to hold hearings, subpoena witnesses, issue cease and desist orders and apply to the court for an injunction if its order is violated.

The chapter establishing the state apprenticeship program was enacted some time prior to 1965 and it is not entirely clear what steps may be taken to eliminate discrimination by the State Council. It is clear that a substantial amount of time would be consumed in the administrative process in the attempt to do so. To hold that the State Council has exclusive jurisdiction to investigate and make a decision in regard to discrimination in apprenticeship programs would be to so disembowel the purpose of the 1965 Civil Rights Act in this area as to eliminate effective state action and invite federal intervention. This was not the intent or purpose of the Legislature.

We do not say that the State Apprenticeship Council may not act if a complaint is submitted to it. However, such action will not preclude resort by the aggrieved individual to the remedies provided by the 1965 State Civil Rights Law. We believe that the remedies are cumulative rather than exclusive.

The second question involves a fundamental determination of jurisdiction. Before an individual is subject to the jurisdiction of the State Council he must participate in a program and under an agreement submitted to and approved by the council or its director. If these conditions are not met the council may not issue a certificate of completion of apprenticeship. A person not registered under the State Apprenticeship Program would not be employed pursuant to a program and under an agreement approved by the council. [NRS 610.010](#) and [160](#). Rule 29, Rules and Regulations, Nevada State apprenticeship Council.

The answer to the third question is found in the provisions of Chapter 610 of NRS. The state director is authorized by [NRS 610.120](#)(b), (c) to set up conditions and training standards for apprenticeship agreements and is further authorized to approve any apprenticeship agreement, we assume, on behalf of the State council. See [NRS 610.010](#). Until such standards are established and agreement approved, the prerequisites of certification are not met. Approval and certification may not be made until the conditions detailed in the law are fulfilled.

CONCLUSION

(1) State Apprenticeship Council does not have exclusive jurisdiction over complaints of discrimination concerning an apprentice employed under an approved apprenticeship agreement.

(2) A person not registered under the State apprenticeship Program may not be issued a certificate of completion by the State Apprenticeship Council.

(3) A company-operated apprenticeship program may not be approved and certified by the State Apprenticeship Council or its director until its standard of operation and apprenticeship agreement have been approved by the council or its director in its behalf.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: Daniel R. Walsh, *Deputy Attorney General*

289 Classified Employees of State—A person in the classified service of the State, who is demoted by the appointing authority after a determination that such is for the good of the public service, cannot, under the law as now written, appeal to the Personnel Advisory Commission.

Carson City, December 14, 1965

Mr. James F. Wittenberg, *State Personnel Administrator, Carson City, Nevada*

Dear Mr. Wittenberg: You have directed to this office an inquiry as to whether a person in the classified service of the State who is demoted, with an accompanying reduction in salary, can appeal to the Personnel Advisory Commission.

ANALYSIS

Sutherland, in his work on statutory construction, states: “The most common rule of statutory interpretation is the rule that a statute clear and unambiguous need not and cannot be interpreted by a Court, and only unambiguous need not and cannot be interpreted by a Court, and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory construction.” (Vol. 3, Sec. 4502, p. 316.)

Sutherland goes on to state that the general rule applied to statutes granting power to administrative boards, agencies, or tribunals is that only those powers are granted which are expressly or by necessary implication conferred.

With this in mind let us examine the act creating the personnel system, Chapter 351 of the Statutes of Nevada 1953, incorporated in Nevada Revised Statutes as Chapter 284.

[NRS 284.065](#) states that the Personnel Advisory Commission shall have only such powers and duties as are authorized by law.

[NRS 284.385](#) (1a) reads as follows: An appointing authority may dismiss or demote any permanent classified employee when he considers that the good of the public service will be served thereby.

Let us pause here and consider the broad scope of this provision. All that is needed to demote any permanent classified employee is appointing authority’s determination that the public service will be served thereby.

In relation to its let us refer to [NRS 284.385](#)(2) which reads: “In case of a dismissal or suspension, the chief (of the personnel division) shall be furnished with a statement in writing setting forth the reasons for such dismissal or suspension. A copy of the statement shall be furnished the employee.”

It will be noted that there is no requirement that the chief (of the personnel division) be furnished a statement setting forth the reasons for a demotion, and retrospection will bring forth the reason for this. First, because as shown later, the statement is necessary in cases of suspension or dismissal to lay the groundwork for an appeal, and second, because the Legislature wisely foresaw that the administrator, charged with the efficient operation of his department, must be given wide latitude in determining what is, and is not, good for the public service, as far as his department and its personnel are concerned, and therefore entitled to demote those employed by him who do not measure up to required standards as to capabilities or moral qualifications.

