

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1969

OPINION NO. 69-556 UNIVERSITY OF NEVADA SYSTEM; LAND GRANT STATUS—The University of Nevada System, consisting of the University of Nevada, Reno, the University of Nevada, Las Vegas, and the Desert Research Institute, is the only land grant institution within the State of Nevada. The components of the system may not hold individual land grant status separate and apart from the system.

Carson City, January 23, 1969

Mr. Neil D. Humphrey, Chancellor, University of Nevada System, 100 North Arlington Avenue,
Reno, Nevada 89501

STATEMENT OF FACTS

Dear Mr. Humphrey:

The University of Nevada has been known as a land grant institution since 1864. The question now arises as to whether the university system and its components, the University of Nevada, Reno, the University of Nevada, Las Vegas, and the Desert Research Institute, may each be designated as having separate land grant status.

ANALYSIS

The Land Grant Act of 1862 granted to the several states an amount of public land, to be apportioned to each state in a quantity equal to thirty thousand acres for each senator and representative each state had in Congress. The lands were to be sold and the proceeds invested. The interest derived was to be used by the states for specified educational purposes. 7 U.S.C.A. § 302-308. Additional federal legislation followed, granting more funds to the states to be used by the land grant institutions. The amount given each state depends, in part, upon population, but not on the number of such institutions within a particular state. The only requirement is that there be such a qualified institution, which will use the funds according to the terms of the grant. 7 U.S.C.A. § 322, 329.

Nevada became a state and its constitution was adopted 2 years later, in 1864. The delegates of the Nevada constitutional convention specifically recognized the benefits that could be derived from the federal act, and provided that the Board of Regents of the University of Nevada shall have control of the funds derived from the land grant. Article II, Section 8, Nevada Constitution; Marsh, *Nevada Constitutional Debates*, p. 662. The University of Nevada, under the control of its board of regents, was and could be the only land grant institution in the State of Nevada.

We recognize that in some other states the legislatures may designate one or more state colleges or universities as land grant institutions. However, in Nevada we have only one state university and one board of regents. The University has necessarily grown over the years, and now has three components consisting of the University of Nevada, Reno, the University of Nevada, Las Vegas, and the Desert Research Institute, an educational and scientific division of the University. Because of this growth, the total institution originally referred to as the University of Nevada is now called the University of Nevada System. The University of Nevada System, consisting of the three described components, is the land grant institution as contemplated by the constitutional convention. The board of regents is to apportion the funds according to the terms of the federal act and its supplements.

We therefore conclude that each component of the University of Nevada System could not have individual land grant status, since each is a part of the presently existing land grant institution. The same advantages accrue and the funds for all are controlled by one governing body, the board of regents.

CONCLUSION

The University of Nevada System, consisting of the University of Nevada, Reno, the University of Nevada, Las Vegas, and the Desert Research Institute, is the only land grant institution within the State of Nevada. The components of the system may not hold individual land grant status separate and apart from the system.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Daniel R. Walsh
Chief Deputy Attorney General

OPINION NO. 69-557 LIABILITY INSURANCE—The procurement of liability insurance by a governmental unit does not waive sovereign immunity or increase a limited statutory waiver of immunity.

Carson City, January 27, 1969

Mr. Preston E. Tidvall, Secretary, State Board of Finance, Nye Building, Room 321, 201 South Fall Street, Carson City, Nevada 89701

Dear Mr. Tidvall:

The State of Nevada presently has insurance coverage in the amount of \$1,000,000 with a \$100,000 deductible provision. A proposal has now been made which would give the State first dollar coverage to a maximum overall coverage of \$10,000,000, and does not purport to cover the State for more than \$25,000 per claimant. In view of the fact that [NRS 41.035](#) limits liability sounding in tort for the benefit of any claimant to a maximum of \$25,000, you have requested our opinion on the following question:

Would the legislative intent of [NRS 41.031](#), [41.035](#) and 41.038 be violated by increasing liability insurance to cover first dollar coverage up to \$10,000,000 per occurrence?

A collection of cases is found in 68 A.L.R. 14 concerning the subject of immunity and the procurement of insurance by governmental units. Most courts have concluded that the procurement of insurance in no way waives sovereign immunity. Neither does it increase the liability of a limited waiver set by statute. Included in A.L.R. citation is a Nevada case, *Taylor v. State*, [73 Nev. 151](#), 311 P.2d 733. Taylor decided that the procurement of insurance by a state agency with funds provided by the Legislature in the normal course of appropriation did not waive sovereign immunity. That case was decided prior to our [NRS 41.031](#) and [41.039](#), waiving sovereign immunity. However, we believe that the reasoning and conclusions of *Taylor v. State*, *supra*, which reached a conclusion in line with the majority of courts, is still in force in this State.

[NRS 41.038](#) provides:

The state and any political subdivision may:

1. Insure itself against any liability arising under [NRS 41.031](#).

2. Insure any of its employees against tort liability resulting from an act or omission in the scope of his employment.
3. Insure against the expense of defending a claim against itself whether or not liability exists on such claim.

This statute, of course, amounts to an authorization by the Legislature to purchase insurance for protection against losses suffered by the waiver of immunity. Subsection 2 and subsection 3 permit the State to insure state employees within the scope of their employment and expenses of defending a claim.

We, therefore, conclude that the procurement of insurance in the amount, and manner set forth above would not violate the terms of [NRS 41.035](#) by increasing the State's exposure to liability.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-558 PAROLES—1. An inmate cannot be paroled for a time which extends beyond his release date, i.e., the date upon which his sentence would have been served had he remained in prison. 2. No inmate may be ordered on parole without his agreement and acceptance of conditions of parole.

Carson City, January 27, 1969

Mr. Philip P. Hannifin, Chief Parole and Probation Officer, 201 South Fall Street, Carson City, Nevada 89701

Dear Mr. Hannifin:

You have requested an opinion from this office concerning the following questions:

1. Can an inmate of the Nevada State Prison be paroled for a term which extends beyond the expiration date of his sentence, and subsequently be returned to prison as a parole violator after the date upon which his sentence would have expired if he had remained in prison?
2. May the parole board order the parole of an inmate without his agreement and acceptance?

You have requested that the opinion be directed both to inmates sentenced under the indeterminate plan in effect prior to the 1967 amendments, and to those sentenced under the indeterminate plan in effect as a result of the 1967 amendments.

ANALYSIS

The courts have established as a general principle of law that the term of imprisonment constitutes a limitation on the period for which parole can be granted. Stated differently, an inmate may not be paroled beyond the time he would be required to serve in prison. 39 Am.Jur., Pardon, Reprieve, and Amnesty, § 87; Re Carroll, 137 Pac. 975.

The application of this rule, however, requires that a further issue be resolved with respect to the effect of parole on the running of the sentence itself. There are two views in the courts on this question. One view holds that the parole does not suspend running of the sentence, in the absence of a provision to that effect in statutes or in the rules of parole. The reasoning behind this view is that the convict is serving his sentence outside the walls of the prison, and is in effect subject to

penal supervision. The other view holds that parole suspends the running of the sentence, and the time served on parole is not credited against the sentence. The effect of this view is that violation of parole causes recommitment for the balance of the sentence unexpired at the time parole was granted. Most states which adopt this view do so because of the provisions of statutes. See Anno. 28 A.L.R. 947.

Research has disclosed no Nevada decisions which have squarely considered this issue. We believe that the former view is the better reasoned view and is more soundly calculated to promote rehabilitation. This view has been impliedly accepted by the Supreme Court of Nevada in *Robinson v. Leypoldt*, [74 Nev. 58](#). It has also been recited in Attorney General's Opinion No. 228 dated June 17, 1961. If the contrary view were to be accepted, parole then would not be counted on the sentence, and it would therefore be impossible to parole an inmate beyond the expiration date of his sentence.

Since Nevada appears to have adopted the former view, each sentence must be examined to determine its expiration date, and that date limits the term for which parole may be granted.

It is as well at this point to note the established rule that a parole must be accepted by the convict before it becomes effective to secure to him his liberty; in other words, it is for him to elect to accept the parole with its conditions or to reject it and remain in prison. If he prefers to serve out the remainder of his sentence as originally imposed rather than to accept a parole or suspension of his sentence by subjecting himself to the conditions set forth in the parole, he has a clear right to do so. 39 Am.Jur. 576, Pardon, Reprieve and Amnesty, § 89; Anno. 52 A.L.R. 836; A.G.O. 599 (4-7-48); A.G.O. 228 (6-14-61).

This leaves the question of the effect of good time credits as they determine the expiration date. Prior to the 1967 amendment of [NRS 213.150](#), good time credits were not subject to forfeiture when an inmate was retaken for parole violation. The parole statutes in effect at the time a sentence is imposed do not alter the sentence, but become a part of the sentence in every respect as though fully incorporated therein. 39 Am.Jur., Pardon, Reprieve, and Amnesty, § 85. Therefore, a parolee sentenced prior to the effective date of the 1967 amendment to [NRS 213.150](#) (April 20, 1967) may not have his good time credits forfeited for parole violation. The opposite is true with respect to parolees sentenced after that date. From this, it follows that the expiration date and permissible term for parole can be calculated with relative ease for parolees sentenced prior to April 20, 1967.

For parolees sentenced after that date, the board has no way to determine whether parole would be violated and good time credits forfeited, until either that happens or the parolee satisfactorily completes his parole up to his tentative expiration date, based on assumed good time credits. If he satisfactorily completes his parole to that date, he becomes entitled to discharge from parole in the same manner as he would become entitled to discharge from prison.

Further difficulty is encountered with respect to parolees who are under an indeterminate sentence. In most instances, those under indeterminate sentence will have been sentenced prior to April 20, 1967. Since their good time credits are not forfeitable, a safe guideline would be to parole to a date not later than the maximum sentence imposed, less good time credits. For those having indeterminate sentences imposed after April 20, 1967, the "wait and see" approach appears to be about the only workable one.

Within these general guidelines, the foregoing specific rules can be applied.

CONCLUSION

It is the opinion of this office that:

1. An inmate cannot be paroled for a time which extends beyond his release date, i.e., the date upon which his sentence would have been served had he remained in prison; and
2. No inmate may be ordered on parole without his agreement and acceptance of conditions of parole.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-559 MINING; NET PROCEEDS OF MINES—Modifies Attorney General's Opinion No. 532, dated August 30, 1968, so as to allow the inclusion of stockpiled material in the computation of gross yield and net proceeds under emergency conditions.

Carson City, February 5, 1969

Mr. Roy E. Nickson, Secretary, Nevada State Tax Commission, Carson City, Nevada 89701

Dear Mr. Nickson:

On August 30, 1968 we issued Attorney General Opinion No. 532, after inquiry from your office as follows:

1. Would the fact that a mining operator is prevented from selling his ore or concentrates through no fault of his own be a matter of extenuation in determining the net proceeds of his mine under Chapter 362 of NRS?

2. Under [NRS 362.120](#) may the Nevada Tax Commission compute the gross yield and net proceeds in dollars and cents by considering factors other than the actual sale of the product of the mine?

Both questions were answered in the negative. We believe the opinion, in justice to the taxpayer, should be modified.

ANALYSIS

While it is true that where the net proceeds reported to the Tax Commission may be based on the actual proceeds from the sale of ore, we do not believe that it should be exclusive under a liberal and cogent interpretation of the statute. [NRS 362.120](#) provides that the Nevada Tax Commission shall, from the statement, *and from all obtainable data, evidence and reports, compute* in dollars and cents the gross yield and net proceeds from each semiannual period. In other words the true question which should have been asked is this: Does the Nevada Tax Commission have authority under subsection 1 of section 362.120 NRS to use all obtainable data, evidence and reports that the commission could obtain, in addition to the statement filed by the operation, to determine gross yield?

In the present case copper concentrates mined during a period when all smelters in the United States were closed were stockpiled. There was no intent to hold the stockpiled material for future sale at a higher price. The stockpiled material was produced during the reporting period but without a chance for sale. One solution in such a situation would be a shutdown of production—thus putting men out of work and creating a diminished economy.

The availability of obtainable data, evidence and reports to the Nevada Tax Commission would include, we believe, the estimation of the value of stockpiled material, records of past sales, prices quoted in *The Engineering and Mining Journal*, etc. From such material the Tax Commission could compute in dollars and cents the gross yield and net proceeds.

Under [NRS 362.200](#) the commission is given the right to inspect all pertinent records of mine operators relating to the yield and proceeds of mines. Thus if stockpiled material were later sold and there was a differential in value from that determined during the stockpiling period, an adjustment could be made by the commission.

This opinion does not mean to infer that the Nevada Tax Commission may not arrive at a determination of the tax due by reference to the net proceeds of money actually received from sales. What it does infer is that under emergency circumstances, where sales are an impossibility due to circumstances and stockpiling results, the gross yield and net proceeds may be computed on all data available to the commission.

CONCLUSION

It is therefore the opinion of this office that Attorney General Opinion No. 532, dated August 30, 1968, is modified to conform to this opinion.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-560 REAL ESTATE COMMISSION; ADMINISTRATIVE PROCEDURE ACT—The provisions of [NRS 645.740](#) for appeal from decisions of the Real Estate Commission exceed the minimal procedural requirements of [NRS Chapter 233B](#) (Administrative Procedure Act). The commission is therefore bound by [NRS 645.740](#).

Carson City, February 11, 1969

Mr. Don McNelley, Administrator, Real Estate Division, Department of Commerce, Carson City, Nevada 89701

Dear Mr. McNelley:

You have expressed concern over a possible conflict between Chapter 645 of Nevada Revised Statutes dealing with real estate brokers and salesmen, and the Administrative Procedure Act, [NRS Chapter 233B](#). Specifically, your concern is over the staying of an order of suspension or revocation of license, pending appeal. Both chapters contain provisions for a stay of appeal, and your question is which of the sections takes precedence when dealing with a stay of the commission's order upon appeal.

ANALYSIS

The pertinent sections are as follows:
[NRS 645.740](#), subsection 2, 3, and 4:

2. If such ruling shall be to the prejudice of or shall injuriously affect the licensee, the commission shall also state in the notice the date upon which the ruling or decision shall become effective, which date shall not be less than 30 days from and after the date of the notice.

3. The decision of the commission shall not take effect until 30 days after its date, and if notice of appeal and demand for transcript are served upon the commission in accordance with the provisions of [NRS 645.760](#), then such stay shall remain in full force and effect until decision upon appeal by the district court; but if the aggrieved party shall fail to perfect his appeal as provided in [NRS 645.760](#), the stay shall automatically terminate.

4. No appeal from a decision of the district court affirming the revocation or suspension of a license shall stay the order of the commission unless the district or

appellate court, in its discretion and upon petition of the licensee, orders such stay, at which time the court shall also set the amount of the supersedeas.

[NRS 233B.140](#), subsection 1:

The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

The discrepancy appears to be that [NRS 645.740](#) provides for an automatic stay if the decision is adverse to a licensee and appeal is properly taken. On the other hand, [NRS 233B.140](#) does not contain provisions for an automatic stay, but would seem to require affirmative action by the appealing party.

A reading of [NRS 233B.020](#), subsection 2, would appear to resolve this question. It provides:

The provisions of this chapter are intended to supplement present statutes applicable to specific agencies. Nothing in the chapter shall be held to limit or repeal additional requirements imposed on such agencies by statutes or to limit such requirements otherwise recognized by law.

We believe that [NRS 645.740](#) imposes more specific and stringent requirements on the agency than the general language of [NRS 233B.140](#), because it provides for an automatic stay without the necessity of application.

CONCLUSION

Since [NRS 233B.020](#)(2) expressly disclaims effect on statutes which provide for additional requirements on agencies, we conclude that you should follow [NRS 645.740](#) with respect to appeals from decisions of the commission revoking or suspending licenses.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-561 PUBLIC SCHOOLS—The actual receipts from all taxes levied for local school support, rather than a computation bases on assessed valuation multiplied by .007, properly constitutes local availability under the Nevada plan for financial support of public schools.

Carson City, February 11, 1969

Mr. Lincoln W. Liston, Associate Superintendent, Department of Education, Division of Administrative Services, Carson City, Nevada 89701

Dear Mr. Liston:

By your letter of February 3, 1969, you have requested an opinion from this office regarding the computation of locally available funds incident to apportionment of the State Distributive School Fund among the county school districts and joint school districts.

FACTS

You have advised us of the following facts. For a number of years the amount of locally available funds from the mandatory 70-cent local school tax has been computed multiplying the assessed valuations reported by the Nevada Tax Commission by .007. The resulting figures are normally not recomputed except at occasional times when the Nevada Tax Commission would amend its reports for budgetary purposes due to significant changes in anticipated proceeds of mines tax. The local availability so computed does not always coincide with the proceeds actually realized from these taxes for a number of reasons:

A. Some taxes are not collected.

B. Other taxes are collected only in years after which they are imposed, thereby resulting in revenues realized in years other than those in which they are budgeted and additional delinquencies and penalties.

C. Permissive tax rates may vary from year to year in a given school district by reason of the provisions of [NRS 387.195](#), subsection 2.(b).

As a consequence, the local availability of funds so computed has never been adjusted to reconcile the difference between the computed figures and the actual receipts from the taxes. You have therefore asked whether there is authority or responsibility to adjust the final apportionments for a school year to reconcile the differences between the computed tax and the actual tax receipts.

ANALYSIS

The statutory plan for financial support of public schools can best be understood in the light of the legislative declaration of policy contained in [NRS 387.121](#). It reads as follows:

The legislature declares that the proper objective of state financial aid to public education is to insure each Nevada child a reasonably equal educational opportunity. Recognizing wide local variations in wealth and costs per pupil, the state should supplement local financial ability to whatever extent necessary in each school district to provide a minimum program of education. Therefore the quintessence of the state's financial obligation for such a program can be expressed in a formula on a per pupil basis as: State financial aid equals school district basic support guarantee for a minimum program minus local available funds produced by mandatory taxes. This formula is designated the Nevada plan.

The locally available funds here under consideration are derived from the county school district taxes imposed pursuant to [NRS 387.195](#) and [NRS 387.250](#). Subsections 2.(a) and 2.(b) of [NRS 387.195](#) provide:

2. In 1956 and in each year thereafter when the board of county commissioners levies county taxes:

(a) It shall be mandatory for each board of county commissioners to levy a 70-cent tax on each \$100 of assessed valuation of taxable property within the county, which taxes shall be used by the county school district for the maintenance and operation of the public schools within the county school district; and

(b) When recommended by the board of trustees of the county school district, in addition to the mandatory levy of taxes provided in paragraph (a), each board of county commissioners shall levy a tax of not to exceed 80 cents on each \$100 of

assessed valuation of taxable property within the county for the support of the public schools within the county school district.

The language of [NRS 387.250](#) is substantially parallel with that of [NRS 387.195](#). The two statutes differ only in that one deals with county school districts and the other deals with joint school districts.

We believe that the legislative policy establishes as fundamental the principle that the public schools of this State are to derive their support locally; and to the extent that the basic support guarantee established by [NRS 387.122](#) exceeds locally available funds, financial support shall be provided from the State Distributive School Fund.

The provisions governing apportionment of the State Distributive School Fund appear in [NRS 387.124](#). The portions of that statute material to this analysis read as follows:

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

(a) Basic support of each school district shall be computed by multiplying the average daily attendance by the basic support guarantee per pupil established in [NRS 387.122](#).

(b) The *availability of local funds* shall be determined, which local funds shall be the sum of:

(1) The *proceeds* of the 70-cent local tax computed as provided in [NRS 387.195](#) or 387.250;

(2) Twenty-five percent of all moneys received by the school district under the provisions of Public Law, 874 81st Congress, approved September 30, 1950, as amended, during the previous year; and

(3) The proceeds of the local school support tax imposed by chapter 374 of NRS. The Nevada tax commission shall furnish an estimate of such proceeds, based upon actual collections during the preceding fiscal year then begun, and the state board of education on or before July 15 for the fiscal year, to the state board of education shall adjust the August apportionment of the succeeding fiscal year to reflect any difference between such estimate and actual receipts.

(c) Apportionment computed on a yearly basis shall consist of the difference between the basic support as computed in paragraph (a) of this subsection and the *local funds available* as computed in paragraph (b) of this subsection. (Italics added.)

The foregoing statutory plan, the statutory language itself and presently established procedures create a number of problems. Substantial difficulty is encountered with the first element of locally available funds. [NRS 387.124](#) subsection 2.(b)(1) refers to it as “the *proceeds* of the 70-cent local tax *computed* as provided in [NRS 387.195](#) or 387.250.” Some of the questions which arise are these:

1. Does this language mean actual proceeds or a computed figure?
2. If the two differ, which term governs and how is any difference to be reconciled?
3. [NRS 387.195](#) and [387.250](#) deal not only with a 70-cent mandatory local tax but also with an additional 80-cent local tax which is equally mandatory if requested. Every county has requested all or a part of this additional 80-cent tax. Yet locally available funds are described as only 70-cent in local taxes while the 80-cent is earmarked for local school support. Therefore, is the additional 80-cent, or part thereof, regarded as locally available funds?

(a) If so, the funds cannot be calculated on the basis of .007.

(b) If not, how is the 70-cent tax to be identified and segregated from the total local school support tax levy? And what is to be done with the excess of tax levied over 70 cents if it is earmarked by the statute for local school support?

4. Where taxes are not paid as they fall due, what treatment is accorded tax delinquencies and penalties? Does a “70-cent computed figure” affect the disposition on these locally available funds?

These issues emphatically demonstrate the need for clarifying legislation. Their presence points up the obvious inconsistencies between local availability computed on the basis of .007 and the existence of an additional 80-cent school support tax. The same inconsistency is evident, in the provisions of [NRS 387.124](#) subsection 2.(b)(1), between the concept of “proceeds” of a tax and the concept of a “computed” tax. These inconsistencies can and must be resolved in the light of the legislative statement of policy and by reference to the overall statutory plan for financial support of schools.

The strongest, if not the only, argument in support of computing local availability by multiplying reported assessed valuations by the factor .007 is found in the literal language of [NRS 387.124](#) subsection 2.(b)(1). It is noteworthy that the statutes referred to in the terms “computed as provided in [NRS 387.195](#) or 387.250” do not specify a particular manner of computation of anything at all.

We believe that [NRS 387.195](#) and [387.250](#) do not purport to prescribe a manner of *computation* but rather are statutory mandates governing the *imposition* of tax. We strongly doubt that the provisions of [NRS 387.124](#) subsection 2.(b)(1) were ever intended to require merely a computed figure for local availability to the exclusion of the actual proceeds in money from the tax levied.

The legislative policy defines the State’s support obligation as the basic support guarantee minus local available *funds produced by mandatory taxes*. [NRS 387.121](#). The 80-cent tax, if recommended, is every bit as mandatory as the 70-cent tax. Thus, if this local availability is computed first on the basis of .007 of reported assessed valuation, it must of necessity be reconciled with actual proceeds under the facts as submitted. Otherwise the computed availability will never coincide with tax receipts. On the other hand, if local availability is determined on the basis of actual receipts at the time of each apportionment, the problem of reconciliation with a prior computation is eliminated.

We can find no express statutory authority or directive that local availability is to be calculated at reported assessed valuation multiplied by .007, nor any statutory authority or directive that, after having done so, any inconsistency between the figure so calculated and actual proceeds is to be reconciled. The same is not true with respect to the local school support tax imposed by [NRS Chapter 374](#), which is a part of locally available funds. This factor, unlike the 70-cent tax, is to be based on estimates supplied by the Nevada Tax Commission and adjusted thereafter to reflect any difference between such estimate and actual receipts. See [NRS 387.124](#) subsection 2.(b)(3). We therefore conclude that the portion of local availability referred to in [NRS 387.124](#) subsection 2.(b)(1) is not assessed valuation multiplied by .007, but proceeds actually received from levies pursuant to [NRS 387.195](#) or 387.250.

Our conclusion is further strengthened by the fact that [NRS 387.124](#) subsection 2.(f), which authorizes school districts to apply for emergency financial assistance, require districts so applying first to have imposed the full \$1.50 school tax levy, thereby obtaining first the maximum local support allowed by law.

Unless this position is correct, there is no statutory provision whereby the proceeds from the additional 80-cent school support tax are included in locally available funds. Since all school districts have recommended all or part of this permissive levy, the proceeds therefrom must be considered. If they are not considered as part of local availability, then the statutory mandate that these funds be used for school support is subverted. There would also be created the problems of apportioning the 70-cent tax levied from the total tax proceeds collected pursuant to [NRS 387.195](#) and [387.250](#), and what disposition shall be made of such proceeds in excess of the 70 cents. On the other hand, if these additional proceeds are part of local availability, it is immediately evident that the statutory reference in [NRS 387.124](#) to the 70-cent tax cannot be entirely controlling, and that the use of the .007 multiplier is neither factually sound nor lawfully authorized. We therefore conclude that locally available funds include the actual proceeds of both the 70-cent local tax and the 80-cent local tax (or such portion of the latter as is recommended).

If local availability for the purposes of [NRS 387.124](#) subsection 2.(b)(1) is the actual cash proceeds of the entire mandatory school tax levies, the legislative policy and the statutory plan for school support will be fully implemented. Otherwise they cannot be. Then there is no necessity to make periodic adjustments to reconcile differences between actual proceeds and previously computed estimates. The possibility of cash shortages after the allocations from the State Distributive School Fund have been made, is eliminated. There is no need for concern over variations in the optional tax rates either from year to year or from district to district. There will be no problem with apportionment of 70 cents out of the total required and optional mandatory taxes; and the excess over 70 cents will be allocated to the purpose for which it is levied, viz. local school support. Any apparent shortage due to lack of collections in particular years will be more than made up in later years in which collections are realized because delinquent penalties and interest will accrue. There is no reason to treat the character of such penalties or interest any differently from the tax to which they relate.

CONCLUSION

It is therefore the opinion of this office that the actual receipts from all taxes levied for local school support, rather than a computation based on assessed valuation multiplied by .007, properly constitutes local availability under the Nevada plan for financial support of public schools.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-562 LOCAL GOVERNMENT BUDGET—The Gardnerville Town Water Company is not a “local government” within the meaning of the Local Government Budget Act. [NRS 354.470](#) to [354.626](#), inclusive.

Carson City, February 17, 1969

The Honorable John Chrislaw, District Attorney of Douglas County, Douglas County Courthouse, Minden, Nevada 89423

DEAR MR. CHRISLAW: You have requested an opinion from this office on the question of whether the Gardnerville Town Water Company is a “local government” within the meaning of [NRS 354.474](#), thereby becoming subject to the provisions of the Local Government Budget Act, [NRS 354.470](#) to [354.626](#), inclusive. In connection with your inquiry, you have advised us of the following facts:

FACTS

The town of Gardnerville, through the board of county commissioners, acting as a town board, acquired the present water system by purchase in 1928 and 1929, under authority of an act to enable such acquisitions ([NRS 710.410](#)). The company is supported entirely by fees received from water users in the town of Gardnerville and does not levy or receive money from ad valorem or other taxes, nor does it make any mandatory assessments.

ANALYSIS

Applicability of the Local Government Budget Act is delineated in subsection 1 of [NRS 354.474](#), which reads as follows:

Except as otherwise provided in subsection 2, the provisions of [NRS 354.470](#) to [354.626](#), inclusive, shall apply to all local governments. For the purpose of [NRS 354.470](#) to [354.626](#), inclusive, “local government” means every political subdivision or other entity which has the right to levy or receive moneys from ad valorem or other taxes or any mandatory assessments, and includes without limitation counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244, 309, 318, 379, 473, 474, 540, 541, 542, 543 and 555 of NRS and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

The purposes of the act are to provide and promote efficiency and uniformity in financial planning, estimation and determination of revenue and expenditures as well as tax levies; to provide statewide control over revenues and expenditures of local governments; to promote prudence and efficiency in handling of public funds; and to provide specific methods to enable taxpayers, investors and the public to be apprised of fiscal matters relating to local government. See [NRS 354.472](#).

The Gardnerville Town Water Company is not a political subdivision. It does not levy or receive taxes of any kind. It is not a city, town, board, school district, nor does it partake in the nature of any other type of district organized pursuant to any of the other statutes mentioned in [NRS 354.474](#). The fees from water users, which are the sole source of its financial support, are not taxes within the meaning of the Local Government Budget Act. Taxes within this meaning are defined in [NRS 354.576](#) as follows:

“Taxes” means compulsory charges levied by a governmental unit against the wealth of a person, natural or corporate, for the common benefit of all. The term does not include charges made against particular persons or property for current benefits and privileges accruing only to those paying such charges, such as licenses, permits and assessments, nor does it include water, sewer, garbage or other service or use fees furnished through municipally operated utilities.

We do not believe that the inclusion of such a town water company within the purview of the act would serve either the letter or the spirit of the act as its purposes are defined above. We therefore conclude that it is not a “local government” within the meaning of the act.

CONCLUSION

It is the opinion of this office that the Gardnerville Town Water Company is not a “local government” within the meaning of the Local Government Budget Act, [NRS 354.470](#) to [354.626](#), inclusive.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-563 VETERANS; EXEMPTIONS—A veteran who resided in Nevada for more than 3 years prior to December 31, 1963, whether such residence was part of the period from December 31, 1960 to and including December 31, 1963, or included years prior to those dates, is entitled to the veterans exemption provided by [NRS 361.090](#).

Carson City, February 18, 1969

Hon. James Bilbray, County Assessor, Clark County Courthouse, Las Vegas, Nevada 89101

Attention: Fern Herzog, Deputy

Dear Mr. Bilbray:

You have asked for an interpretation of [NRS 361.090](#) arising by reason of the following facts: A veteran who resided in Nevada for 3 years prior to, but not immediately preceding, December 31, 1963, left in March of 1963 for Florida, where he remained for 2 years. Upon his return he was denied his exemption because of an absence from Nevada for a period of more than 6 months.

ANALYSIS

The reason for the enactment of [NRS 361.090](#) was to prevent persons, who had served in the Armed Forces from other states, who had no prior residency in Nevada, coming into Nevada to take advantage of the personal property tax exemption afforded to our own Nevada veterans. [NRS 361.090.1\(a\)\(b\)](#) reads as follows:

1. The property, to the extent of \$1,000 assessed valuation, of any actual bona fide resident of the State of Nevada who:

(a) Was such a resident for a period of more than 3 years before December 31, 1963, or who was such a resident at the time of his or her entry into the Armed Forces of the United States, who has served a minimum of 90 days on active duty, who was assigned to active duty at some time between April 21, 1898, and June 15, 1903, or between April 6, 1917, and November 11, 1918, or between December 7, 1941, and December 31, 1946, or between June 25, 1950, and January 31, 1955; or

(b) Was such a resident at the time of his or her entry into the Armed Forces of the United States, who has served a minimum of 90 continuous days on active duty none of which was for training purposes, who was assigned to active duty at some time between January 1, 1961, and whatever date may be proclaimed by the President of the United States as the termination of hostilities in Viet Nam, and who received, upon severance from service, an honorable discharge or certificate of satisfactory service from the Armed Forces of the United States, or who, having so served is still serving in the Armed Forces of the United States, shall be exempt from taxation.

It may be seen by subparagraph (a) that a veteran is entitled to the exemption by one of two alternatives: 1. By having resided in Nevada for a period of more than 3 years prior to December 31, 1963, or, 2. Who was a Nevada resident at the time of his entry into the Armed Forces and who has served a minimum of 90 days on active duty in periods prescribed to the Spanish-American War, the First World War, the Second World War, the Korean War, and by (b) the Vietnamese War.

Do the words “was such a resident for a period of more than 3 years before December 31, 1963,” mean a continuous, uninterrupted residency in Nevada for the 3 years immediately preceding December 31, 1963? We think not, for such an interpretation would be

unconstitutionally restrictive, in shutting out many Nevada veterans who have been lifelong residents of this State who, for one reason or another, have been absent for periods exceeding 6 months.

The present case is an example. Here is a veteran who lived in Nevada for 17 years prior to December 31, 1963. He left Nevada in March of 1963, and went to Florida where he remained for 2 years, and then returned to Nevada. Is he to be denied the exemption because part of his residency was prior to December 31, 1960 and because he remained away from Nevada for a period of more than 6 months?

Many Nevada people who love this State are forced by economic or other justifiable reasons to leave their Nevada homes for periods exceeding 6 months. It is their intent upon leaving to return to Nevada. It is true that they may have to meet certain requirements to reestablish their voting rights, but their property rights remain inviolate, and the criteria for voting should not be applied to their right to apply for a tax exemption on property.

The most liberal interpretation should be given to statutes affecting those who in time of war assumed the burden of defending their Country.

CONCLUSION

It is the opinion of this office that a veteran who resided in Nevada for more than 3 years prior to December 31, 1963, whether such residence was part of the period from December 31, 1960 to and including December 31, 1963, or included years prior to those dates, is entitled to the veterans exemption provided by [NRS 361.090](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-564 DISTRICT HEALTH BOARDS—A district health board or county health board is not a political subdivision within the meaning of the Federal Highway Safety Act of 1966.

Carson City, February 27, 1969

Mr. E. H. Miller, Highway Safety Coordinator, Department of Motor Vehicles, Carson City, Nevada 89701

Dear Mr. Miller:

You have requested an opinion from this office on the question of whether a district health board or county health board constitutes a “political subdivision” for the purposes and within the meaning of the Federal Highway Safety Act of 1966.

ANALYSIS

Your question is directed to both district and county health boards. Since district boards, when created, have the same powers, duties, authority and jurisdictions as the county boards they replace, our analysis will be made with reference to district health boards.

The Federal Highway Safety Act of 1966 is designated P.L. 89-564 and appears at 80 Stat. 731, 23 U.S.C. 401, et seq. At § 402(b)(1) it sets forth requirements for highway safety programs developed by states, which must be met as a condition to approval by the secretary. One such requirement, contained in subparagraph (b) thereunder, is that the state program “authorize

political subdivisions of such state to carry out local highway safety programs within their jurisdictions as a part of the state highway program * * *.”

This requirement must presuppose that a “political subdivision” within its meaning has the power and authority to conduct a local highway safety program. The county health boards, and therefore the district health boards, have only the powers and authority conferred by law. District health boards have only the duties, powers, and authority of county boards. [NRS 439.410](#).

[NRS 439.350](#) provides:

The county board of health shall:

1. Oversee all sanitary conditions of the county in which the board is created.
2. Make such rules and regulations as may be necessary for the prevention, suppression and control of any contagious or infectious disease dangerous to the public health, which rules and regulations shall take effect from and after their approval by the state board of health.

[NRS 439.360](#) provides:

The county board of health shall have the power:

1. To abate nuisances in accordance with law.
2. To establish and maintain an isolation hospital or quarantine station when necessary.
3. To restrain, quarantine and disinfect any person sick with or exposed to any contagious or infectious disease, dangerous to the public health.
4. To appoint quarantine officers when necessary to enforce quarantine, and shall provide whatever medicines, disinfectants and provisions which may be required, and shall arrange for the payment of all debts or charges so incurred from any funds available; but each patient shall, if able, pay for his food, medicine, clothes and medical attendance.

It is at once apparent that such powers, duties, and authority are not in any sense what is contemplated by the Federal Highway Safety Act. It is true that district health departments are becoming interested and actively involved in such programs. However, this does not mean that they are for that reason necessarily political subdivisions.

In 1967 our Legislature enacted [NRS 223.200](#) empowering the Governor to implement the Federal Highway Safety Act. The Legislature recognized the valuable contribution which the district boards (through their own channels of authority within the State Health Department) could make toward the program.

[NRS 223.200](#), subsection 3, provides in part:

The state agency designated by the governor pursuant to subsection 2 shall, with the assistance of the legislative commission, the supreme court of Nevada, the department of highways, *the health division of the department of health and welfare*, the state department of education *and other state agencies and local subdivisions*, cause to be prepared a comprehensive highway safety program plan detailing how the State of Nevada proposes to progress toward long-range state goals to achieve full compliance by December 31, 1968, or thereafter, with the program standards promulgated pursuant to the Highway Safety Act of 1966. *
* * (Italics added.)

This language illustrates the manner in which county and district health boards are to participate in the state program, and also indicates the legislative intent to distinguish them from local subdivisions for purposes of the program. We believe that the terms “local subdivision” in our statute and “political subdivision” in the federal act were intended to mean counties, cities, and towns, i.e. entities exercising essentially governmental functions on the local level.

CONCLUSION

It is therefore the opinion of this office that county or district health boards are not political subdivisions within the meaning of the Federal Highway Safety Act of 1966.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-565 UNIVERSITY OF NEVADA—Authorized University of Nevada personnel may enter student housing units provided by the University, for purpose of inspection, repairs, or official business, without violating any of the constitutional or legal rights of said students.

Carson City, March 3, 1969

Mr. N. Edd Miller, President, University of Nevada, Reno, Nevada 89507

Dear Mr. Miller:

It is my understanding that officials of the University of Nevada, pursuant to a student housing application contract form, enter the rooms of students who have signed such application forms, and as a result thereof are living in University residence halls. The purpose of such entrance is justified under subparagraph 6 of part III of the contract entitled "Terms and Conditions of Residence," which reads as follows:

The University reserves the right to have authorized personnel enter any unit for the purpose of inspection, repairs, or any other official business.

You ask whether entry into student housing units by authorized University personnel violates any constitutional rights of the students.

ANALYSIS

The housing units are under the control and supervision of the University of Nevada. In that supervisory position, the burden is placed on University officials to see that said units are guarded against vandalism, against situations leading to an unsafe condition, and against the use of said premises for an illegal purpose.

In addition to these factors, a duty is imposed on the University to keep such units in repair, and ipso facto, in order to make a determination as to whether repairs are needed, it is necessary for qualified personnel to enter the units for inspection.

A man's home may be his castle, but the same sanctity is not accorded a college student's dormitory room. The U.S. District Court for the Middle District of Alabama has ruled that a state college can conduct a warrantless search of a student's room and personal effects pursuant to a school regulation authorizing such entry. (*Moore v. Student Affairs Committee*, May 14, 1968, 284 F.Supp. 725.)

The situations which arise by reason of the foregoing are completely different from a situation where a law enforcement official seeks admission for purposes of search without a warrant.

CONCLUSION

It is therefore the opinion of this office that authorized University of Nevada personnel may enter student housing units provided by the University, for the purpose of inspection, repairs, or official business, without violating any of the constitutional or legal rights of said students.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-566 EMPLOYERS; PAYMENT OF WAGES BY—An employer, under [NRS 608.250](#) and [NRS 609.030](#), is obligated to pay not less than the minimum statutory wages for all hours that he knowingly suffers or permits an employee to work.

Carson City, March 3, 1969

Mr. Stanley P. Jones, Labor Commissioner, Carson City, Nevada 89701

Dear Mr. Jones:

You have advised this office that certain employers in Nevada are requiring new employees to break in on the job by working for a certain indefinite period without pay.

Your question is whether such procedure contravenes the provisions of [NRS 608.250](#) and [609.030](#).

ANALYSIS

[NRS 608.250](#) reads as follows:

1. Except as otherwise provided in subsection 2, the 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.
2. The provisions of subsection 1 do not apply to male persons:
 - (a) In domestic service or in an agricultural pursuit.
 - (b) Governed by the provisions of the Fair Labor Standards Act of 1938, as amended, being 29 U.S.C. § § 201 to 219, inclusive.

[NRS 609.030](#)(3) reads as follows:

3. The policy of this state is hereby declared to be:
 - (a) That 8 hours in any one 13-hour period, and not more than 48 hours in any 1 calendar week, and not more than 6 days in any calendar week, are the maximum number of hours and days female workers shall be employed in private employment, with certain exceptions; and

(b) That not less than the rate of \$1.10 for 1 hour or \$8.80 for 1 day of 8 hours, or \$52.80 for 1 week of 6 days of 8 hours each, shall be paid such female workers under the age of 18 years in this state; and

(c) That not less than \$1.25 for 1 hour or \$10 for 1 day of 8 hours, or \$60 for 1 week of 6 days of 8 hours each, shall be paid such female worker 18 years of age or over in this state.

These sections cover minimum wages to both sexes. An employer is obligated to pay not less than the minimum statutory wages for all hours that he knowingly suffers or permits an employee to work. The agreement of the employee, as a condition of securing the job, that he will work without compensation for a break in period is not voluntary, but coercive, and thus runs afoul of Nevada statutes.

The insecurity of such an arrangement is emphasized by the fact that an employer does not guarantee the employee a gainful employment after the break in period. The employer may, and often does, release the employee at the end of the break in period, thus opening the door to securing another employee on the same terms. It may readily be seen that such procedure could lead to free service by employees ad infinitum.

CONCLUSION

It is the opinion of this office that an employer, under [NRS 608.250](#) and [609.030](#), is obligated to pay not less than the minimum statutory wages for all hours that he knowingly suffers or permits an employee to work.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-567 COUNTY ASSESSOR AND COUNTY BOARD OF EQUALIZATION; REAL PROPERTY—Factors which can and do affect the value of property other than those enumerated in [NRS 361.227](#), subsection 1, may be considered in determining full cash value for the purpose of assessment.

Carson City, March 20, 1969

Mr. Roy E. Nickson, Secretary, Nevada Tax Commission, Carson City, Nevada 89701

Dear Mr. Nickson:

You have requested an opinion from this office regarding factors which may be considered in the valuation of property for assessment purposes. You have advised that taxpayers have questioned valuation of property based on the following facts:

FACTS

The taxpayer's property is located in a remote area and its sole access is by either of two unimproved roads. One road is a fire trail maintained by the Forest Service. It is often impassable in the winter months and is established by an easement for the purposes of fire protection. The second road in part traverses the private property of another person. Since 1963, the third party has never attempted to deny or restrict access to the taxpayer's property although he has reserved the right ultimately to use his property for purposes other than a road.

At the time of initial purchases of the properties, building permits were readily issued by the county and residences were constructed. Subsequently, the county has taken the position that no further building permits will be issued until some permanent arrangement is made whereby access to the property in question can be assured. The Forest Service fire trail is not regarded as adequate for this purpose.

The county assessor has verified that the values established were determined in accordance with the provisions of [NRS 361.227](#) 1(a), (b) and (c). It is the contention of the taxpayers that the value of their property is diminished by reason of the tenuous status of accessibility and the inability to obtain further issuance of building permits to improve the property in that area. They concede that, were access assured, the valuation is reasonable. However, they contend that questionable right of access is a factor which was not considered by the county assessor in applying the factors above recited.

QUESTION

Based on the foregoing facts, you have posed the following question:

In determining full cash value of real property, are county assessors and county boards of equalization authorized to consider factors other than those enumerated in subsection 1 of [NRS 361.227](#)?

ANALYSIS

It will be noted that [NRS 361.227](#) was added by the Legislature in 1965 to the previously existing statutory plan for the valuation and assessment of property taxes. In so doing, we do not believe that the Legislature intended to restrict county assessors or county boards of equalization in their overall function of fairly and truly determining full cash value. This conclusion is fortified by the fact that [NRS 361.227](#) was added and [NRS 361.025](#) amended in the same act. See Statute of Nevada 1965, Chapter 518, page 1444. We regard this to be an expression by the Legislature that the definition of full cash value is to be read in connection with the factors which determine it, and that such factors are to aid in arriving at it, but not to be restrictive of it. The pertinent provision are the following:

[NRS 361.025](#):

Except as provided in [NRS 361.227](#), "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.

[NRS 361.225](#):

All property subject to taxation shall be assessed at 35 percent of its full cash value.

[NRS 361.227](#):

1. In determining the full cash value of real property, the county assessor and county board of equalization *shall give weight to each of the following factors for which information is available*:

(a) The price at which the property was sold to the present owner, plus any improvements made by him and minus any depreciation applicable to buildings and other improvements.

(b) The market value of the property, as evidenced by comparable sales in the vicinity.

(c) In addition to the value of the land, the replacement cost of any buildings or other improvements less a reasonable allowance for depreciation computed according to the estimated life of such buildings and improvements.

(d) The value of the property derived from the capitalization, at a rate of return not less than 5.5 percent nor more than 8 percent, of the net income which could reasonably be expected from the rental of the property, taking due account of its location.

(e) The value of the property for the use to which it is actually put during the fiscal year of assessment.

2. Any taxpayer may furnish to the county assessor information concerning any one or more of the factors enumerated in subsection 1, and if he does so, shall furnish such additional information as the county assessor may reasonably require. If the taxpayer does not so furnish information, the determination of value by the county assessor shall be rebuttably presumed to be correct. (Italics added.)

It will be observed that weight is to be given to each of those factors for which information is available or supplied by the taxpayer. If the taxpayer does not supply information, the determination is presumptively correct. It would follow that if no information is available for any of the factors, they need not be given any weight at all. In such instances, county assessors and county boards of equalization would, nevertheless, be required by law to determine full cash value as otherwise defined by law and Nevada decisions. Stated differently, we do not believe that county assessors and boards of equalization are required to look only to those five elements to the exclusion of other factors cognizable within the legislative framework, which obviously can and do affect valuation of property.

It is apparent that a factor such as access which is questionable at the time of purchase could thereafter be denied or lost to an owner. Such a factor truly affects value and would not be reflected by the purchase price. If the land were vacant there would be no basis to consider replacement costs or depreciation of improvements. Similarly, there would be no basis to capitalize its value. Finally, if no other comparable sales in the vicinity exist, there is no way to determine market value on the basis of such comparable sales.

Unless valuation can be determined without regard to these factors, valuation becomes impossible.

“Full cash value” means that amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor. This is the statutory definition. It is fair to presume that such property so taken would be valued at what is reasonably worth. *State v. Virginia & Truckee RR.*, [23 Nev. 283](#). The Nevada Supreme Court, in construing this statutory language, quoted from a California decision based on the same language in that state’s statute. It said that this statutory language, in effect, means that price which the property would bring if its owner offered it for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other. It is a measure of desirability translated into money amounts or its value for use in its present condition. *Nellis Housing v. State of Nevada*, [75 Nev. 267 at 275](#). Within this concept there must be included those factors which affect value in a real sense, which are not within the definitions of [NRS 361.227](#). We therefore conclude that, in an appropriate case, your inquiry must be answered in the affirmative.

CONCLUSION

It is the opinion of this office that factors which can and do affect the value of the property other than those enumerated in [NRS 361.227](#), subsection 1, may be considered in determining full cash value for purposes of assessment. Therefore, the county assessors and county boards of equalization are not necessarily restricted to such enumerated factors in all cases.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-568 UNIVERSITY OF NEVADA; LIABILITY FOR ACTS AND CONDUCT OF STUDENTS—University officials have an affirmative obligation to prevent dangerous acts or conduct of students which might reasonably be foreseen to result in injuries to other students.

Carson City, March 24, 1969

Mr. N. Edd Miller, President, University of Nevada, Reno, Reno, Nevada 89507

STATEMENT OF FACTS

Dear Mr. Miller:

Last fall, three students living in Nye Hall on the University of Nevada, Reno, campus sought approval of University officials to promote charter flights to various University activities and athletic contests outside the State of Nevada. The plane to be used was a DC-3 and was to be leased by minor students for purposes of these flights. The pilot of this twin engine airliner was to be a 20-year-old student who had a commercial pilot's license. The co-pilot was to be a 19-year-old student who was qualified to fly only single engine aircraft.

The students requested that they be allowed to use University facilities to set up a table in the Student Union Building to promote the plan and sell tickets to other students for the flights. The request was denied, and after the students indicated they were going ahead with the plan in spite of administration objections, the advice of this office was sought concerning the right and responsibility of the University to exercise supervisory authority to prohibit such a plan. We advised that the University had the right and the duty to prohibit student activities and the use of University facilities that may reasonably be classified as dangerous to the health and welfare of the students. We also advised that the University and its responsible officers may be personally liable for damages for injuries to students resulting from failure to supervise and regulate student activities that were dangerous and which might reasonably result in injuries to students.

At that time it was requested that a broader question of liability be presented for review and more substantial research by this office. Our present analysis is based primarily on the following question:

QUESTION

What are the University's legal responsibilities and obligations concerning student activities which may involve exposure of students to dangerous conditions and possible injury?

ANALYSIS

The general rule is recited in an annotation in 86 A.L.R.2d at 565, as follows:

Liability may arise for personal injuries to a pupil or student due to the misconduct of a fellow pupil, student, or other person where a school official or teacher was negligent with respect thereto, such as in failing to exercise proper

supervision or in directing or permitting a pupil to embark upon a course of conduct which might reasonably be foreseen to result in injuries to another pupil or student.

As applied to the airplane caper, we conclude that this rule imposed a responsibility on University officials to take affirmative action to prohibit a course of conduct on the part of students which could reasonably result in a dangerous condition and consequent injuries or worse. This responsibility was met by the University.

Generally, if University officials permit or condone a dangerous condition or practice to exist on campus, as a consequence of which a student is injured, a potential cause of action could exist. However, liability is dependent on many different factors and cannot be pre-determined by a hard and fast rule. We can only recite general legal rules, together with a few specific examples for illustration purposes. A statement recited in Attorney General's Opinion No. 806, dated September 9, 1949, is apropos:

An examination of the law concerning the liability of Universities and Colleges for damages occasioned by injuries to students and visitors discloses such a diversity of decisions of appellate courts that it is impossible in an abstract opinion to state a rule that will govern all cases. Each case must rest upon its own set of facts.

In *Stockwell v. Board of Trustees of Leland Stanford Junior University*, 148 P.2d 405 (Cal. 1944), the plaintiff was an 18-year-old freshman at Stanford. He was riding in the back of a pick-up truck with other students on campus while participating in a university function when he was struck in the eye by a pellet fired from a BB gun. He lost his sight. The plaintiff adduced evidence that the university had permitted boys to use BB guns on campus. The California Supreme Court concluded that it was for a jury to determine whether the failure to guard against such an occurrence constituted such negligence on the part of the university as to justify an award of damages.

The following rule was promulgated in the primary school case of *Eastman v. Williams*, 207 A.2d 146 (Vt. 1965):

In a limited sense the teacher stands in the parents' place in his relationship to a pupil under his care and charge and has such a portion of the powers of the parent over the pupil as is necessary to carry out his employment. In such relationship he owes his pupils the duty of supervision, and if a failure to use due care in such supervision results in injury to the pupil in his charge, makes him liable to such pupil. Common sense and fairness must call for the exercise of reasonable care in such duty of supervision, not only in the commission of acts that will not injure the pupil, but in a neglect or failure to act, when from such failure to act, injury results. * * * If the teacher is liable for misfeasance we find no sound reason why he should not also be held liable for nonfeasance, if his acts or neglect are the direct proximate cause of the injury to the pupil.

We realize there is a substantial argument against the application of the loco parentis doctrine on a university level. However, we have no judicial determination in this area in Nevada, and for purposes of our legal advice concerning liability for injuries, we choose to advise with a view to a possible decision, applying the rule in a limited or unlimited manner to the various classes of education.

In *Moore v. Student Affairs Committes of Troy State University*, 284 F.Supp. 725 (1968), the court said:

The college * * * has an affirmative obligation to promulgate and to enforce reasonable regulations designed to protect campus order and discipline and to promote an environment consistent with the educational process.

Although the *Moore* case was not a damage action, the general rules of tort may provide a basis for such action if the affirmative obligation described is not met, and injuries result from such failure to act.

In *LaValley v. Stanford*, 70 N.Y.S.2d 460, it was held that negligence was shown where a pupil, untrained in the art of boxing, was injured during a boxing bout while teacher watched.

Woodman v. Hewet Union High School, 29 P.2d 257 (Cal.), involved a teacher who permitted students to use a dilapidated truck, without any instruction as to its operation, or warning for avoiding its dangers from a hot shot battery, and was found to be negligent.

The following general rule may be recited from an accumulation of cases cited in *Wright v. City of San Bernardino High School Dist.*, 263 P.2d 25, at 27 (Cal. 1953):

Liability may result from a failure on the part of school officials to exercise ordinary care to stop or prevent the dangerous acts or conduct of students which might reasonably be foreseen to result in injuries to other students.

We recognize that lawyers and courts know very little about the ethical and practical considerations of student discipline and control, as compared with educators who work with the problem on a day to day basis. An educator's life better fits him for the exercise of correct judgments in this area, and it appears the courts have generally taken a "hands off" attitude except in clear cases of abuse of discretion or negligence by misfeasance or nonfeasance. We have attempted to delineate some of the areas wherein the university and its officials could be held responsible for damages in court. In the area of negligence, as in many areas of the law, the problem boils down to one of common sense of a reasonable man and the use of reasonable precautions to avoid dangerous conditions.

CONCLUSION

University officials have an affirmative obligation to prevent dangerous acts or conduct of students which might reasonably be foreseen to result in injuries to other students.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Daniel R. Walsh
Chief Deputy Attorney General

OPINION NO. 69-569 NEVADA FISH AND GAME COMMISSION; POWER TO EXCHANGE LAND—Statute authorizing Nevada Fish and Game Commission to "dispose of" certain lands owned by commission, interpreted to include the exchange of such lands as well, when made for the purpose of protecting and propagating fish and game in the State.

Carson City, April 3, 1969

Mr. Frank W. Groves, Director, State of Nevada Fish and Game Commission, P.O. Box 10678, Reno, Nevada 89510

STATEMENT OF FACTS

Dear Mr. Groves:

You have advised this office of negotiations presently being carried on with the United States Department of Agriculture (Forest Service) for the exchange of certain lands in the Kingston Canyon area, Lander County, Nevada, for certain federal lands in the same area. It is believed that the proposed exchange will benefit the Nevada Fish and Game Commission in the general operation of its program from the protection of fish and game. The question has been raised as to whether or not the commission is authorized to make such exchange.

ANALYSIS

This office has previously given an opinion to the effect that the State Fish and Game Commission is a body politic established by state law for public benefit, AGO 339 (7-2-1954), and that as an administrative board the commission has only such powers as are expressly granted by statute. AGO 116 (8-24-1933). In order to carry out the program assigned to it, the Legislature has seen fit to clothe the commission with many broad powers. It is authorized to expend and disburse all funds of the State acquired for the protection, preservation, or propagation of fish and game which come from appropriations, gifts, license fees, or otherwise. [NRS 501.215](#). It is further authorized to use any available funds for acquiring lands, water rights, easements, and other property necessary for the protection and propagation of fish and game. [NRS 501.225](#). It may also enter into leases and make certain sales of real property, provided there is no interference with hunting or fishing thereon. [NRS 501.227](#).

In addition to this, the commission may dispose of surplus property. [NRS 501.220](#). This section reads as follows:

Disposal of surplus, other property. The commission shall have full power and authority to condemn and dispose of all property, owned by the State of Nevada and used for the protection or propagation of fish and game, which shall have been found to be of no further use or value to the state, and shall turn over the proceeds arising therefrom to the fish and game fund.

We are confronted with the determination as to what types of transfers or alienation of property rights are embraced within the term "dispose of." While the term is often used in the restricted sense of "sale only," it is more generally interpreted to mean an alienation of property in any manner, such as passing it into the control of someone else, relinquishing it, parting with it, or getting rid of it. *Neilson v. Alberty*, 129 P. 847 (Okla.); *State v. Rothman*, 105 A. 427 (Del.); *State v. Handy*, 105 A. 426 (Del.); *Holland v. Bogardus-Hill Drug Co.*, 284 SW 121 (Mo.), and numerous other cases.

We have been unable to find any interpretation of the term by the Nevada courts, but we feel that in view of the authorities above cited, that an exchange of property is well within its purpose and intent. Any interpretation which would eliminate an exchange of the property under the control and supervision of the State Fish and Game Commission, would impose a definite restriction on that body in the management of fish and game facilities, such as would defeat what appears to be its principal purpose. While the above-quoted section authorizes the disposition of only such property "which shall have been found to be of no further use or value to the State," it places no restriction upon the manner of any such disposition, which would indicate a legislative intent that the commission itself determines the manner or method thereof.

CONCLUSION

It is the conclusion of this office that the term "dispose of" as it appears in [NRS 501.220](#), authorizes the Nevada Fish and Game Commission to exchange lands under its control and management for other lands owned by the federal government, or others, when such exchange is made for the promotion and improvement of fish and wildlife facilities in the State.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Chief Assistant Attorney General

OPINION NO. 69-570 JUSTICE COURT CLERK—An assignment of duties of clerks of the justice court by the county commissioners is contrary to law. Such duties are within the sphere of powers granted to justices of the peace.

Carson City, April 21, 1969

The Honorable Joseph S. Pavlikowski, Justice of the Peace, County Court House, Las Vegas, Nevada 89101

Dear Mr. Pavlikowski:

You have directed an inquiry to this office which concerns the interpretation of [NRS 4.350](#), especially with regard to the duties and responsibilities of the clerks of justice courts.

ANALYSIS

It is our understanding that in addition to the duties imposed on justice court clerks by [NRS 4.350](#), the board of county commissioners has assigned to such clerks the right to hire and fire employees working in the office of the justice of the peace.

This we believe to be contrary to the statutes governing the conduct of the offices of the justice of the peace.

[NRS 4.350.3](#) reads as follows:

The justice's clerk shall have authority to administer oaths, take and certify affidavits and acknowledgments, issue process, enter suits on the docket, and do all clerical work in connection with the keeping of the records, files and dockets of the court, and shall perform such other duties in connection with the office as the justice of the peace shall prescribe.

It will be noted that the duties of the clerks of justice courts are specifically prescribed. Such duties there included, and included in [NRS 4.350.4](#), extend only to the power to appoint one deputy. The powers and duties of officers are prescribed by statute, and are measured by the terms of the grant and must be executed in the manner directed and by the officer specified. (*See First Nat. Bank v. Filer*, 145 So. 204.) If broader powers are desirable, they must be conferred by the proper authorities, in this instance the Legislature. (*See Federal Trade Commission v. Raladam Co.*, 283 U.S. 643.)

It will be noted in [NRS 4.350.3](#) that any duties of the clerk other than administering oaths, taking and certifying affidavits and acknowledgments, issuing process, entering suits on the docket, and doing all recording and filing in connection therewith, are to be prescribed by the justice of the peace.

CONCLUSION

It is therefore the opinion of this office that an assignment of duties of clerks of the justice court by the county commissioners is contrary to law. Such duties are within the sphere of powers granted to justices of the peace.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

**OPINION NO. 69-571 COUNTIES; REAL PROPERTY; TAX AND ASSESSMENT
LIENS**—By receiving deeds from the tax receiver for delinquent taxes, the county treasurer does not obligate the county for special assessments.

Carson City, April 22, 1969

The Honorable John E. Stone, Lyon County District Attorney, County Court House, Yerington, Nevada 89447

Dear Mr. Stone:

The county treasurer holds trustee certificates on some real property in Lyon County for unpaid taxes. The redemption period is about to expire. Special assessments for paying bonds for improvements have been issued. Because the special assessments have not been paid, you have requested our advice concerning the obligations of the county to the bond holders.

QUESTION

Does [NRS 318.420](#), giving special assessments a coequal status with general taxes, obligate a county to pay special assessments?

ANALYSIS

[NRS 318.420.1](#) provides:

All special assessments shall from the date of approval thereof constitute a lien upon the respective lots or parcels of land assessed coequal with the lien of general taxes, not subject to extinguishment by the sale of any property on account of the nonpayment of general taxes, and prior and superior to all liens, claims, encumbrances and titles other than liens of general taxes.

The purpose of this statute was to insure that special assessments were not extinguished by proceedings to sell real property for delinquent taxes, and that their status as liens were equal. In other words, the foreclosure of one does not affect the validity of the other, because it is not of inferior, but of equal force and effect. Thus, when the county forecloses its tax lien, the special assessment lien becomes paramount, and the purchaser of the land on foreclosure takes subject thereto, and vice versa. See 51 Am.Jur., Taxation, § 1021, p. 893; 135 A.L.R. 1468.

[NRS 361.585](#) provides that the county treasurer obtains the property and holds it in trust until the property is sold at public sale. Thus, the lien of the county is not extinguished nor is the foreclosure process completed until the property is sold pursuant to the provisions of Chapter 361 of Nevada Revised Statutes. It is at the time and not before, that whosoever purchases the property does so subject to the lien for special assessments.

CONCLUSION

It is therefore the opinion of this office that by receiving deeds from the tax receiver for delinquent taxes, the county treasurer does not obligate the county for special assessments.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-572 LAS VEGAS VALLEY WATER DISTRICT—The Board of Directors of the Las Vegas Valley Water District, in the absence of legislative permission, cannot appoint an advisory committee or board.

Carson City, April 22, 1969

Mr. Paul Zimmerman, President, Las Vegas Valley Water District, Box 4427, Post Office Annex, Las Vegas, Nevada 89106

Dear Mr. Zimmerman:

Your counsel has requested an opinion of this office as to the power and authority of the Las Vegas Valley Water District to appoint an advisory committee to assist the board in arriving at decisions affecting the welfare of the public in water matters.

ANALYSIS

In order to arrive at a determination it is necessary to study those sections of Chapter 169 of the 1947 Legislature, as amended, which touch upon the powers and duties of the board.

Under Section 8 of the act seven directors are provided for subject to their election by the people, one of whom shall be secretary-treasurer, with permission granted to appoint an assistant secretary and an engineer and manager.

Section 9 gives the board authority to appoint such agents, officers, and employees as may be necessary and to prescribe their duties and remuneration, as well as to establish rules and regulations.

Nowhere in the act, nor in subsequent amendments, is authority given for the appointment of an advisory committee.

An attempt to create an advisory board to the board of regents came before the Supreme Court in 1948 (*King v. Board of Regents*, [65 Nev. 533](#)). While the situation there was somewhat different in that the Legislature had sought to create such a board for a constitutionally empowered agency of state government, the language of the court in declaring the act unconstitutional might well apply to the present indicated action.

There is no doubt but that the Legislature in the matter at hand could provide for an advisory board to the elective Las Vegas Valley Water Board of Directors; but obviously it was not the intention of the Legislature to take from such directors any part of the governing jurisdiction over the district. The functions of the directors under legislative fiat cannot, in whole or in part, be exercised concurrently or otherwise, by any other persons. The directors have accepted this responsibility; the people have imposed the burden on them; and sans further legislative action they cannot share either the responsibility or the burdens.