In the case at bar, employees in trusted positions betrayed that trust. One surreptitiously removed valuable records from the department in which he was employed, took them from state custody and turned them over to third parties not connected with state government, where he directed the duplication of such records, and then surreptitiously returned them, all of this without consultation with those entrusted with the legal duty of protecting and preserving these records. They could have been lost, altered or destroyed, Others involved discussed these records in clandestine meetings outside of the department and transmitted misinformation concerning them.

Let us now resolve the question as to appeal in cases of demotion. We have ascertained ([NRS 284.385](#)-1a) that the appointing authority may demote a permanent classified employee when he deems it for the good of the public service. In the above cited instance the head of the department determined that the surreptitious removal of valuable records from his department, without his knowledge and consent, and the dissemination of misinformation concerning such records, was not conducive to the good of the public service. This, under the law, is his right and it cannot be interfered with in the absence of further legislation.

[NRS 284.390](#) provides for appeal to the Personnel Advisory Commission from a suspension or dismissal and it reads as follows:

Appeal to commission after dismissal or suspension; rules of evidence.

1. Within 30 days after receipt of a copy of the statement provided for in subsection 2 of [NRS 284.385](#), an employee who has been dismissed or suspended may, in writing, request a hearing before the commission to determine the reasonableness of such action.

2. The commission shall grant the employee a hearing within 45 days after receipt of the employee's written request.

3. At the hearing of such appeal, technical rules of evidence shall not apply.

It will be noted that no provision is made for an appeal from a demotion, and in the absence of such authority the Personnel Advisory Commission has no jurisdiction.

[NRS 284.400](#) requires that the appointing authority must report to the chief of the personnel division the reduction in position and salary, but no affirmative act is required of the chief after receiving such communication.

The only remedy afforded a person allocated to a position which displeases him is found in [NRS 284.165](#), which provides that any employee affected by the allocation of a position to a grade or class, may upon written request to the chief of the personnel division be given a reasonable opportunity to be heard thereon by the chief.

CONCLUSION

It is therefore the opinion of this office that a person in the classified service of the State, who is demoted by the appointing authority after a determination that such is for the good of the public service, cannot under the law as now written, appeal to the Personnel Advisory Commission.

Respectfully submitted,

HARVEY DICKERSON, Attorney General

290 State Purchasing; Furnishing of supplies by State Rehabilitation Centers—State Rehabilitation Centers are charitable institutions under [NRS 333.290](#) and eligible to furnish items or supplies to other state agencies at a price no higher than the lowest acceptable bid received by the State Purchasing Department for furnishing such items or supplies. (Modifies AGO 281, 11-23-65.)

Carson City, December 16, 1965

Mr. Francis Brooks, *Administrator, State Purchasing Division, Carson City, Nevada*

Mr. Charles O. Ryan, *Assistant Superintendent for Vocational Rehabilitation, Department of Education, Vocational Rehabilitation Division and OASI Determination, Carson City, Nevada*

Dear Sirs: This office has reviewed Attorney General's Opinion No. 281 issued November 23, 1965, and has come to the conclusion that the opinion should be modified.

With the supplying of additional information from the agency we now determine that the State Vocational Rehabilitation Centers are charitable institutions. As we understand it, persons in need of rehabilitation receive treatment in these centers free of charge. They are supported in part by gifts and donations.

It was clearly the intent of the Legislature in enacting [NRS 333.290](#), that if any of the state institutions could produce items which could be used by other state agencies at a saving to the State, and which would create jobs for idle hands, such items should be produced and be made available.

ANALYSIS

[NRS 333.290](#) reads as follows:

Utilization of materials, supplies, products of state institutions:
Contents of advertisement for bids.

1. Every advertisement for bids covering any class of materials or supplies that any charitable, reformatory or penal institution of the state is prepared to supply, in whole or in part, through the labor of inmates, shall carry a statement that the chief reserves the right to secure such materials or supplies from any such institution or institutions, to the extent that they can be secured of equal quality and at prices not higher than those of the lowest acceptable bid received in response to such advertisement.

2. All institutions' products meeting these conditions shall be utilized to the extent available, before orders are placed under contracts or otherwise.

Having concluded that the rehabilitation centers are charitable institutions, at least by legislative definition, we then come to the question as to whether the State Rehabilitation Centers are required to submit bids to the State Purchasing Department when they are in a position to supply materials put out for bid. We think not.