CONCLUSION

It is the opinion of this office that the Board of Directors of the Las Vegas Valley Water District, in the absence of legislative permission, cannot appoint an advisory committee or board.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-573 FOREIGN CORPORATIONS—A certificate of amendment to articles of incorporation which reflects a change in stock structure only, and not an increase in capitalization, may be filed upon payment of the statutory fee of \$25.

Carson City, April 29, 1969

The Honorable John Koontz, Secretary of State, Carson City, Nevada 89701

Attention: Mr. John K. Woodburn, Deputy Secretary of State

Dear Mr. Koontz:

You have requested an opinion from this office on the question of whether a fee in the sum of \$25,000 is to be collected pursuant to the provisions of [NRS 80.050](#), subsection 1(b) by reason of the filing of an amendment to articles of incorporation where the amendment, in effect, implements a stock split, a change from stated par value to no par stock without an increase in authorized capital. The pertinent facts we set forth below.

FACTS

You have supplied this office with photostatic copies of the Certificate of Amendment to Articles of Incorporation of Gulf Oil Corporation, a Pennsylvania corporation, qualified to do business in the State of Nevada and engaged in the business of marketing petroleum products. The certificate of amendment is in the usual form and recites the amendment in the following language:

Resolved, That Article 7th of the Articles of Incorporation be and the same is hereby amended so as to read as follows:

7th. The aggregate number of shares which the Corporation shall have authority to issue is 300,000,000 shares of Capital Stock without par value.

Resolved further, That each share of Capital Stock of the par value of \$8.33 1/3 issued and outstanding or held in the treasury of the Corporation is hereby reclassified and changed into two fully paid and non-assessable shares of Capital Stock without par value, without any change in the aggregate amount of stated capital applicable to the issued shares.

The certificate of amendment was submitted to the office of the Secretary of State for filing and the tender was refused pending payment of the filing fee specified in [NRS 80.050](#), subsection 1(b). The stated reason for refusing such filing without payment of the \$25,000 fee was that, pursuant to [NRS 78.760](#), subsection 2, the filing fee where no par shares are involved is the number of no-par shares multiplied by \$10. This calculation produced a substantially higher

figure when applied to double the number of shares which originally had a par value of \$8.33 1/3. For that reason, the maximum filing fee of \$25,000 was demanded.

ANALYSIS

The language of the appropriate statutes provide:

NRS 78.760: 2. For the purposes of computing the filing fees according to the schedule in subsection 1, the amount represented by the total number of shares provided for in the articles of incorporation or the agreement of consolidation shall be:

(a) The aggregate par value of the shares, if only shares with a par value are therein provided for; or

(b) The product of the number of shares multiplied by \$10, if only shares without par value are therein provided for; * * *

NRS 78.765: 1. The fee for filing a certificate of amendment of certificate of incorporation *increasing the authorized capital stock* of a corporation shall be in an amount equal to the difference between the fee computed at the rates specified in NRS 78.760 upon the total authorized capital stock of the corporation, including the proposed increase, and the fee computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the proposed increase. (Italics added.)

NRS 80.050: 1. Foreign corporations shall pay the same fees to the secretary of state as are required to be paid by corporations organized under the laws of this state, but in no case shall the amount of fees to be paid exceed:

* * * * *

(b) The sum of \$25,000 for each subsequent filing of an amendment certificate *increasing authorized capital stock*. (Italics added.)

It is apparent that the reason why the statute attributes a multiplier of \$10 per share for no-par stock is that some arbitrary valuation of stated capital must be arrived at for fee purposes. That reason does not exist where such valuation already exists by reason of the preceding provisions which fix the valuation by reason of par. In this situation the amendment specifically provides that one share of stated par value stock is reclassified and changed into two shares of stock without par. The amendment further specifically provides that the aggregate amount of stated capital remains unaffected.

From this it is clear that the change is one of form only and not substance, that each shareholder retains his proportionate interest and that the capitalization dedicated to each shareholder's interest is unaffected. The statutory fee in question is required only where the capital stock is increased and not where the authorized capital stock remains the same, and the change is merely one in the stock structure. It has been held that a change in outstanding stock by the issuance of two shares of no-par stock in exchange for one share of par value does not constitute an increase in capital upon which an excise tax is collectible.

The case of *Hood Rubber Co. v. Commonwealth*, 238 Mass. 369; 131 N.E. 201 is squarely in point. There an amendment to articles of incorporation changed authorized shares of par stock to a number twice as large without par and without any change in capitalization, impairment of surplus or disposition of accumulated or undistributed profits. An excise tax was collected for filing and recording a certificate of amendment increasing authorized capital. The corporation sued to recover the tax illegally exacted, and its position was sustained by the court.

The court noted that the increases for which such tax must be collected relate only to actual additions to capitalization, that is fresh contributions of money or property to the permanent funds with which the corporation conducts its business, or to the capitalization of surplus or undivided profits.

"Such statute," the court said, "simply does not include the change of shares from par value shares to shares without par value where no accession to the assets occurs."

The transaction, therefore, was not subject to excise tax.

By reason of the foregoing, we conclude that the amendment in question is a mere change in the number of fractions into which shareholder interests are divided and is not an increase in capitalization. Therefore, the fee demanded pursuant to [NRS 80.050](#), subsection 1(b), is not authorized.

CONCLUSION

It is the opinion of this office that a certificate of amendment to articles of incorporation which reflects a change in stock structure only and not an increase in capitalization may be filed upon payment of the statutory fee of \$25.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-574 GAMING LICENSING FOR MANUFACTURERS, SELLERS, OR DISTRIBUTORS OF ELECTRONIC GAMING DEVICES—The requirements imposed on a gaming licensee as a manufacturer, seller, or distributor of an electronic gaming device are not the same as those imposed on a casino licensee. However, the commission should follow the policy statement as set forth by the Legislature, with respect to all gaming corporations.

Carson City, April 30, 1969

Mr. Frank H. Johnson, Chairman, Nevada Gaming Control Board, 515 East Musser Street, Carson City, Nevada 89701

STATEMENT OF FACTS

Dear Mr. Johnson:

You requested an opinion of this office as to whether the requirements imposed on a corporation licensed as a manufacturer or distributor of gaming devices, as defined in [NRS 463.650](#) to [463.670](#), inclusive, are the same as those imposed on casino licensees, pursuant to other sections of Chapter 463 of the Nevada Revised Statutes.

ANALYSIS

[NRS 463.650-463.670](#), inclusive, captioned Licensing and Regulation of Manufacturers, Sellers and Distributors of Gaming Devices and Equipment was enacted by the 1967 Legislature.

The enactment of this statute brought a new class of licensees under the jurisdiction of the Nevada Gaming Commission and State Gaming Control Board, to wit: All persons who manufacture, sell, or distribute any device or machine used in gambling from which the odds are operated, produced, or determined electronically, or electrically, except pin ball machines.

The criteria to be used by the commission in granting such licensees their licenses, is set forth in [NRS 463.650](#), section 2, which is set forth verbatim:

2. Any person whom the commission determines to be a suitable person to receive a license under the provisions of [NRS 463.650](#) and [463.660](#), having due consideration for the proper protection of the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada, may be issued a manufacturer's or distributor's license. The burden of proving his qualification to receive or hold any license under [NRS 463.650](#) and [463.660](#) shall be at all times on the applicant or licensee.

No reference is made anywhere in [NRS 463.650](#) to [463.670](#), inclusive, to any other provision of [NRS Chapter 463](#). However, this does not create a problem from a disciplinary view, as all of the powers of the board and commission regarding violations, complaints, disciplinary procedures, etc., apply to any licensee under the provisions of [NRS Chapter 463](#). However, by specifically separating this class of licensee within the confines of [NRS Chapter 463](#), and by stating the criteria by which the commission is to determine the suitability of a person to receive such a license without reference to the corporate gaming act, which is set forth in [NRS 463.490](#) to [463.640](#), inclusive, and [NRS 463.170](#), subsection 2, the Legislature must have intended that the commission can establish separate criteria for the different kinds of licenses involved.

Statutes must be interpreted with reference to the reasons, or necessity, which induces their adoption. *Carpenter v. Clark*, [2 Nev. 243](#). Further, in construing a particular section of a statute, its location with respect to other sections should be taken into consideration. *Robinson v. Imperial Silver Mining Co.*, [5 Nev. 44](#).

The 1967 session of the Legislature, when it was considering the enactment of [NRS 463.650](#) through [463.670](#), was specifically concerned with a problem that had developed in gaming with respect to manufacturers, sellers, and distributors of electronic gaming machines. The manufacture and utilization of these machines in gaming was a product of the electronic industry which had developed in the years after the Gaming Control Act had been enacted, the first machine being produced some time in 1964. In the early days of the industry, electronic machines were regulated under the general provisions of Chapter 463 of NRS, but a number of cases involving cheating of various kinds, commencing in 1965, plainly revealed to the regulatory agencies and to the Legislature that this new development in the gaming industry was a different kind of gaming than had been previously known and required a different approach from the standpoint of regulation and control.

It is clear that the Legislature, by setting up a separate section for this particular class of licensee without reference to the other sections of the act, and by adopting [NRS 463.650](#), subsection 2, which sets forth the criteria by which a person could receive a license, intended that the commission be given discretion as to what standards it wished to impose on such persons, having due consideration for the proper protection of the public health, safety, morals, good order, and general welfare of the inhabitants of the State of Nevada.

This view is supported by what the Legislature did in the same session. It enacted a law providing for the issuance of corporate licenses. This act, which is generally known as the Corporate Gaming Act, is found in sections [463.490](#) through [463.640](#), inclusive, but is directly connected to general gaming licensees, because of a specific reference in [NRS 463.170](#), subsection 2. On the other hand, the Corporate Gaming Act is not connected by reference in any way to licensing or regulating of manufacturers, sellers, and distributors of electronic gaming devices and equipment, even though both acts were considered in the same session. Therefore, it would appear that the commission may decide that a corporation which seeks a license as a manufacturer or distributor need not comply with all the requirements that it or the Legislature imposes on a corporation which is engaged in operating a gaming casino.

This view is further supported by other rules of statutory construction. Statutes shall be construed in the light of their purpose. *Berney v. Alexander*, [42 Nev. 423](#), 178 P. 978.

It can easily be seen that the operation of a gaming establishment differs greatly from the manufacture of a particular machine or device, or the sales or distribution of such a device. The operation of a gaming casino, for instance, requires the supervision of a great number of people who have the opportunity to cheat or defraud the public with every roll of the dice or with the

dealing of every card. The manufacturer of a gaming device, or seller of such a device, involves a very limited opportunity to do something to the machine or device which will cheat or defraud the public. This does not mean that such a danger does not exist, but it does warrant the Legislature and the regulatory agencies making a distinction as to the qualifications of such persons to hold a gaming license, having due consideration for the proper protection of the public health, safety, morals, good order, and general welfare of the inhabitants of the State of Nevada.

This is not to say that the commission should not carefully review the requirements which the Legislature has seen fit to impose on corporations in general, particularly with respect to the actions of the 1969 Legislature, which adopted specific guidelines for corporations which are engaged in gaming in the State of Nevada. These general policy guidelines are as follows:

* * * * *

- (a) To broaden the opportunity for investment in gaming through the pooling of capital in corporate form.
- (b) To maintain effective control over the conduct of gaming by corporate licensees.
- (c) To restrain any speculative promotion of the stock or other securities of gaming enterprises.
(Chapter 220, 1969 Statutes of Nevada.)

While this opinion does hold that the commission is not bound by the requirements of the Corporate Gaming Act with respect to licensing manufacturers, sellers, and distributors of certain gaming devices and equipment, this office would recommend to the commission that, at a minimum, it adhere to the policy pronouncements of the Legislature in determining whether or not such a person is suitable to receive a manufacturer's, seller's, or distributor's license.

CONCLUSION

The requirements imposed on a gaming licensee as a manufacturer, seller, or distributor of an electronic gaming device are not the same as those imposed on a casino licensee. However, the commission should follow the policy statement as set forth by the Legislature, with respect to all gaming corporations.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Don W. Winne
Deputy Attorney General

OPINION NO. 69-575 IRRIGATION DISTRICTS; COUNTIES; BRIDGES—If an irrigation district's ditch or canal intersects a previously existing county road or highway, the district is required to construct, maintain, and repair a bridge over the public way, and an expectation of reasonable increase in traffic and public needs must be foreseen. The duty to maintain and repair a bridge may be discharged if the public way is so materially changed that a new and different public right is created. An irrigation district is under no obligation to construct and maintain a bridge for the benefit of a private landowner, but may be liable in damages if a landowner's reasonable access to his property is restricted by the construction of a ditch or canal.

Carson City, April 30, 1969

Mr. James W. Johnson, Jr., Attorney for Truckee Carson Irrigation District, 10 State Street,
Reno, Nevada 89501

Dear Mr. Johnson:

The Truckee Carson Irrigation District has requested our opinion on its obligation to construct and maintain bridges across its canals and ditches.

STATEMENT OF FACTS

After various communications with you and with Mr. Dennis E. Evans, Churchill County's District Attorney, it appears that there are some cases where the district's irrigation ditches or canals were in existence prior to the advent of a county road, and others where the reverse is true. Furthermore, the county has on occasion set out to improve a county road by widening, resurfacing, or changing its location entirely. This results in the necessity of strengthening, widening, and resurfacing an existing bridge, or the construction of a new bridge in a different location. Finally, we understand that some of your ditches, laterals, or canals are surrounded by or abut land of private landowners.

QUESTIONS

The following questions have arisen:

1. Does an irrigation district have an obligation to construct, maintain, or repair a bridge when its works intersect a county road?
2. If such a duty does exist, is it discharged when the county improves, widens, or changes the location of a county road?
3. Does an irrigation district have an obligation to construct or maintain a bridge for the benefit of a private landowner whose property abuts or is intersected by a ditch or canal?

ANALYSIS

[NRS 539.220](#) deals with the powers and obligations of irrigation districts when a district constructs its works across, among other things, streets and roads. It provides:

1. The board of directors shall have the power to construct the works of the district across any stream of water, watercourse, street, avenue, highway, canal, ditch or flume, in such manner as to afford security of life and property; but the board shall restore the same when so crossed or intersected to its former state as near as may be or in a manner not unnecessarily impairing its usefulness.
2. If a railroad company or those in control of the property, thing or franchise to be crossed cannot agree with the board upon the amount to be paid, or upon the point or points or the manner of crossing or intersecting, the same shall be ascertained and determined as provided in this chapter in respect to the taking of land.

Further, [NRS 405.120](#) provides:

1. All persons, associations, firms or corporations conducting water across any public road or highway in this state, or across any street or alley in any unincorporated town of this state, for domestic, mining, agricultural or manufacturing purposes, are required to construct, repair and maintain, at their own expense, good and substantial culverts or bridges, as the case may be, over such

crossings, and shall in no case allow any stream of water, diverted from its natural channel, to flood or wash any public road, or any street or alley in any unincorporated town of this state.

2. The construction and repairing of such bridge or culvert shall be performed according to a standard plan and specifications to be prescribed by the board of county commissioners of the county wherein the crossing is situated, and the work of construction or repairing shall be approved by the board.

These statutes, coupled with [NRS 405.580](#), support the general conclusion that the duty to construct, maintain, and repair a bridge as between an irrigation district and a county depends primarily on which easement or facility was in existence first. If the road was in existence first, then the irrigation district has the obligation. The county may be required to assume this duty if the ditch or canal was established before the road. See *Richardson Co. v. Drainage District No. 1*, 139 N.W. 648. It is our understanding that both the county and the irrigation district agree to this proposition.

With this in mind, we turn to the situations where the county alters the course of a road, thus requiring a new bridge in a different location, and where the improvement of a road requires either renovation of an existing bridge or construction of a new bridge at the original site.

In 39 Am.Jur.2d, *Highways, Streets and Bridges*, Sec. 85, p. 471, it is said that when the location of a highway is changed by the proper authorities, the one charged with the duty of repair is exonerated from this obligation. This statement is also found in 11 C.J.S., *Bridges*, Sec. 37, p. 1071. See also *Phoenixville v. Phoenix Iron Co.*, 45 P.2d 135. Thus we conclude that if there is a complete change in the location or nature of a road, the irrigation district is not responsible for the construction or repair of a new bridge.

Assuming there exists a duty on the part of an irrigation district to maintain and repair a bridge, we must consider the extent of this duty. You have posed a situation wherein the original bridge must be renovated or reconstructed. We believe the extent of this duty to be a question of fact. On the one hand, the district should be required to foresee a reasonable increase in traffic and use of the bridge which would require some widening or strengthening. Yet if the public easement is materially changed so that a new and different right is created (for example, the construction of a freeway), we do not believe the district is required to assume this new responsibility. See 39 Am.Jur.2d, Sec. 81, p. 468.

Your next area of inquiry relates to individual abutting property owners. The question is whether an irrigation district has the duty to either construct or maintain a bridge for the sole benefit of an abutting property owner.

We have found no statutory direction requiring an irrigation district to construct or maintain a bridge for the benefit of a private landowner, and there is no such requirement under the common law. Thus we conclude that no obligation to do so exists on the part of the irrigation district. See 39 Am.Jur.2d, Sec. 85, p. 471. However, we do point out that the district may be liable in damages in condemnation proceedings in the event the landowner has suffered a loss or reasonable access to his property as a result of the construction of a ditch or canal.

CONCLUSION

We therefore conclude:

1. If an irrigation district's ditch or canal intersects a previously existing county road or highway, the district is required to construct, maintain, and repair a bridge over the public way.
2. If the county authorities substantially change the location of the public way, the district is not required to construct and/or maintain a new bridge.
3. The duty of an irrigation district to maintain and repair a bridge is not discharged by simply maintaining a bridge in its original condition. An expectation of reasonable increase in traffic and public needs must be foreseen. The duty to maintain and repair a bridge may be discharged if the public way is so materially changed that a new and different public right is created.

4. An irrigation district is under no obligation to construct and maintain a bridge for the benefit of a private landowner. It may, however, be liable in damages if a landowner's reasonable access to his property is restricted by the construction of a ditch or canal.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-576 REAL PROPERTY TRANSFER TAX—No conveyance to which the Secretary of Housing and Urban Development is a party is subject to the Nevada real property transfer tax. Conveyances in lieu of foreclosure to mortgagees not specifically exempted are subject to such tax to the extent of value. Modifies Attorney General's Opinion No. 513 of May 16, 1968.

Carson City, May 2, 1969

Mr. Robert F. Hollister, Chief, Home Mortgage Section, Office of the General Counsel, Department of Housing and Urban Development, Federal Housing Administration, Washington, D.C. 20411

Dear Mr. Hollister:

By your letter of April 25, you have requested this office to review Attorney General's Opinion No. 513 of May 16, 1968, in the light of subsequent legislation relating to the subject therein treated.

Since the issuance of that opinion, the Legislature has enacted Senate Bill No. 366, which amends certain of the exemptions to the Real Property Transfer Tax Act. It provides:

Section 1. [NRS 375.090](#) is hereby amended to read as follows:

375.090 The tax imposed by [NRS 375.020](#) does not apply to: * * *

2. A transfer of title to *or from* the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.

The italicized language was added by amendment.

In addition, you inquired whether a conveyance by a mortgagor in lieu of a foreclosure to a mortgagee is an exempt transaction when there is a subsequent conveyance by the mortgagee to the Secretary of Housing and Urban Development.

ANALYSIS

Prior to the amendment, only transfers of title to the United States or its instrumentalities were exempt. Subsequent to the amendment, any conveyance to which the United States or its agencies, departments, or instrumentalities are parties is an exempt transaction. It follows that any conveyance to or from the Secretary is now exempt from taxation under the act.

However, where the conveyance is one by a mortgagor to a non-exempt mortgagee, the mere fact that such mortgagee subsequently conveys to the secretary does not exempt from tax the conveyance from the mortgagor to the mortgagee, even though the secretary must reimburse the

mortgagee for the tax. Thus, the secretary bears the economic burden of the tax, but the incidence of the tax is lawfully placed elsewhere.

Two reasons support this conclusion: First, the exemption relates only to the United States, its agencies, departments, or instrumentalities, and clearly does not extend to mortgagees even though the mortgages might be guaranteed by exempt agencies, departments, or instrumentalities. It is fundamental that such exemptions from taxation must be strictly construed. Second, it is well established that in the absence of a specific statutory immunity, it is entirely proper to subject the United States to the economic burden of a tax when the legal incidence of such tax is placed elsewhere upon a non-exempt party or person. *Alabama v. King and Boozer*, 314 U.S. 1 (1941).

CONCLUSION

It is therefore the opinion of this office that Attorney General's Opinion No. 513 of May 16, 1968, should be modified to hold that any conveyance to which the Secretary of Housing and Urban Development is a party is not subject to the Nevada real property transfer tax, and that conveyances in lieu of foreclosure to mortgagees not specifically exempted are subject to such tax to the extent of value.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-577 DEPARTMENT OF EDUCATION; TEACHER'S SALARY RAISES—Paragraphs 2 and 3 of S.B. 546, Sec. 5, were enacted to shrink the perimeter of teachers' salary schedules in the State of Nevada to a 1 to 1.70 ratio. School districts with schedules not conforming to this ratio shall not raise the salary of any teacher in an amount more than the amount the salary of the beginning teacher is raised.

Carson City, May 5, 1969

Mr. Burnell Larson, Superintendent of Public Instruction, Department of Education, Carson City, Nevada 89701

Dear Mr. Larson:

You have requested an opinion of this office clarifying Senate Bill 546, Chapter 614 of the 1969 Statutes of Nevada.

ANALYSIS

The Legislative Counsel Bureau has issued a legal opinion interpreting Senate Bill 546 relating to the payment of teachers' salaries. It was directed to a state senator approximately 2 weeks after the Legislature adjourned, and purports to tell the legislator what the Legislature meant by this law. It was also released to the press.

Our law provides that the Legislative Counsel shall be the legal advisor to the Legislature. The authority of this agency of state government to give opinions affecting the constitutionality of a law that has passed is neither authorized nor warranted. This duty devolves on the Attorney

General and the courts of this State. Constitutionally and by statute, the Attorney General is the legal adviser of the executive arm of government, and for administrative agencies to follow a will-o-the-wisp path to legal interpretation of our statutes will lead only to confusion and a disruption of government. We believe the advice of the Legislative Counsel in this matter to be completely erroneous, and for that reason we do not hesitate to answer your request, in view of the fact that under [NRS 385.270](#), the Attorney General is legal adviser to the Superintendent of Public Instruction.

The primary reason for the enactment of S.B. 546, Sec. 5, was to draw in the perimeters of the present teacher salary schedules so that the disparity between salaries of first year teachers and experienced teachers would be reduced. For example, the present Clark County schedule specifies that every teacher who meets certain qualifications will double his salary after 13 years. Teachers on one end of the pay scale are paid twice as much as beginning teachers. In terms of raises, this means that, if beginning teachers at \$6,000 are given a \$1,000 raise, all those at the opposite end of the scale must be given a \$2,000 raise, or from \$12,000 to \$14,000. All other teachers up and down the scale are also given raises proportionately higher than the beginning teacher. Appendix A is the present Clark County schedule.

This situation naturally caused problems when the focus for pay raises was placed on the plight of the beginning teacher who was paid only \$6,000. Unless the schedules were changed, the salary of the beginning teacher could not be raised without doubling the ante for teachers on the other end of the pay schedule, and so on up and down the line. If the demand of the teacher association groups for \$8,000 minimum were met, all teachers on the opposite end of the schedule would automatically

APPENDIX A

Step	Class A	Class B	Class C	Class D	Class E	Class F
1.....	\$6,000	\$6,420	\$6,840	\$7,260	\$7,680	\$8,100
2.....	6,360	6,780	7,200	7,620	8,040	8,460
3.....	6,720	7,140	7,560	7,980	8,400	8,820
4.....	7,080	7,500	7,920	8,340	8,760	9,180
5.....	7,440	7,800	8,220	8,700	9,120	9,540
6.....	7,800	8,100	8,520	9,000	9,420	9,900
7.....	8,160	8,400	8,820	9,300	9,720	10,200
8.....		8,700	9,120	9,600	10,020	10,500
9.....			9,420	9,900	10,320	10,800
10.....			9,720	10,200	10,620	11,100
11.....			10,020	10,500	10,920	11,400
12.....						11,700
13.....						12,000

DEFINITION OF CLASSES

Class A—Bachelor’s degree and valid Nevada certification for the level or subject taught.

Class B—Bachelor’s degree plus 16 increment growth units and valid Nevada certification for the level or subject taught. Units must be taken after receipt of the bachelor’s degree.

Class C—Bachelor’s degree plus 32 increment growth units and valid Nevada certification for level taught.

Class D—Master’s degree from an accredited institution in a field pertinent to position and valid Nevada certification for level or subject taught.

Class E—Master’s degree plus 16 increment growth units and valid Nevada certification for level or subject taught. Units must be taken after receipt of Master’s degree.

Class F—Master’s degree plus 32 increment growth units.

receive \$16,000 per year for 180 days of teaching. A legislative compromise was sought as a possible solution, which would require school districts to apply more of any additional resources to lower scheduled salaries.

The facts you have related to us include the following:

Discussions of financial requirements for public schools over the next biennium began in August, 1968, which involved state administrative and legislative officers and staff, as well as officers and staff of local school districts and the Department of Education. General agreement was expressed that major reasons for the need to increase rate of support for education were to keep pace with rising costs and to provide higher salaries for teachers, especially to provide higher salary for the newly trained, beginning teacher. Teacher association groups, particularly, expressed a demand that minimum salary for teachers should be \$8,000 as soon as possible.

When it was recognized that under current salary schedule practices, average salary for teachers would increase \$1,450 if beginning salary was increased \$1,000; that in some so-called "index" salary schedules, a base pay increase of \$1,000 would mean an automatic increase of \$2,000 to the maximum step of the schedule; that to increase base salary \$1,000 under average statewide conditions relative to salary schedule practices would require \$8,700,000 increase per year for 6,000 teachers; that during the last 4 years the median salary increase to minimum steps of salary schedules in Nevada has been \$700, while the median increase to maximum steps of salary schedules has been \$1,949; and that median percentage increases to maximum salaries were 13 percent, while median percentage increases to maximum salaries were 24 percent, strong sentiment was expressed in favor of forcing school districts to apply proportionately more of any additional resources that could be applied to teachers' salaries to lower scheduled salaries.

Possibilities brought forward included:

1. Creation of a state salary schedule for teachers.
2. Authorizing an appropriation of dollars earmarked for teachers' salaries to be paid equally "across the board" for all teachers within each district.
3. Enactment of a minimum salary statute stipulating a minimum salary sufficiently high to force most additional funding to be applied to lower scheduled salaries and let local school boards determine how to limit increases to higher scheduled salaries.
4. Establishment of some compromise limitation that would force a greater sharing of salary increases by the newly trained and younger teachers only where previous sharing of increases were deemed to be disproportionately favorable to the teachers of longer tenure.

One official had stated, "The financial requirements for raising base salaries are minor compared to the financial requirements for raising maximum salaries that are stipulated to be a fixed multiple of a base salary, especially so when the multiple is 2, because in that situation, an increase of \$2 must be allowed in order to increase base salary \$1."

Late Thursday afternoon, April 24, 1969, you and staff members of the Department of Education, as well as Louis Bergevin, President of the State Board of Education, were summoned to conference with legislative members to discuss, and clarify if possible, the intent and possible interpretation of suggested amendments.

Sample elements of such a "ratio," non-compliance schedule were presented on a chalkboard, and the specific question was asked, "If response is required under subsection 3, may reemployed teachers receive the next increment that would normally be payable under the schedule, in addition to the increase in base salary, as a salary increase?"

The agreed answer of intent was expressed as, "No, increments are to be frozen until such time as a district effects a compliance salary schedule."

S.B. 546, Section 5, contains the two relevant amendments to existing law. Paragraph 2 provides as follows:

Whenever a board of trustees of a school district adopts a single salary schedule for teachers which stipulates differences in salary because of differences in level of training or differences in salary because of differences in number of years of teaching experience, any such salary schedule adopted for application after July 1,

1969, shall limit the total difference in salary because of such differences to a ratio of 1 to 1.70.

This paragraph does not affect existing schedules. It obviously is designed to shrink the outer boundaries of future salary schedules by bringing the 1 to 2 ratio of Clark County or the 1 to 1.95 ratio of Washoe County and others down to 1 to 1.70.

The third paragraph of Section 5 of S.B. 546 deals with existing schedules and recites:

If any board of trustees of a school district has effected a salary schedule prior to the effective date of this section and such schedule does not conform to the limitations set forth in subsection 2, the salary for any teacher reemployed in such school district shall not, exclusive of salary amounts for extra-curricular or extra-time services, be increased by an amount in excess of the amount of salary increase applied to the lowest salary stipulated for a teacher holding a professional level teacher's certificate.

We don't think there is much room for interpretation of this language. It appears quite clear that school districts with present ratios over 1 to 1.70 shall not raise the salary of any teacher more than that of a beginning teacher. This has the effect of reducing the pay gap between the highest and lowest paid teacher until such time as the 1 to 1.70 ratio is reached. Any other conclusion would defeat the purpose of the law.

An apparent misunderstanding has arisen through the erroneous conclusion that presently employed teachers will be penalized, their existing contracts jeopardized, and that they will be paid less than they would have been paid under the existing schedule of raises. Under the subject appropriation no teacher will be paid less than they would have been paid under the existing schedule of raises. Under the subject appropriation no teacher will be paid less than he would have been paid under existing schedules. In fact, they all will be paid substantially more.

For example, the school district in Ely has already adopted an across the board increase that conforms to this opinion. Enough money is available to allow that district to raise each and every teacher's salary \$100 per month for each school month or a total of a \$900 raise for each teacher per year. This is a substantial boost to every teacher over and above present schedules, and no teacher is deprived of any pay he otherwise would have received. No teacher is deprived of a preexisting raise.

We can see no constitutional problem concerning impairment of obligations of contract. Before this issue could arise, the legislation would have to deprive an individual of a right he is presently entitled to by the terms of a contract. Relatively few, if any, teachers had returned signed contracts stipulating salary amounts for the coming year before the enactment of S.B. 546. Any of this type that are outstanding would not be impaired, because the teacher will be paid more than the amount agreed to in that contract. No right is affected.

Most teachers in the State either have open end contracts that do not specify amount, or they received a notice of reemployment specifying that salary schedules would be worked out in the future, e.g., Clark County. This notice of reemployment, with no contract amount specified, was accepted by the teachers. The amounts obviously cannot be determined until the appropriation is made. The impairment of contract doctrine does not remotely relate to the present problem.

CONCLUSION

It is therefore our opinion that paragraphs 2 and 3 of S.B. 546, Sec. 5, were enacted to shrink the perimeter of teachers' salary schedules in the State of Nevada to a 1 to 1.70 ratio. School districts with schedules not conforming to this ratio shall not raise the salary of any teacher in an amount more than the salary of the beginning teacher is raised.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Daniel R. Walsh
Chief Deputy Attorney General

OPINION NO. 69-578 PAROLES—An inmate serving the first of two or more consecutive sentences cannot be paroled from it to begin serving a subsequent sentence.

Carson City, May 5, 1969

Mr. Philip P. Hannifin, Chief Parole and Probation Officer, Department of Parole and Probation,
Carson City, Nevada 89701

Dear Mr. Hannifin:

You have made inquiry of this office regarding the interrelationship of parole and consecutive sentences. You ask:

1. May an inmate serving the first of consecutive sentences be paroled from the first to begin the second?
2. If so, and a violation of the terms of parole occurs, is he returned to serving the first; and what credit is given on the second for time served during the parole prior to violation?
3. Would this procedure violate a statute or court order which imposes consecutive sentences?

ANALYSIS

We have previously ruled that parole does not suspend the running of the underlying sentence, but merely permits it to be served outside the prison. See Attorney General's Opinion No. 558 (January 27, 1969); Attorney General's Opinion No. 228 (June 17, 1961); *Robinson v. Leyboldt*, [74 Nev. 58](#). Therefore, any attempt to parole from the first to begin the second of two consecutive sentences would necessarily result in the sentences becoming concurrent in effect.

We believe this is violative of a statute or court order that directs sentences to be served consecutively. [NRS 176.035](#), specifying consecutive sentences where crimes are committed during a term of imprisonment, requires that the latter term not begin until the expiration of the former. This cannot be reconciled with a parole from a former sentence which does not suspend the running of the former sentence.

Parole is defined as release of a convict from imprisonment upon specific conditions to be observed by him. 39 Am.Jur. 572, Pardon, Reprieve and Amnesty, Sec. 82. Our entire statutory plan governing paroles, consistent with this definition, contemplates parole as a program of supervision outside the prison. We therefore believe that parole in prison from one sentence to a subsequent sentence is not permissible under our statutes and would not be within the meaning and purpose of parole generally. We conclude that the expiration of a former sentence is the only condition which can institute the running of the later consecutive sentence.

The foregoing analysis makes it unnecessary to consider your second question.

CONCLUSION

It is the opinion of this office that an inmate serving the first of two or more consecutive sentences cannot be paroled from it to begin serving a subsequent sentence.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Robert A. Groves
Deputy Attorney General

OPINION NO. 69-579 PUBLIC SCHOOLS—Public school authorities are required to honor parents' requests that their children not be administered medicine or drugs, administered transfusions, or subjected to operations; that they be excused from attending classes where sexual intercourse is discussed or taught; that they be exempt from religious instruction or discussion; that no matter concerning a student's family involvement or conditions at home should be discussed.

Carson City, May 6, 1969

Honorable William Raggio, Washoe County District Attorney, County Courthouse, Reno, Nevada 89501

Dear Mr. Raggio:

You have submitted to this office the request of several parents that their children be exempted in school from the following:

1. Any medical, psychiatric, psychological, physical examination, or questioning thereon for any purpose whatsoever.
2. The administration of any medicine, drug, transfusion, or medical operation for any purposes whatsoever.
3. Any test, course of study, or discussion, written or oral, dealing with sexual relations in humans or animals or with opinions or experiences that pertain to the subject.
4. Any test, quiz, or discussion on the subject of religion, mental capacity, aptitude, group therapy, sanity or insanity in any degree, emotional disturbances, family privacy, or conditions at home.
5. Any test, course of study or discussion, written or oral, or by way of visual aids, having to do with drugs, narcotics, hallucigens, or with opinions or experiences that pertain to the subject.

Your main question is a [as] follows: Is the School District obligated to honor this request?

ANALYSIS

Article 2, Sec. 2 of the Nevada Constitution provides for a uniform system of public schools with sectarian teaching prohibited. The Legislature is authorized and empowered to pass such laws "as will tend to secure a general attendance of children in each school district upon said public schools."

Under [NRS 385.110](#) the State Board of Education shall prescribe and cause to be enforced the course of study for public schools in this State, provided:

1. That high schools may have modified courses of study, subject to the approval of the Board of Education, and
2. That any high school offering courses normally accredited as being beyond the level of the 12th grade shall, before offering such courses, have them approved by the Board of Education.

Under [NRS 388.010](#) public schools are defined as all kindergarten and elementary schools, junior high schools, and high schools which receive their support through public taxation, and whose textbooks, courses of study, and other regulations are under the control of the State Board of Education.

The only prohibited instruction is contained in [NRS 388.150.1](#) which provides: “No books, tracts or papers of a sectarian or denominational character shall be used or introduced in any public school established under the provisions of this title of NRS, nor shall any sectarian or denominational doctrines be taught in any public school.”

[NRS 389.010](#) states that boards of trustees of school districts shall enforce in schools the courses of study prescribed and adopted by the proper authority.

There are certain required subjects as follows:

1. Instruction in United States and Nevada Constitutions.
2. Instruction in American History, Civics, State History.
3. Patriotic exercises.
4. Citizenship and physical training in high schools.
5. Physiology and hygiene with effects of stimulants and narcotics upon the human system.
6. Instruction on fish and game laws.
7. Thrift.
8. Automobile driving education when established by the State Board of Education at specific high schools.

Under [NRS 390.160](#) the State Textbook Commission has the power to select textbooks to be used in the public schools and to make recommendations for their purchase and use to the State Board of Education, in which the final selection rests.

All of this is preparatory to the established premise that once children are placed in public schools the authorities thereof stand in loco parentis to the students.

One cannot place a child in public schools and at the same time attempt to establish the courses that his child shall be taught, or the textbooks that said child shall use. To give this authority to parents would lead to as many differently arranged courses as there are parents.

Those courses which are mandatory may be enlarged by additional courses, approved by the State Board of Education. Those which are prohibited may not be taught. ([NRS 388.150.](#)) Thus we come to the contents of the letter you have submitted to us. The parents in our opinion are correct in their objection to the administration of medicines and drugs, the transfusion of blood, and, medical operations, by school authorities. They are also correct in their objection to any test, quiz, or discussion on the subject of religion, and discussion of those matters in the home which are private and constitutionally protected.

The subject of sexual instruction is highly controversial, and of course may be taught only with the consent of the Board of Education, and then, according to information from the Department of Education, only to high school students. In those schools where family relations is not a required subject, students whose parents object to any instruction touching on sex should be excused.

CONCLUSION

Public school authorities are required to honor parents’ requests that their children not be administered medicines or drugs, administered transfusions, or subjected to operations; that they be excused from attending classes where sexual intercourse is discussed or taught; that they be exempt from religious instruction or discussion; that no matter concerning a student’s family involvement or conditions at home should be discussed. All other objections set forth are without merit.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-580 SCHOOL DISTRICT BONDS—Proceeds from bonds issued for purchase of equipment may be used to purchase school books.

Carson City, May 8, 1969

Robert L. Petroni, Esq., Legal Counsel, Clark County School District, 2832 East Flamingo Road, Las Vegas, Nevada 89109

Dear Mr. Petroni:

You have advised that in 1966 the District Attorney of Clark County advised the Clark County School Board that funds raised as a result of the sale of bonds authorized by a legally-held election might be used to purchase school books.

Your question is whether it was proper for the bond proceeds to be pledged to pay for the lease purchase of books needed for Clark County schools. In order to arrive at a proper determination, it is necessary to review [NRS 387.335](#), which reads as follows:

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:

(a) Construction or purchase of new school buildings, including but not limited to teacherages, dormitories, dining halls, gymnasiums and stadiums.

(b) Enlarging or repairing existing school buildings, including but not limited to teacherages, dormitories, dining halls, gymnasiums and stadiums.

(c) Acquiring school building sites or additional real property for necessary school purposes, including but not limited to playgrounds, athletic fields and sites for stadiums.

(d) Purchasing necessary school equipment.

(e) Refunding of any outstanding valid indebtedness of the county school district, evidenced by bonds, when the interest rate or rates on the indebtedness are to be increased or any bond maturity is to be extended.

2. Any one or more of the purposes enumerated in subsection 1, except that of refunding any outstanding valid indebtedness of the county school district evidenced by bonds, may, by order of the board of trustees entered in its minutes, be united and voted upon as one single proposition.

It can thus readily be determined by [NRS 387.335\(1\)\(d\)](#) that the purchase of school books would only be proper if they can be defined as necessary school equipment. This takes us into the realm of legal definitions of “equipment.”

Webster defines “equip” as follows: To furnish for service, or against a need or exigency; to fit out; to supply whatever is necessary to efficient action in any way.

Black’s Law Dictionary (Fourth Edition) defines “equipment” as: Furnishings or outfit for the required purposes. An exceedingly elastic term, the meaning of which depends on context.

The court in *Midland Special School District v. Central Trust Co.*, 1 F.2d 124, stated that “in determining what is ‘equipment’ we should have clearly in mind the subject which is being equipped.”

It is certainly necessary before a school can function to have school books. We can have clearly in mind that books necessary for school instruction are a necessary adjunct to the school’s operation, and thus may well be termed equipment. The situation is clearly different than where books are purchased for a home, regardless of necessity.

In the case of *Appeal Tax Court of Baltimore City v. St. Peters Academy*, 50 Md. 321, the court took this approach by stating in its opinion that the term equipment “means the visible tangible furniture, fixtures and apparatus on the premises which are used and necessary for the operations therein conducted. It may include the library, silverware and necessary furniture of a college building.”

Under [NRS 393.160](#), the board of trustees of a school district have the authority to purchase, rent or otherwise acquire supplies and equipment necessary to the operation of the public schools.

CONCLUSION

It is therefore the opinion of this office that school books may be classified as equipment and that the expenditures of the proceeds of a bond issue, which authorizes the purchase of equipment, may be expended for books, in addition to other needed equipment.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-581 INDIAN AFFAIRS COMMISSION; ELIGIBILITY OF COMMISSIONERS—A commissioner on the Indian Affairs Commission of Nevada is not ineligible to serve as tribal judge under Chapter 600, Stats. 1969, amending [NRS 233A.030.1](#). A commissioner on the Indian Affairs Commission who holds a policymaking position on government agencies which receive federal funds for the benefit of Indians is ineligible to serve as such commissioner under Chapter 600 of the 1969 Statutes, amending [NRS 233A.030.1](#).

Carson City, May 12, 1969

Mr. Robert R. Johnson, Executive Director, Indian Affairs Commission, Carson City, Nevada
89701

Dear Mr. Johnson:

You have called attention to A.B. 459 of the 1969 session of the Legislature (Chapter 600, 1969 Statutes), whereby [NRS 233A.030.1](#) has been amended so as to provide that any person who is an employee, member, or in a policy-making position of any governmental agency which receives federal funds for the benefit of Indians, is ineligible to be a commissioner on the Indian Affairs Commission.

There are two commissioners who you feel may fall within the statutory prohibition. We shall refer to them as Commissioner A and Commissioner B.

Commissioner A is employed as a tribal judge by the Pyramid Lake Indian Tribe which receives federal funds in the form of E.D.A. grants, Bureau of Indian Affairs revolving loan funds, etc.

Black’s Law Dictionary (Fourth Edition) defines policy as “The general principles by which a government is guided in its management of public affairs.” A judge, in the truest sense, has no part in the policy-making machinery of government. It is true his decisions may result in a change in policy, but his rulings are the guidelines only for policy-making changes by the proper governmental agency. Thus we can determine that a commissioner who is a tribal judge does not run afoul of the statutory prohibition found in the amended law.

Commissioner B is a member of the executive board of the Inter-Tribal Council of Nevada, a nonprofit organization which administers Office of Economic Opportunity programs on twenty-two Indian reservations and colonies in the State of Nevada. Commissioner B is Director of the Neighborhood Young Corps-Operation Mainstream program and as such receives a salary.

It cannot be denied that Commissioner B is in a policy-making position as a member of the executive board of the Inter-Tribal Council of Nevada, and as director of the Neighborhood Young Corps-Operation Mainstream program, both of which entities receive federal funds for the benefit of Indians. We must therefore conclude that Commissioner B is ineligible to be a commissioner, unless he resigns his policy-making offices.

CONCLUSION

It is therefore the opinion of this office that a commissioner on the Indian Affairs Commission of Nevada is not ineligible to serve as tribal judge under Chapter 600, Stats. 1969, amending [NRS 233A.030.1](#). It is our further opinion that a commissioner on the Indian Affairs Commission who holds a policy-making position on government agencies which receive federal funds for the benefit of Indians, is ineligible to serve as such commissioner under Chap. 600 of the 1969 Statutes, amending [NRS 233A.030.1](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-582 WATER CONSERVANCY SUBDISTRICTS; PURPOSES AND POWERS—The purposes and powers of a water conservancy subdistrict permit participation in litigation which will affect or increase the water supply or works of a water conservancy subdistrict; the costs and expenses of such litigation are part of the cost of maintenance if they affect or protect the existing operation; if the litigation is for the purpose of acquiring or enlarging the operation or water supply and the expense is greater than the ordinary annual income and revenue of the subdistrict, the procedures for acquisition of works set forth in [NRS 541.340](#), et seq., must be followed.

Carson City, May 14, 1969

J. Rayner Kjeldsen, Esq., Attorney for Carson Water Conservancy Subdistrict, 310 South Virginia Street, Reno, Nevada 89501

Dear Mr. Kjeldsen:

United States v. Alpine Land Reservoir Co., et al., No. D-183, is a lawsuit pending in the United States District Court for the District of Nevada. The suit will determine the decreed rights of all water users on the Carson River from the Nevada-California state line to the Lahontan Reservoir. You have requested an opinion from this office concerning whether or not it would be proper for the Carson Water Conservancy Subdistrict to enter this litigation. Your question is:

QUESTION

Can a water conservancy subdistrict expend funds for litigation which will determine water rights which will affect members of the subdistrict?

ANALYSIS

In your request you indicate that while the litigation is to the benefit of all water users in your district, unequal benefits will result in that some people in your subdistrict live in municipalities and are not direct water users of the Carson River.

The powers of a water conservancy subdistrict are identical with those of a water conservancy district and are found in [NRS 541.140](#). These powers are extremely broad, and in view of [NRS 541.410](#), which declares that Chapter 541 of NRS should be construed liberally, we conclude that participation in this lawsuit is within the power of your subdistrict.

Furthermore, the purposes of your subdistrict are likewise of a broad and sweeping nature. They are found within the petition for and decree establishing the subdistrict. The purposes are set forth, among others, by adopting the provisions of [NRS 541.030](#) and [NRS 541.040](#), which read in part:

It is declared that to provide for the conservation and development of the water and land resources of the State of Nevada and for the greatest beneficial use of water within this state, the organization of water conservancy districts and the construction of works as herein defined by such districts are a public use and will:

- (a) Be essentially for the public benefit and advantage of the people of the State of Nevada;
- (b) Indirectly benefit all industries of the state;
- (c) Indirectly benefit the State of Nevada in the increase of its taxable property valuation;
- (d) Directly benefit residents of the State of Nevada by providing adequate supplies of water for domestic, municipal and industrial use;
- (e) Directly benefit lands to be irrigated or drained from works to be constructed;
- (f) Directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams;
- (g) Directly benefit urban use of water or development of water resources by flood control; and
- (h) Promote the comfort, safety and welfare of the people of the State of Nevada.

Thus, we conclude, as a general proposition, that it is within both the powers and the purposes of a water conservancy subdistrict such as yours to participate in the above mentioned litigation.

Having made that conclusion, we wish to qualify it, with regard to your particular subdistrict and in regard to the property of expenditures for litigation.

As we understand it, your subdistrict presently purchases water from the Carson Truckee Water Conservancy District for distribution, and has no other source of water supply.

[NRS 541.130](#) provides that the employment of attorneys shall be taken as a part of the cost of maintaining the improvement. [NRS 541.160](#) provides for the levy and collection of taxes and special assessments to maintain and operate the works. Thus, assuming the litigation will affect the water and waterworks which are now in existence, and the users thereof, then the attorney fees and cost of litigation are properly a cost of maintenance.

However, if your subdistrict stands to acquire a new or additional source of water, and the expenditures are greater than the ordinary annual income and revenue of the subdistrict, then we conclude that you should follow the procedure set forth in [NRS 541.340](#), et seq., for the acquisition of works, which reads, in part:

Whenever the board of a district incorporated under this chapter shall, by resolution adopted by a majority of the board, determine that the interests of the district and the public interest or necessity demand the acquisition, construction or completion of any source of water supply, waterworks, or other improvements, or facility, or the making of any contract with the United States, the State of Nevada, or other persons or corporations, to carry out the objects or purposes of the district,

wherein the indebtedness or obligations shall be created, to satisfy which shall require a greater expenditure than the ordinary annual income and revenue of the district shall permit, the board shall order the submission of the proposition of issuing such obligation or indebtedness, for the purposes set forth in the resolution, to such qualified electors of the district as shall have paid a tax on property in the district in the year preceding such election, at an election held for that purpose. In the order submitting such propositions to the electors the board shall, if it is proposed that the indebtedness be secured by pledge of any revenues of the district, so state, and shall designate the revenues to be so pledged.

CONCLUSION

We therefore conclude:

1. That the purposes and powers of a water conservancy subdistrict as set forth in [NRS 541.030](#), [NRS 541.040](#), and [NRS 541.140](#), permit participation in litigation which will affect or increase the water supply or works of a water conservancy subdistrict.
2. That the costs and expenses of such litigation are part of the cost of or protect maintenance if they affect the existing operation.
3. That if the litigation is for the purpose of acquiring or enlarging the operation of water supply, and the expense is greater than the ordinary annual income and revenue of the subdistrict, the procedures for acquisition of works set forth in [NRS 541.340](#), et seq., must be followed.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-583 BANK LOANS—Individual bank loans which are secured by federal obligations of the class or kind specified in [NRS 662.040](#), subsection 2, are exempted from the loan limitation imposed in subsection 1 thereof.

Carson City, May 22, 1969

Mr. Preston E. Tidvall, Superintendent of Banks, Department of Commerce, Carson City, Nevada 89701

Attention: Mr. A. Galer Brann, Chief Bank Examiner

Dear Mr. Tidvall:

You have requested an interpretation of subsection 2 of [NRS 662.040](#), because of the following facts:

STATEMENT OF FACTS

During the course of a bank examination, a difference of opinion apparently arose between the bank's personnel and an examiner from the Nevada Banking Division, as to the correct construction or interpretation and application of [NRS 662.040](#), paragraph 2. The bank has apparently assumed and followed the practice of exempting from the "25 percent of capital and

surplus” limitation on individual loans, loan amounts which are “secured” by any U.S. obligations of the class or kind specified or enumerated in said Nevada statute.

Depending on how such Nevada statute is interpreted and applied, the bank examination will show either that an excess line of credit was improperly permitted by the bank, which requires report and some corrective action, or that such existing line of credit is entirely proper and legally authorized under the provisions of [NRS 662.040](#), paragraph 2.

QUESTION

Are individual bank loans which are secured by federal obligations of the class or kind specified in [NRS 662.040](#), paragraph 2, exempted from the loan limitation, imposed in paragraph 1 thereof, that any such individual loan “shall not at any time exceed 25 percent of the capital and surplus of such bank, actually paid in * * *”?

ANALYSIS

[NRS 662.040](#), paragraph 2, provides as follows:

Neither the limitation on loans by banks contained in this section nor any other similar limitations contained in any law of this state relating to banks or banking shall apply to any loan or loans made by any bank to the extent that the same are secured or covered by guaranties or by commitments or agreements to take over or to purchase made by the Federal Reserve Bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly by the United States.

The foregoing Nevada statutory provision is derived from and based on Title 12, U.S.C. Sec. 84 (U.S.R.S. Sec. 5200) paragraph (10), which reads as follows:

Obligations shall not be subject under this section to any limitation [limit of liability of any one borrower] based upon such capital and surplus to the extent that such obligations are secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; *Provided*, That such guaranties, agreements, or commitments are unconditional and must be performed by payment of cash or its equivalent within sixty days after demand. The Comptroller of the Currency is hereby authorized to define the terms herein used if and when he may deem it necessary.

Regulation A (Code of Federal Regulations), 12 C.F.R. Sec. 201, sets forth provisions relative to *loan limits of national banks*; as a general rule loans by a national bank to any one borrower may not exceed 10 percent of the bank’s unimpaired capital and surplus. The law, however, provides thirteen exceptions to said general rule. Among such exceptions, under “(10)”, are: “Obligations to extent secured, guaranteed, or covered by agreement to purchase by U.S. Government or any agency of the United States Government. The Comptroller is authorized to define these terms”, in which case there is “no limit” on loans to any one borrower. (*Cf.*, Sec. 7, State Banking Law Revision, 1967, The American Bankers Association, p. 4.)

In Regulation A (U.S.R.S. Sec. 5200), the following definition appears:

The term “obligations” shall mean *the direct liability of the maker* or acceptor of paper discounted with or sold to such association and the liability of the indorser, drawer, or guarantor *who obtains a loan* from or discounts paper with or sells paper under this guaranty to such association and shall include in the case of obligations

of a co-partnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. (Italics added.)

However, then follow the thirteen exceptions to the general 10 percent national banks loan limitation, including amount them number (10) set forth verbatim at pp. 20-21 of Regulation A. We have quoted the substance of said exception in number (10) from Section 7, State Banking Law Revision, where it is given in summarized form.

Further quoting from said Section 7, State Banking Law Revision, on page 7 thereof, we find:

The amount that most *state banks* are permitted to loan to one borrower increases as a percentage of capital and surplus, when collateral is pledged as security. The maximum which *state banks* can lend to individual borrowers on collateral loans ranges upward from the basic limit to as much as 50 percent in Louisiana and South Carolina. *Where the security is U.S. Government obligations, virtually all states provide a complete exemption from the loan limits * * *.* (Italics added.)

The Appendix to said Section 7, State Banking Law Revision (pp. 21-54), contains a chart and state-by-state compilation, apparently made by the State Legislative Committee in April 1962 and updated to April 1967, which includes Nevada among the majority (some 33) of the states which prescribes no limit on individual loans if and when collateralized with securities upon which the various state statutes have conferred exemptions relative to loan limitations.

CONCLUSION

1. The provisions of [NRS 662.040](#), paragraph 2, not only apply so as to exempt from the prescribed loan limits obligations of the United States running to Nevada state banks, but also to other individual loans if and when collateralized and secured by U.S. government obligations of the class or kind specified or enumerated in said statutory provisions, in the absence of further clarifying or restrictive regulation in implementation of said applicable Nevada law. Such conclusion is further grounded on the foregoing analysis and outline of general banking policy and practice on the part of both national and state banks in the United States.

2. The existing line of credit questioned by the bank examiner, if properly secured or collateralized by United States obligations of the class or kind specified or enumerated in [NRS 662.040](#), paragraph 2, as entitled to exemption status relative to loan limitations, was not “excess” or violative of Nevada law, and should not be reported as “exceptions” or “scheduled” items requiring corrective action by the involved state bank.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: John A. Porter
Deputy Attorney General

OPINION NO. 69-584 RETROACTIVE REFUND OF ANNUITY PREMIUM INCOME TAXES; CHAPTER 56 (S.B. 92), 1969 STATUTES OF NEVADA CONSTRUED—
Held, insofar as relied upon as authorizing and mandatorily requiring administrative and

retroactive refund of such taxes legally-owed and properly paid for preceding years, said enactment is constitutionally defective and invalid.

Carson City, May 27, 1969

Mr. Louis T. Mastos, Commissioner of Insurance, Department of Commerce, Carson City, Nevada 89701

Dear Mr. Mastos:

You have requested our legal opinion and advice relative to construction properly to be given to Chapter 56 (S.B. 92), 1969 Statutes of Nevada, as the same possibly provides for and authorizes refund of premium taxes legally due and received for the 3 years preceding such statutory enactment and its effective date in connection with annuity payments.

FACTS

As you know, the above-mentioned amendatory legislation resulted from Attorney General's Opinion No. 542, dated October 1, 1968, holding or concluding that the collection and payment of the prescribed 2 percent tax levy under [NRS 686.010](#) (prior to such 1969 amendment) was applicable to "payments on annuities" income "in the next preceding calendar year," and not when such accumulated funds were used to purchase specific individual annuities. We therein further indicated that proposed revision of the Insurance Code would probably include some change concerning the premium tax levy as applied to annuity payment.

Unfortunately, the 1969 legislative session failed to enact the rather extensive proposed revision of the Insurance Code (S.B. 39), but did enact S.B. 92 (Chapter 56, 1969 Statutes of Nevada), now requiring administrative interpretation and implementation by your office.

The "Summary" of S.B. 92 (Chapter 56, 1969 Statutes of Nevada) describes the purpose and contents thereof as: "Permits election as to annuity payments under insurance premium tax": *i.e.*, authorizes an election in payment of the premium tax on moneys accumulated for the purchase of annuities, either at the time of receipt, or upon actual application of the funds to purchase of specific annuities.

As also pertinent hereto, however, such amendatory statute further provides:

* * * Each life insurer shall signify on its premium tax return to be filed in the calendar year 1969 its election between such two alternatives, *and such election shall also apply to the premium tax returns filed in the three immediately preceding calendar years.* An insurer shall not change such election without the consent of the commissioner. * * * (Italics added.)

Subsequent to release of Attorney General's Opinion No. 542, dated October 1, 1968, it was indicated on behalf of industry that it would either support or seek legislation explicitly authorizing and permitting election as to annuity payments under the insurance premium tax ([NRS 686.010](#)), as now afforded under Chapter 56 (S.B. 92), 1969 Statutes of Nevada. Because apparently consistent with industry administrative practice and alternative methods of taxability as authorized in a number of states, the Nevada Insurance Division did not actively challenge or oppose such legislative proposal. It was generally understood that any proposed change would be prospective in effect, and would merely authorize and permit "* * * election as to annuity payments under insurance premium tax," precisely as the "Summary" of S.B. 92 (Chapter 56, 1969 Statutes of Nevada) expressly provides.

Your present request for our legal opinion and advice is attributed to the fact that several applicants have written to you and cited Chapter 56, 1969 Statutes of Nevada as legal basis and authority for refunds to them of premium taxes paid on deposit administration agreements during the past year.

QUESTION

Does Chapter 56 (S.B. 92), 1969 Statutes of Nevada authorize and require the Nevada Insurance Division administratively to make requested retroactive refund of premium taxes legally due and properly paid in connection with annuity administration deposits for the three years preceding such statutory enactment?

ANALYSIS

It is, of course, well-settled law that tax exemption is the exception, not the rule; that while tax exemption provisions may not be given a distorted or unreasonable construction, they are, nevertheless, construed against those claiming any such benefit. Analogously, and with even greater cogency, presumptively-legal taxes, especially if voluntarily paid (not paid “under protest”), are seldom, if ever refundable.

[NRS 353.110](#) enumerates the cases in which applications for tax refunds may be made. It provides that [NRS 353.110](#) to [353.125](#), inclusive, shall apply in making applications for refund of *moneys which have been paid into the state treasury* in cases where:

1. Through mistake or inadvertence, a county and school district tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid two or more times.
2. An executor or administrator of an escheated estate has, by mistake, paid more money into the state treasury than he should have paid.
3. A remission of the assessed valuation on patented mining claims has been ordered by a board having jurisdiction of the matter on account of annual assessment work having been performed thereon, and such remission has not been made by the proper county officers, and taxes on the full valuation have been paid thereon by the owner of such patented mining claims under protest.
4. Where license or taxes have been twice paid on the same band of sheep.
5. *In the opinion of the state board of examiners*, the applicant for refund has a just cause for making such application and the granting of such a refund would be equitable. (Italics added.)

Of the foregoing, only the provisions of paragraph “5,” arguably, may be deemed as having any relevancy hereto. It is to be noted, however, that even such particular provision only authorizes the *state board of examiners* to determine whether the applicant for tax refund has just cause for the application and that the grant of such tax refund would be equitable. Generally determinative and conclusive of the matter, however, is the fact that [NRS 353.110](#) (inclusive of paragraph “5”), reasonably construed in its entirety, makes it abundantly clear that it is legislative intent that the cause for tax refund application is to be premised upon an inadvertent, mistaken, or improper assessment or double exaction and payment of taxes.

Factually, the exact contrary or opposite is the case here. Attorney General’s Opinion No. 542 (dated October 1, 1968) concluded that the 2 percent tax levy under [NRS 686.010](#) (prior to the 1969 amendment), as pertaining to “Payments on annuities” was applicable to such income “in the preceding calendar year”; hence, the taxes so levied and paid and apparently, now the subject of refund applications, were legally due or owing and, therefore, entirely valid and properly paid and received. Thus [NRS 353.110](#) is substantially inapplicable hereto and, in any case, specifically solely empowers and authorizes the state board of examiners to make “refund of moneys which have been paid into the state treasury.”

We next turn to consideration of Chapter 56 (S.B. 92), 1969 Statutes of Nevada itself. Our concern here is not the purpose or object of the bill’s sponsors to effectuate such tax refunds, but legislative intent, and whether such enactment sufficiently and validly authorizes and requires the Insurance Division to make retroactive refund of such legally due and properly paid taxes.

If not otherwise expressly provided and authorized in statute (*e.g.*, [NRS 353.110](#)), tax refunds (as well as tax exemptions) must rest upon language as to which there can be no doubt. If the Legislature meant to allow a refund under the circumstances here involved, it was required to do so in terms too plain to be mistaken, leaving no room for inference on such score.

The amendatory provisions of Chapter 56, 1969 Statutes of Nevada do not so directly or plainly speak. They merely provide as follows, as pertinent hereto:

* * * Each life insurer shall signify on its premium tax return to be filed in the calendar year 1969 its election between such two alternatives (*Ed., -i.e., applicability of the tax either upon receipt or upon use of premium income funds to purchase of annuities*), *and such election shall also apply to the premium tax returns filed in the three immediately preceding calendar years*. An insurer shall not change such election without the consent of the commissioner. Any such funds taxed as total premium income are, if the funds are withdrawn before their actual application to the purchase of annuities, eligible to be included as return premiums under the provisions of subsection 1. (Italics added.)

The foregoing provisions, without prior consent of the commissioner, merely extends to the premium tax returns filed for each of the three immediately preceding calendar years, such privilege or right of an “election” as to authorized alternative methods of taxability. They certainly do not, either explicitly or plainly, authorize, require, or direct refund by the Insurance Commissioner, mandatorily and on a retroactive basis, of “annuity” premium taxes for preceding years which were legally due and properly paid.

Additionally, even assuming such tax refunds to have been the sponsors’ intent, it is our considered opinion that for any such purpose and in such connection, Chapter 56 (S.B. 92), 1969 Statutes of Nevada is substantially and fatally, constitutionally defective and, therefore, invalid.

Such conclusion results from Article 4, Section 17, of the Nevada Constitution, which provides as follows:

Sec. 17. *Act to embrace one subject only; title; amendment.* Each law enacted by the Legislature shall embrace but one subject, and matter, properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised or section as amended, shall be reenacted and published at length.

The foregoing constitutional requirement is mandatory, intended to prevent combination of subjects which should properly be dealt with separately, in order that the Legislature and public will not be misled. It is also intended to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation, and to apprise the public of the subjects of legislation under consideration. (*Cf.*, Annotations to Nevada Revised Statutes, Vol. 6, p.p. 1877-1889, and cases therein cited.)