The law requires the Chief of the State Purchasing Department to include in his advertisement for bids a statement that he reserves the right to secure such materials or supplies from a charitable, reformatory, or penal institution of the State, to the extent that they can be secured of equal quality and at prices not higher than the lowest acceptable bid received.

We believe that the supplies being available from one of the defined state institutions, the duty devolves upon the State Purchasing Agent, upon review of bids received from other than such institutions, to advise such institution of the lowest bid and to ascertain if they can, and will, supply the required item or items at a price no higher than the lowest acceptable bid received.

[NRS 333.300](#), we feel, refers to persons, firms, or corporations which are not state institutions.

We agree with the former opinion that there is no statutory provision for bidding by the State Rehabilitation Centers, but in view of our discussion hereinbefore set forth, we reiterate that there is no need for it under our statutes.

CONCLUSION

It is therefore the opinion of this office that Attorney General's Opinion No. 281 should be modified so as to define the State Rehabilitation Centers at Reno and Las Vegas as charitable institutions under [NRS 333.290](#), and therefore eligible to furnish items or supplies to other state agencies at a price no higher than the lowest acceptable bid received by the State Purchasing Department for furnishing such items or supplies.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

291 Public School Districts—Effect of Elementary and Secondary Education Act, Public Law 89-10, on the special quarterly apportionments to school districts under [NRS 387.127](#), is not such as to prevent such apportionments in view of separation of state and federal funds.

Carson City, December 22, 1965

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

Dear Mr. Stetler: In a letter addressed to this office, you advise that the implementation of federal educational programs under the Elementary and Secondary Education Act of 1965, Public Law 89-10, may require the employment of certificated personnel whose salaries and other benefits, such as retirement, will be paid from federal moneys.

You further state that the certificated persons employed as a result of the federal law may increase the number of such personnel to a figure in excess of 45, the number allowed under the regular budget.

Your letter points out that [NRS 387.127\(1\)](#) provides that employees, and for which there has been levied the maximum local tax of \$1.50 for operating costs, cannot meet its budget requirements, the State Board of Education may make special quarterly apportionments.

You then propound this question: If a school district operating under the provisions of [NRS 387.127](#) employees 45 or less certified employees, but because of participating in Title 1 of the Elementary and Secondary Education Act of 1965, finds it necessary to hire additional teachers, does having the number of certified employees above 45 make the district ineligible to receive the special quarterly apportionments provided for in [NRS 387.127](#)?

ANALYSIS

[NRS 387.127\(1\)](#) reads as follows:

Whenever the state board of education finds that any school district, actually employing 45 or less certified employees and for which there has been levied the maximum local tax of \$1.50 for operating costs as authorized by law (and not including any special tax authorized by the provisions of [NRS 387.290](#)), and in which school district the county average ratio of assessed valuation of property to true valuation computed pursuant to the provisions of [NRS 387.200](#) is equal to or greater than the state average, cannot meet its budget requirements, the state board of education is authorized to make special quarterly apportionment, not to exceed a sum equal of \$250 multiplied by the number of certified employees actually employed by the school district, from the emergency state distributive school fund, payable at the same time as regular apportionments are paid from the state distributive school fund. The state board of education is authorized to make regulations necessary to carry out the provisions of this subsection.

It will be noted that funds available to the school districts are arrived at by a formula used by the State Tax Commission in accordance with [NRS 387.200](#). The county commissioners of each county are compelled by [NRS 387.250](#) to levy a tax for educational purposes of 70 cents on each \$100 of assessed valuation, and they may under the statute, levy an additional tax not to exceed 80 cents on each \$100 of assessed valuation for school purposes.

Thus it can be seen that these portions of our state statutes deal with the taxable money available under the state budgetary requirements. Thus when the words "cannot meet its budget requirements" are referred to in [NRS 387.127](#), this refers to state funds.

The provisions of Public Law 89-10 make additional sums available for educational purposes. Their use cannot raise the constitutional debt limit above the \$5 on each \$100 of assessed valuation (Article 10, Section 2, Nevada Constitution). The salaries for personnel hired in addition to the 45 allowed by [NRS 387.127](#), as well as other benefits, will be paid from federal funds.

It is our understanding that such personnel will be carried on a separate roster and that federal funds will not be commingled with state funds.

CONCLUSION

It is therefore the opinion of this office that the fact that additional certified personnel will be hired under the Elementary and Secondary Education Act of 1965. Public Law 89-10 will not affect, nor prevent, a school district from receiving, when necessary, the special quarterly apportionments provided for in [NRS 387.127](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*