As already noted, the “Summary” of S.B. 92 (Chapter 56, 1969 Statutes of Nevada) describes its contents and purpose as: “Permits election as to annuity payments under insurance premium tax.” Undoubtedly, the constitutional requirement relative to bills embracing but one subject should be liberally construed. However, it is a well-established rule of statutory construction that legislative enactments shall be deemed to have prospective effect only, absent express and clear provision to the contrary. Certainly, the quoted “Summary” of S.B. 92 herein provides no reasonable basis for inference that its contained provisions shall have retrospective application or, even less so, that refund of previous legally due and properly paid “annuity” premium taxes was thereby being retroactively authorized.

The absence of explicit or plain language to such effect, both in the summary of S.B. 92, as well as in its contents, is so palpable and material and, consequently, open to serious legal objection, as to render the same constitutionally defective and invalid, were it construed as

authorizing retroactive refund of taxes which were legally due and properly collected, as here involved.

CONCLUSION

Chapter 56 (S.B. 92), 1969 Statutes of Nevada, *insofar as relied upon as authorizing and requiring the Insurance Division, administratively, to make retroactive refund of taxes*, legally owed and properly paid on “annuity” payment income for preceding years, is constitutionally defective and invalid; any such received tax refund applications, therefore, should be disapproved and denied by you on such ground.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: John A. Porter
Deputy Attorney General

OPINION NO. 69-585 NEVADA DEPARTMENT OF AGRICULTURE—Authorized to enter into cooperative agreements with other governmental agencies to permit use of its vehicles and equipment for control of noxious weeds, insect plant pests and plant diseases, under proper lease agreement and during such period of time as such equipment and machinery cannot be used by department.

Reno, May 27, 1969

Mr. Harry E. Gallaway, Director, Division of Plant Industry, Nevada Department of Agriculture,
P.O. Box 1209, Reno, Nevada

STATEMENT OF FACTS

Dear Mr. Gallaway:

You have advised this office that no appropriation was made by the Legislature for the control of noxious weeds, insect plant pests and plant disease program which the Department of Agriculture has carried on for years. During that period the department has acquired various types of trucks, machinery, and other equipment for this purpose, and which cannot be put to any other use by the department because of lack of funds. The following questions have been presented:

1. Can the department place on loan to another governmental department the use of this equipment?
2. If so, what restrictions or limitations should be placed upon the use of equipment in a loan agreement?

ANALYSIS

The answers to these questions are within the purview of the following NRS:

561.245 Cooperation, Agreements With Federal Government and Agencies, Political Subdivisions and Others. In the administration of various programs by the department as provided by law, the department may cooperate, financially or otherwise, and execute contracts or agreements with the Federal Government or any

federal department or agency, any other state department or agency, a county, a city, a public district or any political subdivision of this state, a public or private corporation, an individual, or a group of individuals, but such cooperation shall not of itself relieve any person, department, agency, corporation or political subdivision of any responsibility or liability existing under any provision of law.

277.045 Cooperative Agreements Between Political Subdivisions for the Performance of Governmental Functions.

1. Any two or more political subdivisions of this state, including without limitation counties, incorporated cities and towns, unincorporated towns, school districts and special districts, may enter into a cooperative agreement for the performance of any governmental function. Such an agreement may include the furnishing or exchange of personnel, equipment, property or facilities of any kind, or the payment of money.

2. Every such agreement shall be by formal resolution or ordinance of the governing body of each political subdivision included, and shall be spread at large upon the minutes, or attached in full thereto as an exhibit, of each governing body.

3. Each participating political subdivision shall provide in its annual budget for any expense to be incurred under any such agreement, the funds for which are not made available through grant, gift or other source.

The provisions contained in these sections for cooperative agreements between political subdivisions are entirely statutory and have no basis in the common law, being comparatively new, and there has been little occasion for their interpretation. They have not come before the Nevada State Supreme Court at any time and we find that this office has given but one opinion as to the application of Chapter 277 of NRS of which [NRS 277.045](#) is a part. In Attorney General's Opinion No. 356, dated September 26, 1966, this office recognized that this latter section permits cooperative agreements between political subdivisions of the State for the performance of any governmental function.

Cities, counties, and certain state departments constitute governmental agencies, and in our opinion any of the equipment which you mentioned, and which is not presently useful to the Department of Agriculture for the reason mentioned, may be used by other governmental agencies under lease agreements. It is realized that the equipment involved requires insurance and licensing for motor vehicles. Any agreement entered into should require the lessee to keep insurance in a specified amount in full force and effect during the term of the lease agreement. Signs, markings, and other indicia of state ownership on any such equipment should be covered when it is used by a county, city or other non-state agency.

Since any vehicle subject to any such agreement would continue to be property of the State, it would be necessary that the department continue to procure the necessary exempt license plates.

CONCLUSION

This office concludes as follows:

1. That the State Department of Agriculture is authorized to enter into an agreement with another governmental agency for the use of its weed control equipment provided such equipment is available and its use is put to a governmental function.

2. That any lease agreement entered into should specify the use to which the equipment is to be put, the period of the lease, provision for insurance coverage, and for proper care, together with any other proper provisions.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Chief Assistant Attorney General

OPINION NO. 69-586 LEGAL HOLIDAYS—Chapter 315 of the 1969 Statutes of Nevada makes no allowance for designating the Friday preceding a legal holiday on Saturday as a day on which state employees may remain absent from their respective duties. The power of the Governor to do so will expire June 30, 1969.

Carson City, May 27, 1969

The Honorable Paul Laxalt, Governor of Nevada, State Capitol Building, Carson City, Nevada
89701

Attention: Mr. Ed Allison

Dear Governor Laxalt:

Mr. Allison has requested an opinion from this office as to whether the Governor can designate the Friday preceding a legal holiday which falls on a Saturday as a day on which state employees may remain absent from their designated duties.

ANALYSIS

Chapter 315 of the 1969 Statutes of Nevada (A.B. 52) is specific in allowing the Governor, until December 31, 1970, to designate Monday as a holiday when New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Admission Day, Veteran's Day or Christmas fall on the preceding Sunday.

After January 1, 1971, the Governor may designate Monday as a legal holiday when New Year's Day, Fourth of July, Admission Day, and Christmas fall on the preceding Sunday.

[NRS 236.010](#), as it now stands, permits the Governor to appoint any day as a legal holiday so that until July 1, 1969, the Governor could, if he so wished, designate a Friday preceding a Saturday which is a legal holiday as a day on which state employees may remain absent from their respective duties.

CONCLUSION

Chapter 315 of the 1969 Statutes of Nevada makes no allowance for designating the Friday preceding a legal holiday on Saturday as a day on which state employees may remain absent from their respective duties. The power of the Governor to do so will expire June 30, 1969.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 69-587 PUBLIC EMPLOYEES RETIREMENT—1. A new period of years for vesting of public employees retirement rights does not operate to restore those rights which have been forfeited under the laws in effect at the time of forfeiture. 2. If a member withdraws his contributions, regardless of the length of service, he must return to covered service within 5 years to be entitled to redeposit contributions.

Carson City, June 10, 1969

MR. KENNETH BUCK, *Executive Secretary, Public Employees Retirement Board*, Carson City, Nevada 89701

FACTS

Dear Mr. Buck:

[NRS 286.400](#)(1)(a) provides that an employee under our public employees retirement system forfeits all of his previously accrued retirement rights if he is absent from the service of participating employers for a total of more than 5 years in any 6-year period, after he becomes a member of the system.

[NRS 286.440](#) provides that those who have withdrawn contributions and return to service within 5 years may redeposit those contributions.

You have informed us that prior to July 1, 1967, retirement rights vested under the retirement system with 25 years of service. On July 1, 1967, a partial vesting was granted with 20 years of service. This session of the Legislature passed a bill (S.B. 479) which provides for a full vesting of retirement rights with 20 years of service and a partial vesting after 15 years of service.

The foregoing has prompted the following questions:

1. Does the reduction in vesting years, effective of a certain date, operated to restore rights that had previously been forfeited under the laws in effect at time of forfeiture?
2. If a member withdraws his contributions, regardless of length of service, must he return to covered service within the 5-year period prescribed by [NRS 286.440](#) to permit repayment of contributions and recovery of service?

ANALYSIS

In answer to your first question we believe that if a forfeiture has occurred before a new or increased benefit is passed by the Legislature then the statute does not apply to that person unless it clearly is so intended. Cf. 142 ALR 938. A logical expression of such intent would have been to refer to or amend [NRS 286.400](#)(1) which provides the conditions under which a person ceases to be a member of the retirement system. However, the bill merely confers the new benefit upon members of the system. Those whose rights have been forfeited pursuant to [NRS 286.400](#), which was not changed, are not members of the system and cannot participate in the new benefits.

We thus conclude that the new times for vesting of retirement benefits do not apply to those persons whose rights were forfeited before the enactment of the new statute.

Your second question deals with a member who has withdrawn his contributions. We believe he must return to covered service within 5 years to be entitled to redeposit the moneys previously paid by him, regardless of his length of service. This, of course, does not apply to those who are entitled to the extended privileges for political discharge found in [NRS 286.400](#)(2).

Both [NRS 286.400](#) and [NRS 286.440](#) refer to a 5-year period. Under the former statute he ceases to be a member upon an absence of more than 5 years; under the latter he may redeposit the contributions if he returns to service within 5 years.

We must thus conclude that a member of the retirement system who has elected to withdraw his contributions must return to covered service within 5 years of the time he withdraws his contributions to be entitled to redeposit such contributions. This is so regardless of his length of service.

CONCLUSION

1. A new period of years for vesting of public employees retirement rights does not operate to restore those rights which have been forfeited under the laws in effect at the time of forfeiture.

2. If a member withdraws his contributions regardless of the length of service, he must return to covered service within 5 years to be entitled to redeposit contributions.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

**OPINION NO. 69-588 N.S.U. LAND FOUNDATION; REAL PROPERTY CONVEY-
ANCE**—A real property conveyance, to which the Nevada Southern University Land Foundation, as a political subdivision, is a party, is not subject to the real property transfer tax.

Carson City, June 13, 1969

Mr. Roman J. Zorn, President, University of Nevada, Las Vegas, Las Vegas, Nevada 89109

Dear Mr. Zorn:

You have requested our opinion on whether a sale of real property by the Nevada Southern University Land Foundation is subject to Nevada's real property transfer tax. From information supplied to us, escrow was opened on April 14, 1969. Money was deposited afterward and disbursements were made and deeds recorded on April 16, 1969.

QUESTION

Your question is whether the Nevada Southern University Land Foundation is subject to a real property tax.

ANALYSIS

Effective April 14, 1969, [NRS 375.090](#) was amended by Senate Bill 366 to read:

Section 1. [NRS 375.090](#) is hereby amended to read as follows:

375.090 The tax imposed by [NRS 375.090](#) does not apply to:

1. Any transaction wherein an interest in real property is encumbered for the purposes of securing a debt.
2. A transfer of title to or from the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.

The language "or from" was added by the amendment. (See Attorney General's Opinion No. 576, dated May 2, 1969.)

We conclude that whenever the State, or any agency, department, instrumentality, or political subdivision thereof, is a party to a real property transfer, the transaction is exempt from the tax.

Pursuant to [NRS 396.801](#), the Board of Regents of the University of Nevada System has formed the land foundation. The University at Las Vegas is the beneficiary of the foundation. [NRS 396.803](#) provides that the corporation is a political subdivision of the State. It reads:

Such nonprofit corporation, upon its formation, shall be:

1. A corporate agency of the University of Nevada and its board of regents;
2. A body corporate and politic; and
3. A political subdivision of this state.

Thus we conclude that the Nevada Southern University Land Foundation is within the exemption provisions of [NRS 375.090](#).

CONCLUSION

A real property conveyance, to which the Nevada Southern University Land Foundation, as a political subdivision, is a party, is not subject to the real property transfer tax.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-589 COUNTIES; UNINCORPORATED TOWNS—A license tax imposed solely in an unincorporated town must be used for the benefit of the town.

Carson City, June 13, 1969

Honorable Mark C. Scott, Jr., District Attorney of Elko County, Elko County Court House, Elko, Nevada 89801

FACTS

Dear Mr. Scott:

The Elko County Commissioners passed an ordinance in 1959 concerning the town of Jackpot, Nevada. Jackpot was in need of police protection, and at the request of the townspeople an ordinance was passed requiring \$3 per month per slot machine to be collected from the owners. We quote, in part, from that ordinance:

WHEREAS, the establishment and location of several slot machine casinos near the Idaho State Line on U.S. 93, in an area now encompassed within the limit of the Unincorporated Town of Jackpot, has created the need for extra police protection in that area of Elko County, State of Nevada;

WHEREAS, there will be a certain financial burden upon the County of Elko, to station a deputy sheriff at Jackpot; and

WHEREAS, the Board of County Commissioners of the County of Elko, State of Nevada, have the power and duty to pass and adopt all Ordinances, rules and regulations for any unincorporated towns within said County.

About a year later the unincorporated townsite of Jackpot elected to be governed by the provisions of Chapter 269 of NRS which was accomplished by the board of county commissioners on October 6, 1960.

It proved to be the case that the moneys generated by this levy were more than enough for police protection. You have informed us that the moneys were placed in the county general fund

and regular budgetary procedures were followed. The amounts not necessary for police protection were used for general county purposes.

This fact was not brought to the attention of the county commissioners until February of 1969. The residents of Jackpot have asked the county to reimburse the town of Jackpot for all moneys from the levy not actually used for police protection.

QUESTIONS

1. Is it required that the money obtained from the special gaming tax be appropriated to the sole use of the unincorporated town of Jackpot after October 6, 1960 (assuming the validity of the petition and order)?

2. If the money was used as a part of the general county operation, would the county now be required to reimburse the unincorporated town of Jackpot therefor?

ANALYSIS

This opinion does not deal with the legality of the license tax or the proceedings by which Jackpot came under the provisions of Chapter 269 of NRS. You have requested us to assume their validity and for the purposes of this opinion we do so.

The ordinance, when read with the preamble, clearly shows that the license tax was for the specific purpose of providing Jackpot with police protection. (Attorney General's Opinion No. 51, dated April 26, 1951 and Attorney General's Opinion No. 526, dated October 10, 1947.) You have informed us that the license tax was not imposed on a countywide level although a similar tax was levied in Wendover, Nevada. We do not believe that the proceeds from the tax can be used for county purposes. In the first place when a tax is imposed for a particular purpose it cannot be diverted to pay for other purposes, which, in the case, are general county purposes. This is true, at least, in the absence of legislative enactment. (Attorney General's Opinion No. 238, dated June 12, 1926 and Attorney General's Opinion No. 197, dated January 11, 1936.) Furthermore, the inhabitants of one particular locality cannot be taxed for the benefit of another locality. *State v. Stone*, [27 Nev. 249](#).

In addition to the foregoing reasons, we believe that Chapter 269 of NRS precludes the use of the funds from this tax for general county purposes. [NRS 269.155](#)(4) provides:

All ordinances of the town or city in force at the date of the assumption of the town board or board of county commissioners of the powers and duties conferred or imposed by this chapter, and not inconsistent therewith, shall remain in full force and be enforced until changed or repealed by the board.

It would be inconsistent with Chapter 269 of NRS to permit the funds from this tax to be used for the benefit of areas other than the town of Jackpot. The reason for this conclusion is found in [NRS 269.095](#), which reads in part:

1. All taxes, fines, forfeitures or other moneys collected or received by any officer or person, under or by virtue of any of the provisions of this chapter, shall be paid by the officer or person collecting or receiving the same to the county treasurer of the county in which the taxes or moneys were collected or received.

2. The county treasurer shall:

(a) Set the same apart as a fund to be used *solely* for the benefit of the town or city in which they were collected or received. (Italics added.)

We conclude that it is improper to use the funds from a license tax in Jackpot for general county purposes, and that the town or its appropriate fund should be reimbursed therefor.

CONCLUSION

We conclude that a gaming license tax imposed only in a particular unincorporated town may not be used for general county purposes, and that the appropriate town funds should be reimbursed for such wrongful expenditures.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: Peter I. Breen
Deputy Attorney General

OPINION NO. 69-590 MUNICIPAL CORPORATIONS; ORDINANCES IN CONFLICT WITH STATE LAW; TRAFFIC—The Legislature has adopted a general scheme for traffic control and designated those areas in which local governments may not act. Thus, existing ordinances on such subjects are invalid as being in conflict with state law.

Carson City, June 16, 1969

The honorable James R. Brooke, City Attorney of the City of Sparks, City Hall, 222 Twelfth Street, Sparks, Nevada

Dear Mr. Brooke:

The City of Sparks has, in the past, enacted ordinances governing the driving of vehicles while under the influence of intoxicating liquors or drugs, and governing the registration of vehicles and the duties and obligations of persons involved in traffic accidents. By A. B. 271, Section 77, the Legislature has declared that local authorities shall not enact ordinances governing these matters. You have requested our opinion on the following question:

QUESTION

Does A.B. 271, Section 77, invalidate all ordinances to which it refers or only those which are passed after the effective date of the act?

ANALYSIS

The announced purposes of A.B. 271 are found in Section 75, which reads:

The purposes of this chapter are to:

1. Establish traffic laws which are uniform throughout the State of Nevada, whether or not incorporated into local ordinances.
2. Minimize the differences between the traffic laws of the State of Nevada and those of other states.

In further support of this announcement, Section 77, subsection 1 reads:

1. The provisions of this chapter are applicable and uniform throughout this state on all highways to which the public has a right of access or to which persons have access as invitees or licensees.

Thus we believe that the Legislature has seen fit to adopt a general scheme for the regulation and control of traffic throughout the State of Nevada. We further believe that the Legislature, by the use of the words “may enact” or “may not enact,” has designated those areas wherein local governments may operate.

Since local governments are instrumentalities of the State for the convenience of government, the State may limit or extend their powers. It follows that whenever the State Legislature adopts a general scheme for traffic laws, and designates those areas in which the local government may not operate, those areas cease to be a matter for municipal concern. *People v. Huchstep*, 300 Pac. 449 (Cal. 1931). In other words, the State has occupied the field, and local ordinances on the subject are invalid. *Pipoly v. Benson*, 125 P.2d 482 (Cal. 1942); 147 ALR 522; 64 ALR 993.

CONCLUSION

We conclude that by Section 77 of A.B. 271 the Legislature intended to occupy the areas designated in subsection 3:

3. A local authority shall not enact an ordinance:
 - (a) Governing the driving of vehicles while under the influence of intoxicating liquor or drugs;
 - (b) Governing the registration of vehicles and the licensing of drivers;
 - (c) Governing the duties and obligations of persons involved in traffic accidents; or
 - (d) Providing a penalty for an offense for which the penalty prescribed by this chapter is greater than that imposed for a misdemeanor.

Therefore local ordinances on these subjects, even though in existence when the foregoing act was passed, are invalid as being in conflict with state law.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By: PETER I. BREEN, *Deputy Attorney General*

OPINION NO. 69-591 SECRETARY OF STATE; SECURITIES—An offer to joint tenants, whether they are husband and wife or not, is an offer to two persons within the meaning of [NRS 90.075](#). A present right to receive stock in the future is a “security.” A director is a “person” within the meaning of [NRS 90.065](#) and [NRS 90.070](#).

Carson City, June 23, 1969

The Honorable John Koontz, Secretary of State, State Capitol Building, Carson City, Nevada
89701

Attention: Ford E. Holmes, Securities Division

Dear Mr. Koontz:

You have requested an opinion from this office relating to the definition of an “offeree” or “person” as used in [NRS 90.075](#).

We must first point out that the manner in which ownership of stock is held, or to whom it is issued, or how the purchaser requests that it be issued, is a different proposition than the “public interstate offering” itself.

However, we will consider the thrust of your questions to be whether husband and wife as joint tenants, or any joint tenants, are to be considered as one or two persons for the purposes of [NRS 90.075](#).

On the subject of joint tenancy, each joint tenant would qualify as an owner of property, without regard to the property right of the other. In *Quimby v. City of Reno* (1957), [73 Nev. 136](#), the issue before the court dealt with a petition for annexation of territory and whether two or more persons owning joint property interest could be considered as individual signators to the petition. The court, after holding there was no evidence of community property ownership, said:

Where undivided interests are owned by two or more persons, each can certainly qualify independently as a property owner. We see no reason for excepting married owners from such rule.

Furthermore, [NRS 90.070](#) defines a “person,” among other things, as an “individual.” We believe that the use of this term would include a wife as a joint tenant.

This, supported by the general rule that securities acts or “Blue Sky Laws” are to be liberally rather than strictly construed (163 ALR 1050, 1051; AGO 277, 11-12-65) leads us to conclude that joint tenants are considered as two persons for the purposes of [NRS 90.075](#).

As we understand your fourth question, directors are receiving stock options in lieu of other considerations for their services until a certain asset value is reached.

First, we would define the foregoing as a security for value. In return for their services, they are acquiring a present right to a future issue. To say otherwise would make the real test for the legality or illegality of an offering and of the definition of a security depend on the success or failure of a particular venture. Cf. 163 ALR 1050-1098; *People v. Olliver* (1929), 282 P. 813.

Furthermore, [NRS 90.080](#) and [90.090](#)(1) read in part:

* * * 2. “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. * * *
* * * any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, guarantee or, or warrant or right to subscribe to or purchase, any of the foregoing. *
* *

Finally, we conclude that the director of a corporation, based upon the information supplied to us, is a person within the meaning of [NRS 90.065](#) and [90.070](#).

CONCLUSION

We therefore conclude that an offer to joint tenants, whether they are husband and wife or not, is an offer to two persons within the meaning of [NRS 90.075](#). A present right to receive stock in the future is a “security.” A director is a “person” within the meaning of [NRS 90.065](#) and [NRS 90.070](#).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

BY: PETER I. BREEN, *Deputy Attorney General*

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL – JULY Through DECEMBER, 1969

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.

OPINION NO. 1969-592 Banking; State Bank Corporation's Use of Assumed or Fictitious Name—A corporation cannot, either directly or by user, change its name except as provided and authorized in NRS 78.385-78.395. Chapter 64 (A.B. 58), 1969 Statutes of Nevada, effective July 1, 1969, amends Chapter 602 of Nevada Revised Statutes (regulating conduct of business under assumed or fictitious name) so as also to authorize and require registration of corporations so doing business. Prior statutory provisions and judicial determinations to the contrary are therefore superseded and, if otherwise in compliance with applicable requirements, corporations may now generally do or conduct business under registered assumed or fictitious names. Retention in proper advertising of former bank name (changed by authorized merger) for legitimate purpose of continued identification and possible benefit of attached good will is also apparently not prohibited by any existing bank regulation.

Carson City, July 2, 1969

Mr. Preston E. Tidvall, Superintendent, Banking Division, Nevada Department of Commerce, Carson City, Nevada 89701

Dear Mr. Tidvall:

The Banking Division granted permission for a merger of the Bank of Las Vegas, Las Vegas, Nevada, and the Valley Bank of Nevada, Reno, Nevada. Further approval of such merger was granted under order dated May 23, 1969 by the Board of Governors of the Federal Reserve System. The name of the merged banks is to be "Valley Bank of Nevada."

It is indicated that the identity of the Bank of Las Vegas has been built over the past 15 years, presumptively creating and resulting in presently valuable good will, which said bank would like to protect and retain in connection with and for advertising purposes hereafter.

Inquiry has therefore been made of you, and in turn you have requested our opinion and advice as to the legality of a bank's using an assumed name for its branches in the foregoing circumstances.

analysis

Apparently, general law on the propriety of a corporation's conducting business under an assumed name is not completely settled. Thus (18 C.J.S. 561, § 166), according to some authorities, a corporation, absent statutory prohibition, may assume another name by which to contract or do business, without violating the rule that a corporation cannot abandon its corporate name and substitute another except by an amendment to its charter, and it will be protected in the use of the assumed name to the same extent as an individual would be. According to other authority, however: "When a corporation is organized under a general law, the name stated in its charter or certificate of incorporation as required by the statute is its only proper name, and it cannot change its name without legislative authority or assume any other name and thus acquire several names by user or reputation," citing *Pilsen Brewing Co. v. Wallace*, 125 N.E. 714, 291 Ill. 59, 8 A.L.R. 579; *Diamond Nat. Corp. v. Lee* (C.A. Idaho), 333 F.2d 517, *Kansas Milling Co. v. Rye*, 102 P.2d 970, 975, 152 Kan. 137.

Also, you have submitted for our consideration herein, a letter dated May 6, 1969, from the Washington State Supervisor of Banking, together with an attached copy of a legal opinion, apparently relied upon by the Washington State Attorney General for the propriety of a banking corporation to file an assumed business name for any of its branches, providing that use of the name is limited to advertising, such as signs and newspapers; however, said attorney general recommended that the full name of the bank be used on legal documents and in the lower left hand corner of the checks.

In relevant provisions, said legal opinion indicates that the Washington statute regulating the conduct of business under an assumed or fictitious name in that state was similar to the Nevada statute, prior to a

1969 amendment of the latter. The opinion further cites and considers two Washington cases wherein the authority of a corporation to conduct business under a trade name was, or had apparently been questioned at the time of said opinion, namely: Brotherhood State Bank v. Chapman, 145 Wash. 214, 259 P. 391, 56 A.L.R. 447; and Seattle Association of Credit Men v. Green, 45 Wash.2d 139. In the first case, the court affirmed and applied the general rule that a corporation may contract and do business in an assumed name as well as can an individual and be bound thereby in its corporate capacity. In the second case, the court at page 142 rejects the notion that the quoted references to corporations has any bearing on the propriety of a corporation acting under an assumed name, stating:

The purpose of the statutes is to advise anyone extending credit to a business operating under an assumed name, who the real persons conducting the business are. * * * Filing of an assumed name "only affects the right of the party doing business under such name to sue in the courts of this state."

Said legal opinion relevantly further states as follows:

The decision as to utilization of an assumed name appears to involve three areas of exposure. First, is it an offense under pertinent banking regulations. Second, does it preserve adequate identification for the mutual convenience and interests of the bank and the parties with whom it deals. Third, does it have any effect upon the legal title and security interests held by the bank, their enforcement, and the position of the bank in court actions.

As relevant hereto, said opinion then proceeds to answer such three questions or considerations as follows:

While we have found nothing specifically authorizing banks to employ assumed names, neither have we found any prohibition in the applicable statutes. We believe that the two cases cited are persuasive, although not controlling, support for use of an assumed name. (*Italics added.*)

* * * * *

Second, as to the adequacy of identification, we believe this is a practical question which could be determined by bank personnel. * * * Except for instruments having an independent legal significance (deeds, mortgages, motor vehicle titles, tax returns, etc.), we believe that an appropriate assumed name would have no objection, particularly if it is combined with circumstances (such as address) which render identification easy. For instance, newspaper advertising, letterhead, envelopes, statements of account, etc., would appear to involve no problems in this regard. We believe that the same would extend to the bank's prepared forms of check which are drafts upon the bank and which would include the bank transit number.

An argument could be made that reasonable identification is all that is required in the various legal instruments to which the bank would be a party. However, as a practical matter, we question the wisdom of such an extension of an assumed name. Having in mind the practical requirements of title insurance, the handling of motor vehicle titles through the Department of Licenses, the institution of court actions to collect upon promissory notes, etc., it is our suggestion that any instruments involving legal title or security interests should be expressed in the full legal name of the bank, and that this should extend to tax returns, statements of condition, and similar reports. There is case authority that actions may be maintained or defended in a properly filed assumed name, but the problems of identification and explanation of chain of title seem to us to render this unwise.

The above-quoted excerpts from the legal opinion allegedly relied upon in the State of Washington for filing and conduct of bank business in that state under an assumed name are clearly inconclusive and admittedly not controlling in the premises. In fact (prior to enactment of Chapter 64 (A.B. 58), 1969 Statutes of Nevada, effective July 1, 1969, and amending Chapter 602 of Nevada Revised Statutes, regulating conduct of business under assumed or fictitious name), Nevada law, as applicable hereto, has been to the contrary, and consistent with the ruling laid down in the case of Pilsen Brewing Co. v. Wallace, supra.

NRS 78.035 regulates the content required in connection with articles of incorporation, among such being the designation of the proposed corporate name; NRS 78.045 regulates corporation requirements if

engaged in the banking or insurance business, and requires approval of such respective commissioners of any corporations intending to conduct such business, inclusive of their names; and NRS 78.385 and 78.390-78.395 prescribe the only authorized manner and procedure pertaining to the amendment or adoption of an amended corporate name.

Additionally, prior to said 1969 amendment thereof, which is effective July 1, 1969, NRS 602.080(1) expressly made inapplicable to corporations the statutory requirements relative to conduct of business under an assumed or fictitious name; and NRS 602.050, providing for registration or filing of the fictitious or assumed name in the office of the county clerk, had also been ruled as inapplicable to corporations. See *McCulloch Corporation v. O'Donnell*, 83 Nev. 396, 433 P.2d 839 (1967).

However, A.B. 58, enacted as Chapter 64, 1969 Statutes of Nevada, and effective July 1, 1969, expressly repeals NRS 602.080(1); and NRS 602.050, along with other provisions which are pertinent hereto, has been appropriately amended to apply to corporations, and to authorize and require registration or filing of certificates of doing business under a fictitious name by them also, on and after July 1, 1969.

Any corporation conducting, carrying on or transacting business in this state under an assumed or fictitious name or designation on the effective date of this act shall within 30 days after the effective date of this act file the certificate required by NRS 602.010. (Chapter 64, Section 8, 1969 Statutes of Nevada.)

conclusion

Except as provided and authorized in Nevada law, a corporation cannot, either directly or by user, change its name. Chapter 602 of Nevada Revised Statutes, as amended by Chapter 64 (A.B. 58), 1969 Statutes of Nevada, effective July 1, 1969, supersedes previous law, so as to authorize and require registration of corporations doing business under assumed or fictitious names, provided there is compliance with otherwise applicable requirements or regulations.

Finally, there is no apparent prohibition in existing banking regulations against proper advertising or use of a former bank name for the legitimate purpose of continued identification and possible benefit of attached good will, so long as the approved and present legal name of the bank is also included and clearly used, as required by law.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John A. Porter, Deputy Attorney General

OPINION NO. 1969-593 Insurance Premium Tax as Applicable to Operational Method of Certain Factory Mutuals—While special statute is desirable and should be sought relative thereto, the payment of premium tax by said mutuals on the basis of the amount of actually-earned or “absorbed” premium each year out of total “premium deposits” is proper and legally complies with NRS 686.010, construed in light of judicial precedents and authority. Involved “premium deposits” substantively constitute an “advance premium” fund or deposit against premiums to insure their payment when due, as ascertained on the basis of actually-experienced losses and expenses; such funds are not “premiums” paid in advance, or the “cost of insurance.” Remaining balances in “premium deposits,” after deduction of “absorbed” premium, are returned or returnable as a matter of right to policyholders, and are not “return premiums” or “dividends.”

OPINION NO. 1969-593 Insurance Premium Tax as Applicable to Operational Method of Certain Factory Mutuals—While special statute is desirable and should be sought relative thereto, the payment of premium tax by said mutuals on the basis of the amount of actually-earned or “absorbed” premium each year out of total “premium deposits” is proper and legally complies with NRS 686.010, construed in light of judicial precedents and authority. Involved “premium deposits” substantively constitute an “advance premium” fund or deposit against premiums to insure their payment when due, as ascertained on the basis of actually-experienced losses and expenses; such funds are not “premiums” paid in advance, or the “cost of insurance.” Remaining balances in “premium deposits,” after deduction of “absorbed” premium, are returned or returnable as a matter of right to policyholders, and are not “return premiums” or “dividends.”

Carson City, July 2, 1969

Mr. Louis T. Mastos, Commissioner of Insurance, Department of Commerce, Carson City, Nevada 89701

Dear Mr. Mastos:

You have requested our legal opinion and advice as to whether certain premium tax payments are in compliance with the provisions of NRS 686.010.

It appears that since 1954 a group of Factory Mutual Companies have been licensed and engaged in the conduct of insurance business in Nevada, predicated upon the assumed approval and consent given by the then Insurance Commissioner that said companies should pay premium taxes for compliance with Nevada law on the basis of the amount "absorbed" each year from the "premium deposits" in force. Moreover, Annual Statements of Tax Forms, as required by NRS 686.030, 686.090, and 686.110, have since been filed by said companies consistently with such method of tax payment, and it is assumed that tax payments have been actually so made.

The Insurance Division files do not contain any record of any such method of premium tax payments. You have therefore concluded that possible question concerning the validity or compliance of such premium tax payments with NRS 686.010 should be regularly and definitively resolved at this time. Division files submitted for our review in such connection have been found to contain material describing the method of operation of such Factory Mutual Companies, as well as legal memoranda pertaining thereto, and the following summarized particulars, excerpted from file records, are deemed relevant to the principal legal question posed by your request.

statement of facts

It is claimed that the plan of operation of Factory Mutual Companies is quite different from that of other companies in the field of property insurance: they are purely mutual companies; their policyholders are obligated to pay their equitable share of the losses and expenses incurred while their insurance was in force; they are required additionally to pay their proper charges for surplus and catastrophe reserves; they do not operate on the agency basis, and all their employees are salaried; all policies are issued at their home offices, and all premium deposits are there made or paid; all returns of remaining balances in the premium deposits are also made therefrom; and, finally, the character of the risks insured and the method of operation promote or favor a much closer connection between policyholder and company than is usually the case, because of the preventive or risk-reducing services available and provided.

The method of determining and assessing the costs of their property insurance to policyholders apparently requires their deposit of a sum of money known or designated as a "premium deposit," at the time a policy is issued. Each policyholder's share of the losses and expenses incurred while his policy is in force will be paid from such "premium deposit." The balance in such "premium deposit," after deduction for losses and expenses, is returnable to the policyholder upon expiration of his particular policy, when same occurs, as "unabsorbed premium deposit."

The "premium deposit" required of any particular policyholder varies in amount according to the size and character of the risk, the exact amount being determined through the application of the rating schedules of the Factory Mutual Rating Bureau, created to provide formal machinery for establishment of premium deposit rates in line with the principles, practices, and experience of Factory Mutuals. Rating schedules, rules, forms, and endorsements used by Factory Mutuals are filed in all licensing states, presently some 47 in number.

"Premium deposits" of Factory Mutuals are the same in amount for all terms, i.e., "if the premium deposit rate for a given risk is 50 cents per \$100 of insurance, then that will be the basis for computing the amount the insured must deposit, regardless of the term for which the policy is written, whether three months or three years or longer." The only difference in ultimate cost will be the amount of losses and expenses incurred during the respective terms charged against the particular premium deposits. Thus, a policy written for a 3-month period will be charged with its allocable term-proportion of the losses and expenses sustained or incurred during its life; likewise, the 3-year policy will be charged its allocable term-proportion of the losses and expenses sustained or incurred during the time or period it is in force.

Because (1) risks insured are in large amounts, and (2) they are generally required to limit insurance coverage provided on any single risk to not more than 10 percent of their net assets, Factory Mutuals are also dependent upon relatively large premium deposits for augmentation and availability of resources and

funds to enable them to furnish adequate insurance protection to those who need it. This is the stated justification therefor and the explanation for the considerable differential between the (approximate) 50-cent premium deposit rate, and the (approximate) 5.5 cents actual "cost of insurance," or "premium," per \$100 of insurance coverage. It also accounts for the relatively high rate of return of "unabsorbed premium deposits," approximately 86 percent on one year policies. On policies having longer terms, such rate of return of "unabsorbed premium deposits," would, of course, be proportionately lower, since based on presumptively incurred greater losses and expenses experienced over such longer terms or periods of time, and severally assessed against such longer term policyholders.

Losses and expenses are exactly computed for, and at the end of, each month, based on actual figures; " * * * and from them is determined the percentage of the premium deposits in force necessary to pay the cost of operating the company during the period, with proper provision for surplus and other reserves." Said figures are used to ascertain such "cost of insurance" and to determine the amount of "unabsorbed premium deposits" or remaining balance in the "premium deposits" which is available and returnable on expiring policies, thus assuring insurance protection to policyholders at "actual" cost.

Since returned or returnable "unabsorbed premium deposits" represent that proportion of the original deposits or assessments which were not used for the payment of losses and expenses, or the "cost of insurance," they cannot be said to be "savings" on insurance costs; also, since they are not earnings or profits from funds invested in business or placed at interest, they cannot, strictly, be properly considered or treated as "dividends." Such returns are also not contingent upon continuation of a policy to expiration date, or subject to short rate cancellations upon the usual basis, and, therefore, cannot in any sense be considered and treated as "premium" income, for tax purposes; in short, it is argued that such return constitutes that portion of his deposit not needed to cover the cost of insurance to the policyholder during the time his policy has been in force.

Because established only after inception of insurance coverage, "premium," or true or actual "cost of insurance" is only determinable and determined at the expiration or termination of written policies. For such reason as well as the other and above-suggested differences in their method of operation. Factory Mutuals therefore submit that the provisions of NRS 686.010 require special construction and application, which are both proper and legally justified.

It is the position of Factory Mutuals that, under NRS 686.010, they have been, and are properly taxable only on the basis of the actual amount charged as consideration for the purchase or "cost of insurance" as indicated in their above-described method of operation; more specifically and otherwise stated, that imposition and exaction of the Nevada insurance premium tax on the basis of "premium deposits" solely would result in an unfair and disproportionate burden upon Factory Mutuals and their policyholders, arguably not legislatively intended or legally required.

question

Are Factory Mutual Companies in compliance with NRS 686.010, relative to their payment of the premium tax thereunder on the basis of the amount "absorbed" each year from "premium deposits" in force, as hereinabove described in their outlined method of operation?

analysis

Some preliminary observations are in order. Clearly, the involved method of operation of said Factory Mutuals has a direct bearing upon the measure of the tax, or tax base, and the amount of premium taxes paid. Perhaps, it is also more precise for determination and assessment or allocation of actual insurance costs, inclusive of administrative changes, thus effecting possible savings in the ultimate costs of insurance to their policyholders. Certainly, such considerations alone do have practical implications and significance. Theoretically, however, such involved method of operation is not fundamentally different from the general operational methods of other insurers, both mutual or stock.

Theoretically, it matters not whether "premium" is paid in advance or computed and paid from "premium deposits" after the insurance protection begins; in both cases, "premium," or cost of insurance, is (or should be) either based on predictable or predicted losses (derived from previous, past experience) or determined from actually experienced losses during the period that a particular policy was in force— proportionately assessed or allocated to each policyholder. In the usual case, effected savings theoretically

accrue, and are subsequently proportionately returnable or returned to policyholders as “unearned premium,” or “dividend.” In all cases, administrative expenses are of course includable and included as an item of insurance costs, a proper element or factor of “premium.”

While “premium” is usually greater for policies having longer terms, the proportionately lower rate of return by Factory Mutuals of “unabsorbed premium deposit” on policies of longer term (because of longer or greater liability exposure and participation in actually experienced losses) substantially corresponds or equates to greater “premium” or cost of insurance to their policyholders also.

In another connection, we had occasion to indicate that present decisional law generally supports the view that legislative intent and statutory purpose ordinarily include in the term “premium” the entire and all costs connected with or incident to the issuance and performance of contracts of insurance, i.e., all sums which must be paid before insurance protection will be afforded or granted. (Attorney General's Opinion No. 537, dated September 16, 1968.) Thus, we concluded that installment payment plan fees collected from Nevada policyholders inclusively constituted taxable premium under NRS 686.010, since not different in character from other expenses denominated “premium” (the entire cost for issuance and performance of insurance contracts), citing Appleman, Insurance Law and Practice, Vol. 19, 1968 Supplement, p. 106, Section 10587 and State ex rel. Earle v. Allstate Ins. Co., 321 Or. 371, 351 P.2d 433. Analogously, “membership fees” have also been held to be includable in “premiums” for the purpose of determining the amount of maintained reserves. (Duel, Commissioner of Insurance v. State Farm Mutual Automobile Insurance Company, 1 N.W.2d 887, 2 N.W.2d 871, 324 U.S. 154, decided in 1942 by the Wisconsin Supreme Court and affirmed on appeal by the United States Supreme Court, wherein the courts ruled that the involved “membership fee” was a part of “premium,” and that the exaction of such fee therefore constituted a “splitting of premium” in violation of statutory requirements.)

In contemplation of the foregoing conclusions, the fact situation involved in the method of operation of the Factory Mutuals reasonably suggests at least the following questions:

Does “total premium income,” as set forth in NRS 686.010 (the tax base or measure of payable taxes), properly correspond to Factory Mutuals' “total premium deposits”; or does it, in actual and substantive legal effect (as urged), correspond to “absorbed premium deposits”?

Does “unabsorbed premium deposits,” on a corollary basis, equate to “return premiums,” as provided in said NRS 686.010?

Does the separation of “absorbed” and “unabsorbed” premium deposit substantially constitute a “splitting of premium,” violative of statutory requirements or decisional law?

What significance and weight, if any, should properly be given to the admitted fact that the amount of the “premium deposit” made by a Factory Mutual policyholder to secure insurance coverage or protection is so much greater than the cost of the insurance written, as ultimately evidenced by the amount of “absorbed” premium deposit?

Is it legally prohibited or contrary to the provisions of NRS 686.010 for Factory Mutual Companies to require that their policyholders at the inception of their policies shall deposit with the companies a sum of money out of which the actual “premium” or cost of insurance (i.e., “absorbed” premium deposit) will be deducted at the expiration or termination of the policies?

Parenthetically, it should also be noted herein that filed legal memoranda by Factory Mutuals indicate that apparently some six states, namely, Maine, New Hampshire, New York, Utah, Vermont, and Washington, have enacted special statutes applicable to their special method of operation. Generally, they “provide for payment of tax at the same rate as is applicable to all other property insurers on all of the premium deposits in force at a given time, after deducting therefrom the unabsorbed premium deposits returnable to policyholders during the year computed at the average rate of return of unabsorbed premium deposits on annual policies.”

In apparently some 33 states, either by allowing the deduction as “refunds,” “returns,” “unused or unabsorbed portion of the premium,” or “by holding that the absorbed portion of the premium deposit is the equivalent of the gross premium of other companies,” Factory Mutual Companies are thus permitted to deduct from the premium deposits received in any given year the unabsorbed premium deposits (which are returned, or returnable, to their policyholders in the same period, in those states), in determining their tax basis and the amount of premium tax liability.

At the time of such survey or compilation (1954), both Alaska and Hawaii had not yet been admitted to statehood. In the then remaining nine states, the law was reportedly either silent on the question whether returns made to policyholders might be deducted, or the wording of the statute specifically denied or

prohibited any deduction for dividends or other returns. These nine states were California, Florida, Georgia, Idaho, Louisiana, Nevada, North Carolina, Tennessee, and West Virginia. The insurance departments of California and Tennessee (where the tax base is the amount of gross premiums less return premiums received each year) have reportedly always permitted the deduction of returned “unabsorbed” premium deposits to policyholders. In the five states where the statutes allegedly specifically prohibit deduction of dividends in computing the tax basis, four such states (North Carolina, Louisiana, Georgia, and West Virginia) evidently requested attorney general or insurance department counsel rulings or opinions, copies of which are contained in your files and thus available to us for review herein. All such rulings or opinions conclude that Factory Mutual Companies should be taxed upon their annual “absorbed” premium deposit, not upon total “premium deposit.” Apparently, at the time of said survey, Factory Mutuals had not been licensed only in Idaho and Nevada; and on the basis of their licensing in Nevada by the then Insurance Commissioner, it presumptively appears that Nevada, administratively or de facto, also sanctioned and approved as compliance with its “Gross Premium” tax law (as had other state insurance commissioners, without reference to or benefit of attorney general ruling or opinion), payment and collection of the premium tax on the basis of the amount “absorbed” each year from the “premium deposits” in force.

Finally, filed Factory Mutual memoranda provides documentation that the involved operational method generally provides for bylaws requiring return to the policyholder at the expiration of the policy, and as “unabsorbed premium deposit,” of the balance of his premium deposit, after deduction therefrom of the allocable share of the sustained or incurred losses and expenses while the policy was in force.

Such preliminary observations aside, we can now better consider your submitted legal question. As pertinent thereto, NRS 686.010 provides as follows:

1. Every insurance or annuity company or association of whatever description * * * doing an insurance or annuity business in this state, shall annually pay to the commissioner a tax of 2 percent upon the total premium income, including membership fees, payments on annuities or policy writing fees, from all classes of business covering property or risks located in this state during the next preceding calendar year, less return premiums and premiums received for reinsurance on such property or risks. (Italics added; as respects annuities, Chapter 56, 1969 Statutes of Nevada, now authorizes election relative to taxability on such administration deposits, either at the time of receipt or upon application to purchase of individual annuities.)

We are of the considered opinion that definitions of involved terms will facilitate proper construction and application of the foregoing statutory provisions to the factual situation and described method of operation.

“Gross premium,” of course, is the amount charged for insurance without any deductions, such as might be made for “return premiums,” “dividends,” etc. As already noted, “premium” constitutes the entire costs connected with or incident to the issuance and performance of contracts of insurance, i.e., all sums which must be paid before insurance protection will be afforded or granted. (The memoranda submitted by Factory Mutuals, citing Dictionary of Insurance Terms, Blanchard, 1949, and Equitable Life Assurance Soc. v. Johnson, 127 P.2d 95, is in accord with such definition.) Since the term “dividend” ordinarily connotes a return earned upon funds placed at interest, or a profit made on money that has been invested, it is reasonable and proper to conclude that the “premium deposit” returns made to their policyholders by the Factory Mutuals are strictly not “dividends,” because they do not represent, nor are they in actual fact, “earnings,” “profits,” or “savings.” (Cf., State v. Hibernia Insurance Co., 38 La. Ann. 465, and State ex rel. National Life Insurance Co. v. Jay, 37 Wyo. 189, 260 P. 180, cited on behalf of Factory Mutuals for differentiation of premium deposit returns as “that proportion of the original deposit or assessment which has not been used for the payment of losses and expenses.”)

The described reported practice or operational method of Factory Mutuals fairly indicates that the “entire costs * * * incident to the issuance and performance” of the insurance contract (or “premium”) are actually not fixed or paid in advance, but computed and determined after the fact, on the basis of experienced losses and expenses as allocable to the particular policy contract while in force. Therefore, it is strictly and properly only then that the amount of “premium” is substantively and legally taxable (“taxable event”). We can find no legal basis to counter the argument that “premium deposits” of such Factory Mutuals constitute and should be considered merely “advance premiums” (together with “advance” reserves against possible losses and expenses) when made—to be drawn upon to pay actual “premium” when subsequently

computed or ascertained on an actually experienced basis. (Cf., 44 C.J.S. 1302, Sec. 340.) There is, therefore, a valid distinction between "premium deposits" of Factory Mutuals and the "premium" of other mutual or stock insurance companies, inasmuch as in the former case the "premium deposit" is a fund to pay the cost of protection as subsequently determined from actual experience, while in the latter case a specified sum is paid in advance for the protection, with a right to share in the company's earnings (if any) at best.

Since the "premium deposits" of Factory Mutuals are substantively aggregate funds out of which the "cost of insurance," or "premium" is taken for payment as subsequently ascertained, it follows that only that amount which is so retained, or "absorbed" therefrom, is the gross amount of direct "premiums," and the proper measure of the premium tax.

It should, however, be noted that profits possibly realized from investment of "premium deposit" funds cannot be deducted from, or applied to reduce such gross amount of direct premiums, since not an "overpayment of premium": and not related to the "cost of insurance," but rather income or a "dividend" derived from investment; NRS 686.010 only authorizes deduction of "return premiums and premiums received for reinsurance * * * property or risks." (Cf., Appleman, Insurance Law and Practice, Vol. 19, Sections 10587, 10592, and footnote citations therein.)

conclusion

It is our considered opinion and advice that it is desirable to have special statutory provisions relative to the Nevada premium tax as applicable to the particular method of operation employed by such Factory Mutual Companies. Nevertheless, present Nevada law, reasonably construed and applied on the basis of judicial precedents and authority, sustains as valid the payment of the premium tax by such Factory Mutuals on the basis of the amount "absorbed" each year from their "premium deposits" in force. Because the total or aggregate "premium deposits" substantively and legally constitute "advance" funds from which actually earned "premiums" are drawn or paid as subsequently ascertained and apportioned or allocated, such "premium deposits" are not properly "total premium income" as contemplated in NRS 686.010, and the measure of premium tax liability. Such conclusion is amply supported by the fact that balances remaining after deductions for payment of costs and insurance, or sustained losses and expenses, are returned or returnable to policyholders as a matter of right, and do not legally represent or constitute "premium" or "dividend" in a taxable sense under present Nevada law.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John A. Porter, Deputy Attorney General

OPINION NO. 1969-594 Nursing—Vocational Education Qualification of Teachers—The State Board of Vocational Education rather than the State Board of Nursing has the power to prescribe teacher qualifications in schools of practical nursing.

OPINION NO. 1969-594 Nursing—Vocational Education Qualification of Teachers—The State Board of Vocational Education rather than the State Board of Nursing has the power to prescribe teacher qualifications in schools of practical nursing.

Carson City, July 2, 1969

Mrs. Jean T. Peavy, R.N., Executive Secretary, State Board of Nursing, 644 South Center Street, Reno, Nevada 89501

Dear Mrs. Peavy:

The Nevada State Board of Nursing is considering the adoption of rules and regulations governing qualifications for teachers in vocational schools of practical nursing. The right to do this is challenged by the State Board of Vocational Education. Your question is:

question

Does the State Board of Nursing have the right to establish qualifications for teachers in vocational schools of practical nursing?

answer

NRS 388.360 provides in part:

The state board for vocational education shall have authority:

* * * * *

3. To administer the funds provided by the Federal Government and the State of Nevada for the promotion, extension and improvement of vocational education in agricultural subjects, trade and industrial subjects, home economic subjects, distributive occupation subjects, practical nursing subjects, vocational guidance services and other subjects which may be included in the vocational education program in the State of Nevada.

* * * * *

11. To prescribe qualifications for the teachers, directors and supervisors of such subjects.

NRS 632.430 provides: (State Board of Nursing)

The board shall have the power to prescribe standards and curricula for schools of practical nursing, to visit, survey and accredit such schools, and to remove such schools from an accredited list for just cause.

This statute was amended in 1959, and the word "supervise" was eliminated.

This office has reached the conclusion in the past that the State Board of Vocational Education, rather than the State Board of Nursing, has the power to prescribe the curriculum for schools of practical nursing in this State. Attorney General's Opinion No. 332, dated December 6, 1957. In following that opinion, we would also have to extend that power to the qualifications for teachers in such schools.

However, we do see a need for clarifying legislation. It will be noted that the State Board of Nursing may accredit practical nursing schools (NRS 632.430); and a practical nurse must complete a course from an accredited school of practical nursing to meet the qualification requirements of NRS 632.270. Thus the need to clarify the overlapping powers and duties of the two boards is apparent, and the matter should be brought to the attention of our State Legislature.

conclusion

The State Board of Vocational Education, rather than the State Board of Nursing has the power to prescribe teacher qualifications in schools of practical nursing.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-595 Sales And Use Tax; Sale Of Prepared Food To Airlines—When a restaurant prepares, sells, and delivers food to an airline, a retail sale of tangible personal property has occurred and the tax liabilities found to exist by appropriate statutory provisions apply.

OPINION NO. 1969-595 Sales and Use Tax; Sale of Prepared Food to Airlines—When a restaurant prepares, sells, and delivers food to an airline, a retail sale of tangible personal property has occurred and the tax liabilities found to exist by appropriate statutory provisions apply.

Carson City, July 9, 1969

Mr. Roy E. Nickson, Secretary, Nevada Tax Commission, Carson City, Nevada 89701

Dear Mr. Nickson:

statement of facts

As the result of an audit conducted by the Tax Commission, it was discovered that a certain restaurant located in Reno, Nevada, prepares meals which are delivered to an airline carrier, and later served to passengers while aboard airplanes. Neither the restaurant nor the airline has paid to Nevada a sales tax based upon the purchase price of the delivered meals since 1955. The airline in question does not possess a resale certificate.

question

Under the above statement of facts, is there a tax liability owed the State of Nevada?

analysis

There is no doubt that the restaurant is a retailer of tangible personal property under NRS 372.055(1)(a):

1. "Retailer" includes:

(a) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

Just as clear is the fact that a series of "sales" have been made. See NRS 370.060(3)(c):

3. "Sale" includes:

* * * * *

(c) The furnishing, preparing, or serving for a consideration of food, meals or drinks.

Such being the case, the tax liability, if any, must fall upon the restaurant as retailer. See NRS 372.105:

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after July 1, 1955.

It has been suggested that the retail sales in question are exempt from the provisions of Chapter 372 of Nevada Revised Statutes under NRS 372.330 and NRS 372.335. These statutes read:

NRS 372.330:

There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

NRS 372.335:

There are exempted from the computation of the amount of the sales tax the gross receipts from any sale of tangible personal property which is shipped to a point outside this state pursuant to the contract of sale by delivery by the vendor to such point by means of:

1. Facilities operated by the vendor;
2. Delivery by the vendor to a carrier for shipment to a consignee at such point; or
3. Delivery by the vendor to a customs broker or forwarding agent for shipment outside this state.

We do not so conclude. In order to come within the exempting provisions of NRS 372.330, supra, the goods in question must be "shipped by the seller * * * under a bill of lading * * * to a point outside this state * * * to the out-of-state destination for use by the carrier." Such is not the factual situation with which we are here concerned. In order to come within the exempting provisions of NRS 372.335, the sold property must be "shipped to a point outside this state pursuant to the contract of sale" by one of the three given methods. Such is not the case in this instance. The sales with which we are concerned were completed within the State of Nevada from the restaurant (retailer) to the airline (purchaser), and because the sales tax in Nevada is imposed upon the retailer (see NRS 372.105, supra) the commission should look to the retailer for payment.

The conclusions reached in this opinion apparently meet with the approval of the other air carriers and their food caterers, for they are doing exactly what we conclude parties herein should do.

conclusion

When a restaurant prepares, sells and delivers food to an airline, a retail sale of tangible personal property has occurred and the tax liabilities found to exist by appropriate statutory provisions apply.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John J. Sheehan, Deputy Attorney General

OPINION NO. 1969-596 Taxation; Mobile Homes, Trailers—A camper is not a mobile home. Camper inventories are taxable as such.

OPINION NO. 1969-596 Taxation; Mobile Homes, Trailers—A camper is not a mobile home. Camper inventories are taxable as such.

Carson City, July 14, 1969

Mr. Roy E. Nickson, Secretary, Nevada Tax Commission, Carson City, Nevada 89701

Dear Mr. Nickson:

statement of facts

Several county assessors have inquired of the Nevada Tax Commission whether or not camper inventories are taxable as a result of Senate Bill 398. It has been suggested that campers, like mobile homes (see NRS 482.3611), should be exempt from taxation. Accordingly, you forwarded to this office the following questions:

questions

1. Does Senate Bill 398 give campers the attributes of a mobile home as defined in NRS 482.067, thus subjecting them to the provisions of NRS 482.3611?
2. If the answer to question 1 is negative, is it not correct that camper inventories are taxable?

analysis

NRS 482.3611 reads:

Notwithstanding the provisions of chapter 361 of NRS and of this chapter or any other law, no mobile home dealer shall be required to pay any property tax, either as a tax on inventory or on individual mobile homes, on any mobile home of which such dealer takes possession and which he holds for sale in the ordinary course of business.

Clearly, by this statute, a mobile home which is part of an inventory enjoys tax exemption. This office has previously concluded in Attorney General's Opinion No. 170, issued September 10, 1964, that a camper is different from a mobile home. The conclusion reached in that opinion was affirmed in Attorney General's Opinion No. 545, issued October 11, 1968. Therein, a camper is defined as " * * * units placed on truck beds, or manufactured so as to become an integral part of the motor vehicle, so as to provide shelter, sleeping, and cooking accommodations * * *."

The Legislature, in passing Senate Bill 398, gave campers a very similar definition, to wit: "Camper" means an enclosed attachment which is designed for mounting on a motor vehicle and which is intended for temporary living purposes." The Legislature did not modify its definition of "mobile home" found in NRS 361.561, which is: " * * * every trailer designed or equipped for living purposes."

We can see clear distinctions, as defined, between campers and mobile homes. A camper is mounted on a motor vehicle and is designed for temporary living purposes. A mobile home is a trailer not designed for merely temporary purposes.

We think the Legislature has intended and has succeeded in establishing a difference between mobile homes and campers. Such being the case, the tax exemption applying to mobile home inventories cannot be transferred to another class of property, i.e., campers. If the Legislature desired to give this tax treatment to inventories of campers, it could easily have done so by adding the word "campers" to NRS 482.3611. Because mobile homes and campers have different definitions, and in accordance with past opinions of this office, we once again conclude that a camper is not a mobile home.

In answer to your second question, camper inventories are taxable.

conclusion

A camper is not a mobile home, and inventories of campers are taxable.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John J. Sheehan, Deputy Attorney General

OPINION NO. 1969-597 Counties—Salaries of Deputies in Sheriff's Office—The Board of County Commissioners of Esmeralda County is not restricted to a salary of \$25 per day for deputies in the sheriff's office, as set forth in section 8 of Chapter 654 of the 1969 Statutes of Nevada, but may establish a salary commensurate with the positions as set forth in subsections 1 and 2 of section 5 of the same statute.

OPINION NO. 1969-597 Counties—Salaries of Deputies in Sheriff's Office—The Board of County Commissioners of Esmeralda County is not restricted to a salary of \$25 per day for deputies in the sheriff's office, as set forth in section 8 of Chapter 654 of the 1969 Statutes of Nevada, but may establish a salary commensurate with the positions as set forth in subsections 1 and 2 of section 5 of the same statute.

Carson City, July 15, 1969

Sheriff L. G. Cozart, Esmeralda County Sheriff's Office, Goldfield, Nevada 89013

Dear Sheriff Cozart:

You have asked this office for an opinion interpreting subparagraph 1 of section 5, and section 8 of Chapter 654 of the 1969 Statutes of Nevada.

analysis

Subsection 1 of section 5 reads as follows:

The sheriff is authorized to appoint one deputy sheriff, who shall receive an annual salary to be fixed by the board of county commissioners as such deputy sheriff and an annual salary to be fixed by the board of county commissioners as deputy ex officio county assessor.

This section gives the sheriff complete authority to appoint one deputy, who is to receive an annual salary to be fixed by the board of county commissioners as such deputy sheriff, and a salary to be fixed as deputy ex officio county assessor.

Section 8 of Chapter 654 reads as follows:

Deputies, part-time help, clerks and stenographers may be appointed or employed by county officers when approved and considered necessary by the board of county commissioners. The compensation of such employees shall not exceed \$25 per day each.

This section does not limit the salary of the deputy appointed by the sheriff under subsection 1 of section 5 of Chapter 654, nor does it apply to extra deputies provided for by subsection 2 of section 5 of the statute.

The deputies referred to in section 8 do not apply to the sheriff's office.

conclusion

It is therefore the opinion of this office that the Board of County Commissioners of Esmeralda County is not restricted to a salary of \$25 per day for deputies in the sheriff's office, as set forth in section 8 of Chapter 654 of the 1969 Statutes of Nevada, but may establish a salary commensurate with the positions as set forth in subsections 1 and 2 of section 5 of the same statute.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-598 State-Chartered Savings and Loan Associations—Raising Capital in Form of Savings Deposits—Chapter 673 of Nevada Revised Statutes, as amended by Chapter 545 (S.B. 179), 1969 Statutes of Nevada construed, relative to requirements contained in Federal Home Loan Bank Resolution No. 22,506, dated January 9, 1969; Held: Subject to commissioner's approval therefor, and adoption of required bylaws and approved security forms, state law sufficiently authorizes and permits state-chartered associations to avail themselves of the same rights and privileges afforded to federal associations to raise capital in the form of savings deposits, shares, or other accounts, all of which would have the same priority on liquidation.

OPINION NO. 1969-598 State-Chartered Savings and Loan Associations—Raising Capital in Form of Savings Deposits—Chapter 673 of Nevada Revised Statutes, as amended by Chapter 545 (S.B. 179), 1969 Statutes of Nevada construed, relative to requirements contained in Federal Home Loan Bank Resolution No. 22,506, dated January 9, 1969; Held: Subject to commissioner's approval therefor, and adoption of required bylaws and approved security forms, state law sufficiently authorizes and permits state-chartered associations to avail themselves of the same rights and privileges afforded to federal associations to raise capital in the form of savings deposits, shares, or other accounts, all of which would have the same priority on liquidation.

Carson City, July 16, 1969

Mr. Frank D. Arnold, Commissioner of Savings Associations, Department of Commerce, Nye Building, Room 316, Carson City, Nevada 89701

Dear Mr. Arnold:

One of the state-chartered savings and loan associations has made direct request for issuance of a legal opinion by this office on certain matters which appear to be of general interest or concern to all such state-chartered associations. We deem it proper, therefore, to address our opinion on such indicated matters to you and, through your office, to make the same available generally, thus obviating the necessity of repeating ourselves and answering a number of individual requests and like inquiries from other associations in similar fashion.

It appears that Congress recently amended section 5(b) of the Home Owners' Loan Act of 1933, as amended, by Public Law 90-448 (82 Stat. 608) to permit federal savings and loan associations to raise capital in the form of savings deposits, shares, or other accounts (all of which shall have the same priority on liquidation) as are authorized by an association's charter and the regulations of the Federal Home Loan Bank Board.

The same rights and privileges so afforded to such federal associations are, apparently, also made available to insured state-chartered institutions. In such connection, Federal Home Loan Bank Resolution No. 22,506, dated January 9, 1969 (which is intended to implement the Congressional enactment), provides that state-chartered associations adopting such bylaws and security forms shall submit to the Federal Home Loan Bank Board written evidence as to the legality of such action from the state attorney general, from the association's attorney, from the state supervisory authority, and from the savings association itself.

In relevant part, said Resolution No. 22,506 provides as follows:

Resolved further, that institutions adopting the bylaw provisions and security forms approved hereby, shall submit the following written evidence:

1. From the appropriate State Attorney General that:

(a) The issuance of such security forms is legal under its state laws, which permit such institutions to raise capital in the form of savings deposits;

(b) Such savings deposits and any other savings account in the institution would, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the institution or in the event of any other situation in which the priority of such savings deposits or savings account is in controversy, have, to the extent of their withdrawal value, the same priority as general creditors of the institution not having priority (other than priority arising or resulting from consensual subordination) over the general creditors of the institution;

(c) In the event surplus assets remain after satisfying all other claims in the liquidation of a mutual institution, the savings deposits and savings accounts will share in those surplus assets on a pro rata basis; and

(d) The terms "savings deposits" and "savings accounts" under its state laws come within the definition of "an insured account" as defined in the rules and regulations for the insurance of accounts of the Federal Savings and Loan Insurance corporation.

analysis

Section 561.3 of the (F.S.L.I.C.) Rules and Regulations for Insurance of Accounts provides as follows:

Insured account. An "insured account" is a withdrawable or repurchasable share, investment certificate, deposit, or savings account held by an insured member in an institution insured by the Corporation. Accounts which by the terms of the contract of the holder with the institution or by provisions of state law cannot be withdrawn or the value thereof paid to the holder until all of the liabilities, including other classes of share liabilities, of the institution have been fully liquidated and paid upon the winding up of the institution are not insurable and are hereafter referred to as "non-withdrawable accounts."

The following excerpted provisions from Chapter 673 of Nevada Revised Statutes (Savings and Loan Associations), as amended by Chapter 545 (S.B. 179), 1969 Statutes of Nevada, are deemed sufficient and principally relied upon for our legal opinion and advice concerning state law and its application to the matters set forth in Resolution No. 22,506 and verbatim listed above:

State-chartered associations are authorized to

* * * conduct or carry on the business of soliciting or advertising for the savings of shareholders, stockholders, members or investors and of loaning such savings. (NRS 673.070, subsection 2.)

NRS 673.115:

4. An association shall not:

* * * * *

(d) Use the word "deposit" or "deposits" in any form of advertising unless the use of such word is authorized in the advertising of a federal savings and loan association pursuant to federal law.

NRS 673.225:

1. Notwithstanding any other provision of this chapter, every company, association or corporation licensed under the provisions of this chapter whose accounts are insured by the Federal Savings and Loan Insurance Corporation or its successor, or which is a member of a federal home loan bank or its successor as an insured association, shall possess the same rights, powers, privileges, immunities and exceptions which are possessed by any federally chartered association.

2. When more permissive lending and investment privileges and provisions regarding payment of interest to savers or savings account holders, establishment of savings accounts, the acceptance of which has been approved by the Nevada Supervisory Authority and the Federal Savings and Loan Insurance Corporation or other powers, privileges, immunities and exceptions are extended to federally chartered associations, the same shall be extended to every federally insured association or corporation licensed under the provisions of this chapter.

NRS 673.333:

6. In addition to the classes of savings accounts provided for in this chapter, an association may, with the approval of its board of directors, authorize additional classes of savings accounts which will conform to those types or classes, which have been established by the Federal Home Loan Bank Board by regulation or which may be hereafter authorized by it.

NRS 673.018:

"Member" means a person owning a savings account of a mutual association, or a person borrowing from or assuming or obligated upon a loan held by an association, and any other person obligated to an association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.

NRS 673.031:

"Savings account" means that part of the savings liability of the association which is credited to the account of the investor-member thereof.

Sec. 2, Chapter 545, 1969 Statutes of Nevada, amending Chapter 673 of Nevada Revised Statutes:

"Deposit" means that part of the savings liability of an association which is credited to the account of the holder thereof.

NRS 673.032:

"Savings liability" means the aggregate amount of savings accounts, including interest credited to such accounts, less withdrawals.

Sec. 3, Chapter 545, 1969 Statutes of Nevada, amending Chapter 673 of Nevada Revised Statutes:

“Interest” means that part of the savings liability of an association which is credited to the account of the holder thereof.

NRS 673.007:

“Dividend” means that part of the net earnings of an association which is declared payable by the board of directors to the holders of permanent capital stock.

(NOTE: In amending Chapter 673 of Nevada Revised Statutes, Chapter 545, 1969 Statutes of Nevada generally eliminates all references to shares or share accounts, substituting therefor “savings accounts”; e.g., NRS 673.360, 673.274, subsection 1b.)

It is material hereto to note that by statutory definition “deposit” is given the same meaning as “savings account,” and that said statutory definitions of both said terms satisfy the requirements of “insured account,” as defined in section 561.3 of the (F.S.L.I.C.) Rules and Regulations for Insurance of Accounts. Also, that while there is no presently existing mutual savings and loan association (chartered by the State) in Nevada, applicable law sufficiently provides for “savings accounts” (or “savings deposits”) in such mutual associations, should any come into existence. The owner or holder of savings deposits in a mutual association would, like the owner or holder of a savings account therein, be a member thereof, entitled to equal or the same rights, privileges, and creditor priorities, in the event of any liquidation of the mutual association. This necessarily follows since, as respects the credited or withdrawable amount or value of either savings deposits or savings accounts, the relationship of the association to both holders of savings deposits and savings accounts is that of debtor-creditor; both would be general creditors, and their priority would, of course, be subordinate to that of secured creditors and tax or other preferred liens. Also, as members of the mutual association, both owners or holders of either savings accounts and savings deposits would share on a pro rata basis in any surplus assets of a liquidated mutual association after payment and satisfaction of all other claims.

conclusion

Based on the foregoing excerpts from applicable statutes, therefore, it is our considered legal opinion and advice that present Nevada law sufficiently authorizes and permits state-chartered savings and loan associations to avail themselves of the same rights and privileges as have been afforded federal associations to raise capital in the form of savings deposits, conformably with the provisions and requirements of Federal Home Loan Bank Resolution No. 22,506, dated January 9, 1969; subject, however, to commissioner approval and adoption of required bylaws and approved security forms therefor, additionally prescribed in state law and in said Resolution No. 22,506.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John A. Porter, Deputy Attorney General

OPINION NO. 1969-599 Municipalities, Towns, and Counties—Building officials in municipalities, towns, and counties where the uniform building code has been adopted legally, must require plans and specifications to be prepared and designed by an engineer or architect licensed by the State to practice as such, if such plans and specifications are prepared in this State.

OPINION NO. 1969-599 Municipalities, Towns, and Counties—Building officials in municipalities, towns, and counties where the uniform building code has been adopted legally, must require plans and specifications to be prepared and designed by an engineer or architect licensed by the State to practice as such, if such plans and specifications are prepared in this State.

Carson City, July 16, 1969

Mr. H. B. Blodgett, Executive Secretary, Nevada State Board of Registered Professional Engineers, Post Office Box 5208, Reno, Nevada 89503

Dear Mr. Blodgett:

Your letter of July 7, 1969, cosigned by Mr. Hellmann, has been thoroughly studied, and we believe that the language of the Uniform Building Code to the effect that the building official may require plans and specifications to be prepared and designed by an engineer or architect, licensed by the State to practice as such, would be permissive if it were not for the state law.

analysis

The drafting of plans and specifications and their design is properly within the perimeter of the state law regarding architects and professional engineers, and therefore the state law is controlling.

NRS 623.180(1) provides that no person shall practice architecture in the State of Nevada without having a certificate issued to him by the State Board of Architecture. NRS 625.210 provides for certification of professional engineers, and NRS 625.520 prohibits practice in this State of an engineer not possessing a certificate.

It must stand to reason, therefore, that even though the Uniform Building Code is adopted by a city or county of this State, the requirements of state law must be met. Thus the word "may" in the phrase "may require plans and specifications to be prepared and designed by an engineer or architect licensed by the State to practice as such" becomes mandatory rather than permissive.

conclusion

It is therefore the opinion of this office that building officials in municipalities, towns, and counties where the Uniform Building Code has been adopted legally, must require plans and specifications to be prepared and designed by an engineer or architect licensed by the State to practice as such, if such plans and specifications are prepared in this State.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-600 Holidays—Special—The Governor of Nevada, upon his own initiative, or at the request of the President of the United States, may declare any day which he deems appropriate to the occasion, a legal holiday.

OPINION NO. 1969-600 Holidays—Special—The Governor of Nevada, upon his own initiative, or at the request of the President of the United States, may declare any day which he deems appropriate to the occasion, a legal holiday.

Carson City, July 17, 1969

Mr. James F. Wittenberg, Administrator, Personnel Division, Blasdel Building, Carson City, Nevada 89701

Dear Mr. Wittenberg:

You have requested an opinion as to whether the Governor has the power to declare a holiday other than those established by the Legislature by Chapter 315 of the 1969 Statutes, amending NRS Chapter 236.

analysis

NRS 223.130 provides as follows:

1. The governor shall have the power to issue proclamations designating certain days or weeks as holidays or legal holidays for purposes of celebration or otherwise.

2. All days declared by the governor to be holidays only may be observed throughout the state by appropriate exercises in the public schools, or may be restricted to certain counties, cities or districts within the state.

Thus it can be seen that the Governor on his own initiative, or at the request of the President of the United States, may declare a holiday other than those delineated as official holidays in Chapter 236 of Nevada Revised Statutes.

conclusion

The Governor of Nevada, upon his own initiative, or at the request of the President of the United States, may declare any day which he deems appropriate to the occasion, a legal holiday.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-601 State Liability Insurance—The State cannot purchase liability insurance with limits in excess of \$25,000 per claimant, but it may purchase a policy on a single limit per occurrence basis in excess of \$25,000.

OPINION NO. 1969-601 State Liability Insurance—The State cannot purchase liability insurance with limits in excess of \$25,000 per claimant, but it may purchase a policy on a single limit per occurrence basis in excess of \$25,000.

Carson City, July 24, 1969

Mr. Louis T. Mastos, Commissioner of Insurance, Department of Commerce, Carson City, Nevada 89701

Dear Mr. Mastos:

You have requested our opinion on the following questions:

questions

1. Does the State have legal authority to purchase public liability insurance limits in excess of \$25,000 per claimant?

2. If the answer to question 1 is negative, may public liability coverage be purchased on a single limit per occurrence basis?

analysis

NRS 41.038 provides in part:

The state and any political subdivision may:

1. Insure itself against any liability arising under NRS 41.031.

NRS 41.031 referred to in paragraph 1 of the above statute waives sovereign immunity and exposes the State to liability to a limited extent. However, by reference to NRS 41.035, it provides that no award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of \$25,000 to or for the benefit of any claimant. Since the liability arising under NRS 41.031 is specifically limited to \$25,000 for each claimant, the State obviously could not insure itself for a nonexistent or speculative liability over this amount.

This law does not preclude the State from obtaining liability coverage purchased on a single limit per occurrence basis. Under this type of policy, for example, a limit could be placed at \$500,000 for an occurrence or accident, and each of a number of individual \$25,000 claimants could be paid up to the policy limits.

conclusion

The State cannot purchase liability insurance with limits in excess of \$25,000 per claimant, but it may purchase a policy on a single limit per occurrence basis in excess of \$25,000.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Daniel R. Walsh, Chief Deputy Attorney General

OPINION NO. 1969-602 Taxation; Lease on State-owned Property—A lease of a single or multiple residence from the State of Nevada is not within NRS 361.157, provided it is not leased in connection with a business conducted for profit.

OPINION NO. 1969-602 Taxation; Lease on State-owned Property—A lease of a single or multiple residence from the State of Nevada is not within NRS 361.157, provided it is not leased in connection with a business conducted for profit.

Carson City, July 24, 1969

The Honorable William J. Raggio, District Attorney of Washoe County, Washoe County Courthouse, Reno, Nevada 89505

Dear Mr. Raggio:

You have requested our opinion upon the taxability of real property owned by the State of Nevada or one of its agencies and leased to private individuals. The property involved happens to be single and multiple residential properties leased by the State of Nevada.

Your question is:

question

Under the provisions of NRS 361.157, may a county assessor assess single and multiple family residences leased from the State of Nevada if the property is not leased for profit?

analysis

NRS 361.157 provides in part:

1. When any real estate which for any reason is exempt 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. * * * (Italics added.)

Whether or not a lease comes within this section is a question of fact. The premises itself need not be leased for profit or sublease, etc., but if a business is conducted thereon or the premises is somehow used by the lessee in a business for profit, the statute applies.

On the other hand, in a situation where a lessee merely uses the property for his residence, we do not believe the statute applies. We would, however, closely scrutinize a lease of a multiple residence building for obvious reasons.

We were referred to S.B. 307, passed by the 1969 Legislature, providing for taxability of state property in certain cases. However, the specific question posed does not require a consideration of that statute.

conclusion

A lease of a single or multiple residence from the State of Nevada is not within the purview of NRS 361.157, provided it is not leased in connection with a business conducted for profit.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-603 Sheriff; Ex Officio License Collector; Public Employees Retirement—As ex officio license collector, the commissions received by the sheriff are includable as part of his compensation for the purpose of the Public Employees Retirement Act. A failure to report and pay contributions on such commissions requires compliance with the conditions for membership of an elective officer as set forth in NRS 286.300.

OPINION NO. 1969-603 Sheriff; Ex Officio License Collector; Public Employees Retirement—As ex officio license collector, the commissions received by the sheriff are includable as part of his compensation for the purpose of the Public Employees Retirement Act. A failure to report and pay contributions on such commissions requires compliance with the conditions for membership of an elective officer as set forth in NRS 286.300.

Carson City, July 24, 1969

The Honorable William J. Raggio, Washoe County District Attorney, P.O. Box 2998, Reno, Nevada 89505

Dear Mr. Raggio:

Until July 1, 1969, the Sheriff of Washoe County received a percentage of county business licenses in addition to his regular salary. A.B. 595, passed by the Legislature as Chapter 631 of the 1969 Statutes of Nevada, eliminated this procedure and raised the salary for sheriff to \$18,000 annually. Since 1963, Washoe County and the sheriff have not contributed, under the Public Employees Retirement Act, any moneys based upon these commissions. It was believed that this could not be done. Washoe County and the sheriff now wish to do so. Thus your question:

question

Are commissions received by the Sheriff of Washoe County from the collection of business licenses "salary" within the meaning of the Public Employees Retirement Act?

analysis

NRS 364.010 provides that the Washoe County Sheriff shall be the ex officio license collector for the county. NRS 364.020 provides for compensation for that office. It reads:

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

In previous opinions (Attorney General's Opinion No. 42 of May 18, 1943 and Attorney General's Opinion No. 548 of November 29, 1947), this office has held that the duties of a sheriff as ex officio license collector are separate and distinct from those as sheriff, and until the Legislature declares otherwise, the sheriff is entitled to compensation for both offices.

Other states have held that commissions received in the discharge of official duties are part of the "salary" for which a public employee may receive retirement benefits. See *Kelly v. Loveland*, 15 A.2d 411; 19 A.L.R.2d 634.

There is further support for this proposition in our statutes. NRS 286.320, subsection 3, reads in part:

* * * Fees received in the discharge of official duties or powers, other than the performance of marriages, may be included as part of such compensation, if they are reported to the board in the same manner that other compensation is reported and the employer's contribution is paid thereon as provided in NRS 286.450. * * *

Finally, we believe that NRS 286.090 defining "salary" is sufficiently broad to cover the commission the sheriff receives. It reads in part:

As used in this chapter, "salary" means the remuneration paid to an employee in cash out of public funds in return for his services to the employer. * * *

Chapter 364 of Nevada Revised Statutes indicates that the sheriff has a right of retention of 6 percent of the county license fees. This poses the question of whether or not the 6 percent commission is a payment from public funds as required by NRS 286.090. We logically conclude that such fees are "public funds" from the time they are received by the sheriff. This should be true, regardless of their ultimate disposition or how and in what manner and for how long the public officer has the money. If they were not, then the sheriff would not be responsible for them. This conclusion is supported by our statutes. NRS 364.050 requires all license fees to be delivered by the sheriff to the county treasurer, and the county auditor makes the proper credits. See Attorney General's Opinion No. 42 of May 18, 1943.

Thus we conclude that as a general proposition, the commissions of a sheriff as license collector for a county are properly a part of reportable compensation within the meaning of our retirement act.

The facts with which we have been provided show that the sheriff and Washoe County have not, in fact, made any contributions based upon the license fees. While the sheriff was a member of the system, it was felt that compensation from his duties as license collector was not reportable. Unfortunately, Chapter 268 of Nevada Revised Statutes does not specifically deal with this contingency.

One reasonable conclusion would be that these commissions could not be considered under Chapter 268 of Nevada Revised Statutes. We would find support in the quoted section of NRS 286.320. It says that fees of this type may be considered part of the compensation provided they are "reported to the board" and the compensation is paid. Since this was not done, arguably, there is no coverage.

We prefer to follow the general proposition that public employee retirement statutes are to be liberally construed in favor of the applicant. We have already noted that the duties of ex officio license collector are separate and distinct from those of sheriff. The sheriff holds this office by virtue of his elective position. This being the case, we believe NRS 286.300 is analogous. It reads:

1. A person holding an elective office, if otherwise eligible, may become a member of the system only by giving the board written notice of his desire to do so within 30 days after he takes office, or, if he is not eligible to become a member of the system at the time he takes office, within 30 days after he becomes eligible.

2. If an elective or appointive officer did not or does not choose to become a member of the system in the manner provided in subsection 1, he shall not be given an opportunity to participate in the system until the start of a new term of office or the expiration of 4 years or more, whichever occurs first, at which time, if he is in covered service, he may participate in the system upon notifying the board of his intention to do so. Such officer shall also notify the board whether or not he chooses to pay the amounts which he would have been required to pay in contribution and administrative charges had he previously been a member of the system. Should he choose to make such payments, the public employer by which he was previously employed shall make corresponding payments of employer contributions as required by NRS 286.450. Payment of past contributions by such officer shall be completed within 5 years with interest charged in the same manner as for previously withdrawn retirement contributions. The public employer may elect to pay the amount due from the employer for such previous service in a lump sum at the beginning of payments by the employee or at the conclusion of payments by the employee. Such employer payments shall match the amount paid by the employee. Upon completion of such payments, the service represented thereby shall be credited toward retirement if consistent with the other provisions of this chapter.

The sheriff has been in office for more than 4 years. He is now in covered service. He may notify the board of his intention to participate with respect to his office as license collector. Upon such notification, the

contributions must be made within 5 years in the same manner as previously withdrawn retirement contributions.

conclusion

An ex officio license collector, the commissions received by the sheriff are includable as part of his compensation for the purpose of the Public Employees Retirement Act. A failure to report and pay contributions on such commissions requires compliance with the conditions for membership of an elective officer as set forth in NRS 286.300.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-604 Sales and Use Tax—The Nevada Tax Commission does not possess the power to waive penalties and interest imposed by statute.

OPINION NO. 1969-604 Sales and Use Tax—The Nevada Tax Commission does not possess the power to waive penalties and interest imposed by statute.

Carson City, July 31, 1969

Mr. Roy E. Nickson, Secretary, Nevada Tax Commission, Carson City, Nevada 89701

Dear Mr. Nickson:

You have submitted to this office a question involving a strict or liberal interpretation of NRS 372.505, which reads as follows:

Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the tax commission under NRS 372.400 to 372.455, inclusive, within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of one-half of 1 percent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

analysis

This office has held in Attorney General's Opinion No. 415, dated June 5, 1967, that NRS 372.505 is mandatory and that no legal authority is given the Tax Commission to waive taxes or penalties. Until changed by the Legislature, a taxpayer failing to pay his full tax, or a portion thereof, is subject to the penalty.

If it were otherwise, the door would be opened to all kinds of excuses for not meeting the tax payment deadline, and the commission would be constantly employed in trying to determine which excuses were just and which without merit.

NRS 372.395 reads as follows:

1. The tax commission for good cause may extend for not to exceed 1 month the time for making any return or paying any amount required to be paid under this chapter.

2. Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate of 6 percent per annum from the date on which the tax would have been due without the extension until the date of payment.

We agree with our former opinion that under this statute an extension must be applied for before the delinquency arises.

We do not believe that any information given to a taxpayer which was not in accordance with mandatory provisions of the statute would be effective. Thus an employee of the Tax Commission would not be legally in a position to forgive a penalty imposed by law.

conclusion

Our opinion of June 5, 1967, has not been modified.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-605 Veterans; Tax Exemptions For—A veteran meeting the requirements of NRS 361.090, who is assigned to duty at any time during the legislatively-determined dates of the beginning and ending of the armed conflict, who serves 90 days in active duty, is entitled to the veterans' tax exemption set forth in said statute, even though a portion of the 90 days extends beyond the termination date set by the Legislature.

OPINION NO. 1969-605 Veterans; Tax Exemptions For—A veteran meeting the requirements of NRS 361.090, who is assigned to duty at any time during the legislatively-determined dates of the beginning and ending of the armed conflict, who serves 90 days in active duty, is entitled to the veterans' tax exemption set forth in said statute, even though a portion of the 90 days extends beyond the termination date set by the Legislature.

Carson City, July 31, 1969

The Honorable John W. Moschetti, Elko County Assessor, P.O. Box 8, Elko, Nevada 89801

Dear Mr. Moschetti:

You have requested this office to furnish you with an interpretation of NRS 361.090, which reads as follows:

1. The property, to the extent of \$1,000 assessed valuation, of any actual bona fide resident of the State of Nevada who:

(a) Was such a resident for a period of more than 3 years before December 31, 1963, or who was such a resident at the time of his or her entry into the Armed Forces of the United States, who has served a minimum of 90 days on active duty, who was assigned to active duty at some time between April 21, 1898, and June 15, 1903, or between April 6, 1917, and November 11, 1918, or between December 7, 1941, and December 31, 1946, or between June 25, 1950, and January 31, 1955; or

(b) Was such a resident at the time of his or her entry into the Armed Forces of the United States, who has served a minimum of 90 continuous days on active duty none of which was for training purposes, who was assigned to active duty at some time between January 1, 1961, and whatever date may be proclaimed by the President of the United States as the termination of hostilities in Viet Nam, and who received, upon severance from service, an honorable discharge or certificate of satisfactory service from the Armed Forces of the United States, or who, having so served, is still serving in the Armed Forces of the United States, shall be exempt from taxation.

* * * * *

Your question is whether a person entering armed service on November 30, 1954, and discharged November 12, 1957, is entitled to the veterans' exemption. You point out that the named veteran served 63 days during the effective period of the Korean War, November 30, 1954, to January 31, 1955, and that the balance of his service to effectively reach the 90 days of active service required by the statute was served outside the designated period.

In answering this question, we preface our reply by stating that this opinion covers all periods of designated armed conflicts set forth in the statute.

We call your attention to the language of NRS 361.090, which does not qualify the veteran's right to the exemption by requiring that all service fall within the four walls of the designated period established by the Legislature. His right is established by the language "who was assigned to active duty" during the period of active conflict.

Thus, if one, for example, was assigned to duty on January 30, 1955, and continued to serve 89 days before discharge, he would be eligible for the veterans' tax exemption even though the designated conclusion of the Korean War was set at January 31, 1955. This, we believe, is in keeping with the philosophy that one assigned to duty during the established dates of an armed conflict is so assigned because of the emergency facing our country and its defenders. If so assigned, and if he serves 90 days in active service prior to discharge, he has earned the exemption right.

conclusion

It is the opinion of this office that a veteran meeting the requirements of NRS 361.090, who is assigned to duty at any time during the legislatively-determined dates of the beginning and ending of the armed conflict, who serves 90 days in active duty, even though a portion of the 90 days extends beyond the termination date set by the Legislature, is entitled to the veterans' tax exemption set forth in said statute.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-606 Public Service Commission—The granting of concessions to conduct tours upon the waters of Lake Mead has been preempted by the federal government to the exclusion of the Public Service Commission.

OPINION NO. 1969-606 Public Service Commission—The granting of concessions to conduct tours upon the waters of Lake Mead has been preempted by the federal government to the exclusion of the Public Service Commission.

Carson City, August 13, 1969

Mr. Reese H. Taylor, Jr., Chairman, Public Service Commission, Carson City, Nevada 89701

Dear Mr. Taylor:

statement of facts

The Public Service Commission of Nevada has received an application from Lake Mead Ferry Service, Inc., seeking authority to transport passengers and hand-carried personal effects between Lake Mead Marina and Echo Bay via Callville Bay and return. All of the passenger transportation proposed by the applicant will be conducted upon the waters of Lake Mead, with the exception of the loading and unloading of passengers at the piers and docks designed for this purpose. The applicant has entered into a contract dated March 31, 1969, with the United States of America acting on behalf of the Secretary of the Interior through the Director of the National Park Service. The gist of the contract is the granting by the United States to the applicant of authority to conduct the transportation of passengers as spelled out and detailed in the application.

Upon receipt of the application by the commission, the following question was raised and forwarded to this office for answer:

question

Does the Public Service Commission of Nevada have jurisdiction over the proposed passenger transportation as applied for by Lake Mead Ferry Service, Inc., and authority to conduct administrative proceedings to determine whether a certificate of public convenience and necessity should be issued to Lake Mead Ferry Service, Inc.?

analysis

In 1964, the Congress of the United States passed Public Law 88-639, the first section of which reads as follows:

In recognition of the national significance of the Lake Mead National Recreation Area, in the States of Arizona and Nevada, and in order to establish a more adequate basis for effective administration of such area for the public benefit, the Secretary of the Interior hereafter may exercise the functions and carry out the activities prescribed by sections 460n to 460n-9 of this title.

The land surrounding Lake Mead, with the possible exception of Hualapai Indian lands, is owned by the United States. Section 460n-3 of Public Law 88-639 delegates to the Secretary of the Interior broad jurisdiction over the activities which may be conducted upon the waters of Lake Mead. That section reads in part as follows:

(a) Lake Mead National Recreation Area shall be administered by the Secretary of the Interior for general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential, and in a manner that will preserve the scenic, historic, scientific, and other important features of the area, consistently with applicable reservations and limitations relating to such area and with other authorized uses of the lands and properties within such area.

(b) In carrying out the functions prescribed by sections 460n to 460n-9 of this title, in addition to other related activities that may be permitted hereunder, the Secretary may provide for the following activities, subject to such limitations, conditions, or regulations as he may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes:

(1) General recreation use, such as bathing, boating, camping, and picnicking;

* * * * *

A year after the enactment of Public Law 88-639, the United States Congress enacted Public Law 89-249, the first two sections of which read as follows:

Sec. 1. That in furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1), which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and service as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

Sec. 2. Subject to the findings and policy stated in section 1 of this Act, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

Public Law 89-249 then goes on to provide basic guidelines which the secretary must follow in negotiating contracts with concessioners such as the applicant, Lake Mead Ferry Service, Inc. Many of these guidelines are designed to assure all interested persons that any concessioner operates his concession in a manner and within certain limitations much like those prescribed by the utility regulatory bodies of the several states.

A reading of the above statutory provisions convinces this office that the regulation of the services contemplated by Lake Mead Ferry Service, Inc. has been preempted by the federal government. This conclusion is shared by text writers and members of the judiciary. In 91 C.J.S. United States, § 74, it is stated:

Under the Constitution, Congress has the power to make rules and regulations with respect to the territory or other property belonging to the United States, which exercise of power cannot be restricted by state laws.

The constitutional provision referred to is Article IV, Section 3, Clause 2, which reads:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

This clause has been consistently construed as giving to Congress unlimited authority to control the use and disposition of federally owned property. See U.S. v. San Francisco, 310 U.S. 16, 29, 60 S.Ct. 749, 84 L.Ed. 1050 (1940).

A case having similar facts to those presented in the instant query is U.S. v. Gray Line Water Tours of Charleston, 311 F.2d 779 (1962). In this case the United States sought to enjoin the use of the Fort Sumter pier by a carrier for hire of Fort Sumter visitors. The basis of the United States' action was the fact that the Secretary of the Interior had granted a concession to a different carrier, granting the privilege of maintaining fare-charging craft to discharge and embark passengers at a pier. Gray Line contended the granting of the concession was void, as having been issued without authority. The court, in reply, stated:

The concession, we hold, was quite within the purpose and intendment of the Act setting Fort Sumter apart as a national monument. The Congress declared it should be "for the benefit and enjoyment of the people of the United States" but, obviously, to be made available to the public, water craft of some kind had to be provided. It, of course, could be undertaken either by the United States directly or through a private waterman.

When adopting the latter method, as it did here, the United States had to be assured of the safety of the vessels, the regularity of the schedule, the reasonableness of the fees to be charged and the general adequacy of the service.

The act interpreted by the court was similar to Public Law 88-639, Sec. 460n in that both provide that the respective bodies of water and surrounding land should be for the public benefit and administered by the Secretary of the Interior for this purpose.

conclusion

The Gray Line case constitutes compelling precedence for our conclusion that the United States Congress has preempted the field of regulating the type of activity contemplated by Lake Mead Ferry Service, Inc.

We hasten to point out, however, that we do not intend this opinion to be interpreted to mean that the State of Nevada has no jurisdiction over other activities carried on upon federal property.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John J. Sheehan, Deputy Attorney General

OPINION NO. 1969-607 Per Diem—Travel Expenses. Per diem cannot be paid to a member of a state board or commission for attendance at board meetings conducted in the municipality in which he has his principal place of business. The rule applies where the meeting is held in the municipality where the board member resides.

OPINION NO. 1969-607 Per Diem—Travel Expenses—Per diem cannot be paid to a member of a state board or commission for attendance at board meetings conducted in the municipality in which he has his principal place of business. The rule applies where the meeting is held in the municipality where the board member resides.

Carson City, August 13, 1969

Mr. Howard E. Barrett, Director of Administration, Carson City, Nevada 89701

Dear Mr. Barrett:

You have asked this office for an opinion as to whether a member of a state board or commission is entitled to travel expenses, meals, and lodging while attending a meeting in a community in which he resides.

You advise that the question arose as the result of an official state board member requesting payment of \$3 to reimburse him for out of pocket expense for a lunch attended during a period in which his board was meeting in his community.

analysis

NRS 281.160.1 provides for per diem and travel expenses in the transaction of public business "outside the municipality or other area in which his principal business is located."

NRS 281.160.3 provides that transportation may be paid pursuant to public business when necessary even though used within the board member's municipality.

conclusion

Per diem cannot be paid to a member of a state board or commission for attendance at board meetings conducted in the municipality in which he has his principal place of business. The rule applies where the meeting is held in the municipality where the board member resides.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-608 General Improvement Districts—Districts may not charge to persons who seek inclusion, an annexation fee based on a benefit to their property from improvements existing within the district.

OPINION NO. 1969-608 General Improvement Districts—Districts may not charge to persons who seek inclusion, an annexation fee based on a benefit to their property from improvements existing within the district.

Carson City, August 14, 1969

Donald L. Carano, Esq., Bible, McDonald, Carano, and Wilson, 60 Court Street, Reno, Nevada 89505

Dear Mr. Carano:

You have requested an opinion from this office on behalf of the Incline Village General Improvement District on the subject of annexation of properties to the district. You have advised us of the following facts:

statement of facts

Since its formation under Chapter 318 of Nevada Revised Statutes, the district has constructed or acquired improvements such as water and sewage systems, streets, and drainage systems. The improvements have been financed by the issuance of special assessment bonds.

A number of property owners adjacent to but outside of the district boundaries have petitioned for inclusion in the district by annexation. The district has not heretofore extended its boundaries by annexation and for this reason the existing improvements, paid for by assessments against property now within the district, will benefit property hereafter annexed, without assessment against it ever having been made.

question

In the light of the foregoing facts, you have asked whether the district may exact from such petitioning owners a fee for annexation equivalent to the benefit such property is said to receive because of the existing improvements within the district.

analysis

Authority for annexation is found in NRS 318.256 to 318.258, inclusive. Subsection 2 of NRS 318.256, in part material to this consideration, provides:

Property included within or annexed to a district shall be subject to the payment of taxes, assessments and charges, as provided in NRS 318.258.

NRS 318.258, subsection 5, specifies what charges annexed property shall be liable for, and charges are precluded with respect to annexed property. It reads as follows:

After the date of its inclusion in such district, such property shall be subject to all of the taxes and charges imposed by the district, and shall be liable for its proportionate share of existing general obligation bonded indebtedness of the district; but it shall not be liable for any taxes or charges levied or assessed prior to its inclusion in the district, nor shall its entry into the district be made subject to or contingent upon the payment or assumption of any penalty, toll or charge, other than the tolls and charges which are uniformly made, assessed or levied for the entire district.

Also material to this question are the various forms of financing lawfully authorized for improvement districts. They are specified in NRS 318.275:

Upon the conditions and under the circumstances set forth in this chapter, a district may borrow money and issue the following securities to evidence such borrowing:

1. Short-term notes, warrants and interim debentures.
2. General obligation bonds.
3. Revenue bonds.
4. Special assessment bonds.

The statutes clearly provide that lands annexed cannot be made liable for: (1) taxes, levies or charges prior to inclusion; (2) any penalty or toll; (3) any charge imposed as a condition of inclusion; or (4) any other charge except as levied uniformly on the entire district. The latter can only mean both lands newly annexed and lands theretofore within the district. The proposed annexation fee clearly falls within the third category.

The statutes provide with equal clarity that lands annexed can be liable only for: (1) taxes or charges levied after inclusion; and (2) a proportionate share of indebtedness evidenced by general obligation bonds. NRS 318.275 specifies the forms of indebtedness permitted, including general obligation bonds and special assessment bonds. Since the only form of indebtedness existing at the time of annexation for which annexed lands can be liable is that evidenced by general obligation bonds, it necessarily follows that indebtedness evidenced by special assessment bonds cannot be charged against newly included lands. Yet this is, in substance and in effect, precisely what the district wishes to do.

It is abundantly clear that the end sought to be achieved is to require, in some way, that newly annexed lands bear a portion of the economic burden in financing existing improvements which benefit such annexed lands, notwithstanding the fact that they are financed by special assessment bonds. The law does not permit this. It is immaterial that annexed lands benefit from such existing improvements.

The imposition of an annexation fee, whether equivalent to the so-called value of such benefits from existing improvements or not, is expressly forbidden by NRS 318.258, subsection 5. Furthermore, an effort to base such charge on a supposed benefit would of its very nature be arbitrary. As such, it runs afoul of that additional objection.

An annexation fee, by definition, is totally inconsistent with the notion of a toll, levy or charge uniformly made on all lands within the entire district. The concept of each is mutually exclusive of the other.

conclusion

For the foregoing reasons, it is the opinion of this office that the Incline Village General Improvement District may not lawfully charge persons who petition for inclusion of their property within the district an annexation fee equivalent to any benefit to their property said to result from existing improvements already paid for by assessments on lands theretofore within the district.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Robert A. Groves, Deputy Attorney General

OPINION NO. 1969-609 County Emergency Loan—Provisions of Chapter 354 of Nevada Revised Statutes, as amended, are applicable. County meets definition of "local government."

OPINION NO. 1969-609 County Emergency Loan—Provisions of Chapter 354 of Nevada Revised Statutes, as amended, are applicable. County meets definition of "local government."

Carson City, August 21, 1969

Mr. George H. Albright, Special Projects Analyst, 225 East Bridger, Las Vegas, Nevada 89101

Dear Mr. Albright:

You have requested this office to advise you (1) as to whether the emergency loan provisions of Chapter 457 of the 1969 Statutes of Nevada, which provide that operation on a cash accrual basis does not extend to contracts between local government * * * for the construction or completion of public works, funds for which have been provided by the proceeds of a sale of bonds or an emergency loan, applies to counties, and (2) as to whether the provision of NRS 354.440.2a (Chapter 457 of the 1969 Statutes) extending the time for maturing short-term negotiable notes or bonds to 5 years, is applicable to the county.

analysis

The first question to be decided is whether the County of Clark is a "local government." This, we believe, is determined by NRS 354.474 as amended which states, "For the purpose of NRS 354.470 to 354.626, inclusive, 'local government' means every political subdivision or other entity which has the right to levy or receive moneys from ad valorem or other taxes or any mandatory assessments, and includes without limitation counties, cities, towns, boards, school districts and other districts organized pursuant to Chapters 244, 309, 318, 379, 463, 474, 540, 541, 542, 543 and 555 of NRS." Clark County is organized pursuant to NRS 244.

NRS 354.080.1 reads as follows:

1. Upon the adoption of any emergency resolution, as provided in NRS 354.618, by a board of county commissioners, a certified copy thereof shall be forwarded to the secretary of the Nevada tax commission. As soon as is practicable, the secretary of the Nevada tax commission shall submit the resolution, together with a factual report of the tax structure of the political subdivisions concerned and the probable ability of the county to repay the requested emergency loan, to the state board of finance for its approval. No such resolution shall be effective until approved by the state board of finance. The resolution of the state board of finance shall be recorded in the minutes of the board of county commissioners.

It will be noted that the emergency resolution is to be adopted in accordance with NRS 354.618. This section of the statute ties in with the provisions of NRS 354.474 which includes "local government" in statutes covered by NRS 354.470 to and including NRS 354.626.

Having decided that Clark County is a "local government" covered by NRS 354.470 through NRS 354.626, the latter statute becomes important in holding that as one of the exceptions to operating on a cash accrual basis is the construction or completion of public works through the use of funds obtained by bond sales or by an emergency loan. (Chapter 457 of the 1969 Statutes, amending NRS 354.626.)

Governing boards of any local government are authorized under NRS 354.440 to make an emergency loan as provided in NRS 354.430, and to issue, as evidence thereof, negotiable notes or short-term negotiable bonds which shall mature not later than 5 years from the date of issuance, bearing interest at not to exceed 8 percent.

conclusion

It is the opinion of this office that a county meets the definition of "local government" and that the provisions of NRS Chapter 354 as amended are applicable to a county's application for emergency loans.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-610 Nursing Homes—Hospitals—Nursing home beds maintained in a hospital are under the jurisdiction of the hospital administrator. In such instances a nursing home administrator is unnecessary.

OPINION NO. 1969-610 Nursing Homes—Hospitals—Nursing home beds maintained in a hospital are under the jurisdiction of the hospital administrator. In such instances a nursing home administrator is unnecessary.

Carson City, August 26, 1969

Mr. John L. Green, Administrator, The Desert Retreat Convalescent Hospital, Inc., 5659 Duncan Drive at Tonopah Highway, Las Vegas, Nevada 89106

Dear Mr. Green:

You have inquired of this office as to whether a section of a hospital set aside with nursing home beds is subject to the provisions of Chapter 397 of the 1969 Statutes of Nevada, requiring a nursing home administrator.

analysis

A careful reading of Section 4 of the act is determinative and is thus quoted below:

1. "Nursing home" means any proprietary or nonprofit institution or facility defined as a nursing home for licensing purposes by Nevada Revised Statutes or rules and regulations adopted by the health division of the department of health, welfare and rehabilitation, which is maintained and operated primarily to provide convalescent or long-term nursing care to one or more ill persons.

2. "Nursing home" does not include any place providing care and treatment primarily for the acutely ill.

A nursing home is defined as one which is maintained and operated primarily to provide convalescent or long-term nursing care to one or more ill persons. Black's Law Dictionary defines "primary purpose" as "that which is first in intention; which is fundamental." There can be no question but that convalescent and long-term nursing is the primary purpose of a nursing home as defined in the act.

But subparagraph 2 of section 4 sets the matter completely at rest. It specifically provides that "nursing home" does not include any place providing care and treatment primarily for the acutely ill. A hospital's primary purpose is to do exactly this.

Thus the administration of nursing home beds in a hospital would be under the jurisdiction of the hospital administrator.

conclusion

It is therefore the opinion of this office that the section of a hospital in which nursing home beds are maintained does not require a nursing home administrator.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-611 Counties; Fair and Recreation Boards; Constitutional Law; NRS 244.7802
Construed—The scheme provided by statute for the selection of members of county fair and recreation boards is constitutional.

OPINION NO. 1969-611 Counties; Fair and Recreation Boards; Constitutional Law; NRS 244.7802
Construed—The scheme provided by statute for the selection of members of county fair and recreation boards is constitutional.

Carson City, August 28, 1969

Mr. James E. Ordowski, City Attorney, P.O. Box 367, Boulder City, Nevada 89005

Dear Mr. Ordowski:

The 1969 Legislature increased the membership of county fair and recreation boards to nine members and provided for the selection of the new members. NRS 244.7802 now reads, in part:

1. The county fair and recreation board shall consist of nine members selected as follows:
 - (a) Two members by the board of county commissioners from their own number.
 - (b) Two members by the governing body of the largest incorporated city in the county.
 - (c) One member by the governing body of one of the other incorporated cities in the county.
 - (d) Four members to be appointed by the members selected pursuant to paragraphs (a), (b) and (c).

Such members shall be selected from a list of three nominees for each position submitted by the chamber of commerce of the largest incorporated city in the county. Such lists shall be composed of nominees respectively who are actively engaged in:

- (1) The resort hotel industry.
- (2) The motel industry.
- (4) General business or commerce.

Paragraph (d) is the added portion. You have asked the following questions:

questions

1. Is paragraph (d) of subsection 1, NRS 244.7802, constitutionally invalid because the Legislature has delegated to private persons the power to appoint or nominate individuals to a public office?

2. Is paragraph (d) of subsection 1, NRS 244.7802, constitutionally invalid because the Legislature has delegated to non-elected individuals the power to spend public tax revenues?

analysis

Article 15, section 10 of the Nevada Constitution provides:

All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

In most states, such language has provided a basis for approving the constitutionality of statutes giving private persons or organizations the power to appoint to public office. See 97 A.L.R.2d 361. Some of the decisions deal with the use of public funds by such officers. 42 AmJur., Public Officers, § 95, p. 953, concludes that where the Legislature creates an office and is not restricted by the Constitution, it may confer the power of appointment thereto upon public officers or boards.

The method of selection provided by the above statute requires five members of the board to be, or be selected by, elected public officials. Then four additional members are selected by the already-constituted board of five members. Thus we cannot say the Legislature has delegated the power to select members of the fair and recreation board to private persons. It would seem that ultimate power still comes from elective bodies.

conclusion

The foregoing authorities, together with the principle that statutes are to be upheld as constitutional if possible, lead us to conclude that the scheme provided by NRS 244.7802 for the selection of members of county fair and recreation boards is constitutional.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-612 Taxation—NRS 361.055, as amended, permits limited taxation of state-owned property.

OPINION NO. 1969-612 Taxation—NRS 361.055, as amended, permits limited taxation of state-owned property.

Carson City, September 2, 1969

The Honorable William J. Raggio, District Attorney of Washoe County, Washoe County Courthouse, Reno, Nevada 89505

Dear Mr. Raggio:

You have asked for our opinion concerning the following hypothetical statement of facts:

statement of facts

The State of Nevada owns real property in a county, the total value of which is greater than 17 percent of the total value of all other real estate listed in the county's tax list and assessment rolls, and the said county elects to tax that portion of the value of the real estate owned by the State of Nevada which is in excess of 17 percent, as provided in Chapter 548 of the 1969 Statutes of Nevada. Among the property which is determined by the county assessor to be in excess of 17 percent is property which has been leased, loaned, or otherwise made available to and used by an individual for residential purposes and not in connection with a business conducted for profit.

You then pose the following questions:

questions

1. Can the county assessor assess the lessee or user of the property of the State of Nevada which is assessed pursuant to Chapter 548, 1969 Statutes of Nevada?

2. What guidelines or criteria should a county assessor follow to determine which property of the State of Nevada is to be assessed, pursuant to Chapter 548 of the 1969 Statutes of Nevada, in order to insure equal protection of the law under the United States Constitution?

analysis

S.B. 307, passed into law by the Legislature as Chapter 548, 1969 Statutes of Nevada, amended NRS 361.055. The first four subsections read, as amended:

1. All lands and other property owned by the state are exempt from taxation, except real property acquired by the state board of fish and game commissioners pursuant to NRS 501.225 which is or was subject to taxation under the provisions of this chapter at the time of acquisition and except as provided in subsection 4.

2. In lieu of payment of taxes on each parcel of real property acquired by it which is subject to assessment and taxation pursuant to subsection 1, the state board of fish and game commissioners shall make annual payment to the county tax receiver of the county wherein each such parcel of real property is located of an amount equal to the total taxes levied and assessed against each such parcel of real property in the year in which title to the same was acquired by the state board of fish and game commissioners.

3. Such payments in lieu of taxes shall be collected and accounted for in the same manner as taxes levied and assessed against real property pursuant to this chapter are collected and accounted for.

4. All real estate owned by the State of Nevada located in each county shall be listed in a separate tax list and assessment roll book of that county at its full cash value. If the total value of such real estate owned by the state in a county is greater than 17 percent of the total value of all other real estate listed in the county's tax list and assessment roll books, that portion of the value of the real estate owned by the state which is in excess of such 17 percent may be taxed by the county as other property is taxed. (The italicized portions are the additions to the statute.)

We think that the amendment constitutes permission by the State to be taxed under the conditions found in subsection 4. The same procedures are to be followed as those for taxing other real property. This is shown by the last portion of subsection 4, which reads:

[T]hat portion of the value of the real estate owned by the state which is in excess of such 17 percent may be taxed by the county as other property is taxed.

The fact that this permission is found in the statute exempting state property from taxation together with another exception, e.g., property of the Fish and Game Commission, and the new language found in subsection 1, lead us to conclude that it is the State which is to be taxed. Had the Legislature desired to tax a lessee of state property for residential purposes, it would have done so by appropriate language or by amendment to NRS 361.157, which provides for taxation of certain property leased from the State.

We might point out that, although unusual, there is no prohibition against the State's allowing itself to be taxed, so long as the intention to do so is clearly manifest. *State v. Lincoln Co.* P. D., 60 Nev. 401, 111 P.2d 528. In this case we believe such intention is clearly shown.

conclusion

From the foregoing we conclude that the answer to your first question is in the negative, but rather the State has given permission for itself to be taxed under the conditions set forth in the amendment to NRS 361.055. We further conclude that the same procedures used for taxation of other property are to be used.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-613 Television District—Compensation—The payment of not to exceed \$600 per year to each member of the board of trustees of a television district is legal.

OPINION NO. 1969-613 Television District—Compensation—The payment of not to exceed \$600 per year to each member of the board of trustees of a television district is legal.

Carson City, September 2, 1969

Hon. Leonard P. Root, District Attorney of Mineral County, Hawthorne, Nevada 89415

Dear Mr. Root:

You have advised that the Board of Trustees of the Mineral Television District Number One have voted to pay each commission member a monthly stipend of \$25.

Your question is whether this is legal.

analysis

A television district is one formed under the law governing the formation of general improvement districts. (NRS Chapter 318.)

One of the basic powers granted a district is the furnishing of television facilities as provided by NRS 318.1192.

In the organization of the board of trustees for a general improvement district it is provided by NRS 318.085.5 that no member of the board shall receive, as compensation for his services, in excess of \$900 per year, payable monthly.

conclusion

It is therefore the opinion of this office that the payment of a monthly stipend of \$25 per month to each member of the board of trustees of a television district formed under the laws governing the formation of general improvement districts, is not contrary to law.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-614 Taxation; Free Port Law; Livestock—Livestock purchased in one state by a Nevada resident, brought here and fed for 6 months, then sold to a California buyer, are not within the definition of personal property in transit and not entitled to exemption under the Nevada Free Port Law. The special head tax provided by NRS 571.035, as amended, applies to livestock which are exempt from taxation under the Nevada Free Port Law.

OPINION NO. 1969-614 Taxation; Free Port Law; Livestock—Livestock purchased in one state by a Nevada resident, brought here and fed for 6 months, then sold to a California buyer, are not within the definition of personal property in transit and not entitled to exemption under the Nevada Free Port Law. The special head tax provided by NRS 571.035, as amended, applies to livestock which are exempt from taxation under the Nevada Free Port Law.

Carson City, September 4, 1969

Mr. Robert O. Barkley, Churchill County Assessor, Fallon, Nevada, 89406

Dear Mr. Barkley:

The Nevada Free Port Law was amended at the 1969 Legislative Session by A.B. 387 (Chapter 392, 1969 Statutes of Nevada). The substance of the amendment is found in section 2, which reads as follows:

Chapter 361 of NRS is hereby amended by adding thereto a new section which shall read as follows:
As used in NRS 361.160 to 361.185, inclusive:

1. "Processed" includes feeding, watering and caring for livestock, and slaughtering of livestock.
2. "Warehouse" includes any enclosed area in which livestock are fed, watered and cared for or in which other personal property is stored. For the purpose of this section, the feeding, watering and caring for livestock may be for warming up or finishing but is not restricted to those purposes, but does not include grazing or ranging.

This amendment has prompted you to ask the following questions:

questions

1. Can a resident of Nevada buy cattle in Oregon, transport them to Nevada, feed them for 6 months, then sell them to a California buyer, and be exempt from taxes under the Nevada Free Port Law (NRS 361.160 through 361.185)?
2. Will cattle that are tax exempt under the amended Free Port Law be exempt from special head tax as collected under NRS 571.035?

analysis

The Nevada Free Port Law was originally statutory, being enacted in 1949 (Chapter 77, 1949 Statutes of Nevada). It then became a part of our Constitution when it was twice approved by the Legislature and adopted by the people at the 1960 general election. Article 10, Section 1 of the Nevada Constitution reads in part:

* * * Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged. * * *

It is a well-settled principle of law that, absent a saving clause, the adoption of a new constitution or the amendment of an old constitution operates to supersede and revoke all previous inconsistent and irreconcilable constitutional and statutory provisions and rights exercised thereunder. It also takes effect on laws to be enacted in the future. *Wren v. Dixon*, 40 Nev. 170, 161 P. 722, 167 P. 324. In addition, a self-executing constitutional provision annuls all inconsistent legislation. *Wren v. Dixon*, supra. We set forth these principles because of our concern over the constitutionality of A.B. 387.

The Legislature has defined the words "processed," and "warehouse," both of which are found in the constitutional amendment, for the purpose of including livestock within their meaning. We have found some decisions indicating that the term "processed" does not include feeding, watering, and caring for livestock. *Colbert Mill & Feed Co. v. Oklahoma Tax Commission*, 109 P.2d 504; *Moore v. Farmers Mut. Mfg. & Ginning Co.*, 77 P.2d 209; *Kennedy v. State Board of Assessment and Review*, 276 N.W. 205. Furthermore, "warehouse," as defined by the amendment, may be repugnant to the Constitution.

Thus, it may well be that A.B. 387 is unconstitutional in that its elaboration on the meaning of the foregoing terms presents an inconsistency with their meaning as found in the Constitution. However, it is not our policy to declare a statute unconstitutional if there is any likelihood the statute or any part of it will be upheld by the courts. See Attorney General's Opinion No. 402 (August 4, 1958), Attorney General's Opinion No. 32 (May 26, 1931), Attorney General's Opinion No. 28 (March 20, 1923), and Attorney General's Opinion No. 64 (September 9, 1921). In this case we prefer not to make such a declaration.

Assuming the validity of the statute, we turn now to consider the factual situation posed by your first question. It would seem that we are concerned with whether or not the cattle could qualify as "personal property in transit" under NRS 361.160(1). We have previously held (Attorney General's Opinion No. 95, dated November 26, 1963) that the out-of-state destination must be specified within a reasonable time after transportation, otherwise, the situs and taxability of the property becomes fixed. Although not deciding the issue, another Attorney General's Opinion, No. 189, dated November 9, 1960, indicated that property (cattle)

stopped in transit for an appreciable length of time probably acquired a situs for taxation in Nevada. We believe that the nature and purpose of the delay are factors to be considered in determining whether property is in transit. It would appear from the facts supplied us that the property is not "in transit" within the meaning of NRS 361.160.

The facts indicate that the out-of-state destination is not assigned until the cattle have been here 6 months. Furthermore, we believe that the primary purpose of the acts set forth in your letter is for the raising of cattle rather than their transportation. This indicates that the cattle are not "in transit." Finally, the statute states that feeding, watering, and caring for livestock does not include grazing or ranging. This language is found in subsection 2 of the amendment. Subsection 2 leads us to believe that extended care of livestock is not contemplated by the amendment.

We must thus conclude that a Nevada resident who buys cattle in one state, feeds them here for 6 months, then sells them to a California buyer, is not exempt from taxation under the Nevada Free Port Law.

In answer to your second question, we do not believe that livestock exempt under the Free Port Law are also exempt under the special head tax of NRS 571.035. The amended portion now reads;

At the completion of each annual assessment and its equalization, the county assessor of each county shall prepare a statement showing the total number of stock cattle, milk cows, bulls, horses, mules, burros, asses, stallions, jacks, hogs, pigs, goats and poultry assessed, or exempted from taxation pursuant to NRS 351.160, in such county and the ownership and location of the same, and shall forward the statement to the department.

The added language which is italicized, shows an intent by the Legislature to require this special tax to apply to livestock even though exempted from taxation by the Free Port Law. Secondly, this special tax is not actually a tax on property, but rather a method for providing support for livestock inspection laws. See Attorney General's Opinion No. 342 (August 14, 1946).

conclusion

Based on the foregoing, it is our opinion:

1. That livestock purchased in one state by a Nevada resident, brought here and fed for 6 months, then sold to a California buyer, are not within the definition of personal property in transit, and not entitled to exemption under the Nevada Free Port Law.

2. The special head tax provided by NRS 571.035, as amended, applies to livestock which are exempt from taxation under the Nevada Free Port Law (NRS 361.160 to 361.185).

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-615 Bonds—Purchase of bonds of state agency or instrumentality by State of Nevada with surplus moneys gained from unexpected revenues illegal in absence of specific legislative authority.
OPINION NO. 1969-615 Bonds—Purchase of bonds of state agency or instrumentality by State of Nevada with surplus moneys gained from unexpected revenues illegal in absence of specific legislative authority.

Carson City, September 4, 1969

The Honorable Wilson McGowan, State Controller, Room 101, Blasdel Building, Carson City, Nevada 89701

Dear Mr. McGowan:

You have referred a letter dated August 29, 1969, signed by E. L. Newton, Executive Secretary of the Nevada Taxpayers Association, in which Mr. Newton proposes that \$6,500,000 of the unexpected revenues of the State be invested in the bonds of the State General Obligation Bond Commission, which under Chapter 612 of the 1969 Statutes of Nevada is authorized to issue bonds in the amount of \$6,500,000 for the construction of specified governmental facilities.

Because NRS 355.150 provides that before making any investments in bonds or securities designated in NRS 355.140, including bonds of this State, the Attorney General shall give his legal opinion in writing as to the validity of any laws under which such bonds or securities are issued and authorized and in which such investments are contemplated. This opinion as to the legality of the investment proposed by Mr. Newton is forwarded to you.

analysis

As authority for following the proposal initiated by Mr. Newton, NRS 355.140, subsection 3, is cited. This section reads in part as follows:

Any law of this state to the contrary notwithstanding, the following bonds and other securities, or either or any of them, are proper and lawful investments of any of the funds of this state, and of its various departments, institutions and agencies, and of the state insurance fund:

* * * * *

3. Bonds of this state or other states of the Union; * * * (Italics added.)

In order to arrive at a determination of the legislative intent on authorizing the investment of any of the funds of this State, we must consider NRS 355.160, which reads as follows:

Except as otherwise provided in NRS 355.140 and NRS 355.150, the Nevada industrial commission, the state board of finance, the state board of education or other state agency shall proceed in the same manner as the law relating to each of them requires in the making of such investments, the purpose of NRS 355.140 to 355.160, inclusive, being merely to designate the classes of bonds and other securities and loans in which the funds mentioned in NRS 355.140 lawfully may be invested and the other matters relating thereto as specified in NRS 355.140 to 355.160, inclusive.

A careful reading of this statute indicates that the purpose of NRS 355.140 to 355.160, inclusive, is merely to designate the classes of bonds and other securities in which the funds mentioned in NRS 355.140 may be invested. The same question as that propounded now was decided by this office in Attorney General's Opinion No. 192, dated July 31, 1956. There the Superintendent of Banks asked whether the State Board of Finance was authorized to invest surplus general funds of the State in 91-day treasury notes. The opinion held that the State Board of Finance could not make such investments without specific authority of the Legislature, insofar as the General Fund is concerned. As pointed out in the opinion, the only statute bearing on the disposition of that fund other than appropriation bills is the authority to deposit funds of the State Treasury in certain banks.

That the intention of the Legislature was to indicate the authorized investments by NRS 355.140, and not to authorize the investment of funds in such categories without specific legislative instruction, is supported by the fact that the State Board of Finance is specifically authorized by NRS 355.120 to invest available money in farm mortgage loans, farm loan bonds, consolidated farm loan bonds, debentures and consolidated debentures, and other obligations issued by federal land banks and federal intermediate credit banks under the authority of the Federal Farm Loan Act, and bonds, debentures and other obligations issued by banks for cooperatives under the authority of the Farm Credit Act of 1933.

Specific authority is also given to the State Board of Finance under NRS 355.130 to make loans to local government.

Lacking this specific authority, we do not believe the State Board of Finance has the authority under Chapter 612 of the 1969 Statutes of Nevada to invest or transfer moneys from the General Fund for the purchase of state bonds. The State Securities Law is procedural rather than substantive. Nothing in it is to be construed as authorizing any particular investment or the incurrence of any obligation. (NRS 349.152.)

We are concerned in the instant case with moneys anticipated to be received because of unexpected tax revenues. It must be obvious that such moneys must constitute an unappropriated fund balance within the meaning of section 14 of Chapter 293 of the 1969 Statutes of Nevada. Such moneys must necessarily be designated as the State Treasury under NRS 226.115. It follows that no moneys realized from such

unanticipated surplus may be withdrawn in the absence of an appropriation (Constitution of Nevada, Article IV, Section 9), and in addition may be withdrawn or disbursed by the State Treasurer only upon the warrant of the State Controller (NRS 226.110). In turn, the State Controller has no authority to draw any warrant on such funds in the absence of a specific appropriation.

conclusion

It is the opinion of this office that the purchase of the bonds of the State General Obligation Bond Commission by the State of Nevada with surplus moneys realized from unexpected revenue would be illegal in the absence of specific legislative authority.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-616 Real Estate—Unlicensed Brokers or Salesmen—The representatives described herein are not “regular employees” within the meaning of NRS 645.240, subsection 1, and sales of real estate in Nevada by them are unlawful unless they are licensed by the Real Estate Division.

OPINION NO. 1969-616 Real Estate—Unlicensed Brokers or Salesmen—The representatives described herein are not “regular employees” within the meaning of NRS 645.240, subsection 1, and sales of real estate in Nevada by them are unlawful unless they are licensed by the Real Estate Division.

Carson City, September 10, 1969

Mr. Don McNelley, Administrator, Real Estate Division, Department of Commerce, Carson City, Nevada 89701

Dear Mr. McNelley:

You have requested an opinion from this office based on the following factual situation.

facts

An owner of real property uses persons not licensed by the Real Estate Division as brokers or salesmen. Such persons are engaged under a contract which provides in substance as follows. The “employee” is designated a representative. He is to devote his full time to the sale of the owner's properties, using the owner's terms only, and the owner's forms only. He may operate only in specifically restricted districts. He is paid strictly on a straight commission basis and is compensated only in the event he makes a sale. Back charges are deducted from his compensation in the event of a loss or cancellation, non-negotiation of customer's check for down payment or transfer of customer's contract to a different account at a lower sales price. Federal taxes and contributions for employment security and workman's compensation are deducted from any commissions paid.

question

Based on the foregoing facts, you have asked whether such “representatives” are “regular employees” of an owner of real property so as to be entitled to an exemption from licensing under NRS 645.240(1).

analysis

NRS 645.240, subsection 1, provides:

The provisions of this chapter shall not apply to, and the terms “real estate broker” and “real estate salesman” as defined in NRS 645.030 and 645.040 shall not include, any person, copartnership, association

or corporation who, as owner or lessor, shall perform any of the acts mentioned in NRS 645.020, 645.030, 645.040, 645.230 and 645.260, with reference to property owned or leased by them, or to the regular employees thereof with respect to the property so owned or leased, where such acts are performed in the regular course of or as an incident to the management of such property and the investment therein.

This office has previously ruled on questions closely related to this inquiry. See Attorney General's Opinion No. 225 (June 9, 1961) and Attorney General's Opinion No. 160 (April 13, 1956).

The first opinion mentioned contains a thorough analysis of this particular problem, and we feel it disposes of the question. However, there are some slight variations in the facts presented in that opinion and the situation here presented, and for this reason we feel some additional comments are appropriate.

Attorney General's Opinion No. 225 considers the situation (first) in which an owner-builder hired a regular staff of employees on a regular payroll basis to sell dwellings, and (second) an owner-builder who employed persons on a straight commission or percentages basis to sell dwellings. The opinion reviewed all the factors established by courts for determining whether such persons were independent contractors or employees. It concluded that in the first instance it was doubtful whether such regular staff of employees were within the exception of "regular employees" within the language of the statute. It further concluded that the persons engaged on a straight commission basis were clearly not employees, and sale by them, if unlicensed, would be unlawful under the statute.

In this case, we feel compelled to conclude that the so-called employees or "representatives" are not in fact employees, but independent contractors. A number of reasons support this conclusion:

1. It strongly appears that there is no right to control the manner in which the representative is to achieve his objectives, namely, sales of property. Right to control is one of the most significant factors in this conclusion. Here it appears that the representative is entirely on his own, subject only to the requirement that any leads or sales materials furnished by the company are to be utilized, and transactions are to be concluded on the company's forms.

2. The salesmen are designated as "representatives," a term which in our opinion more appropriately designates an agent rather than an employee. It occurs to this office that few employees are hired under an elaborate agreement. Rather, the fact that a formal contract is executed is indicative of an agency relationship rather than an employer-employee relationship.

3. The licensing statute is a regulatory measure enacted pursuant to the police power of the state, as distinguished from a revenue measure. Therefore, its exceptions are to be strictly and narrowly construed. Anyone wishing to come within its exceptions must do so clearly and convincingly. We feel that the "representatives" described above do not meet the test of coming clearly and convincingly within the exception.

4. One of the strongest factors indicating that the representative is not an employee is that not only is he paid on a straight commission basis, but in addition he is back-charged in all cases where the company realizes, within any 6 month period, a loss or lower sales price than that originally negotiated by the representative. These back-charges are handled through a reserve account which is required to be established in all cases. It is our opinion that any asserted right to back-charge earnings or wages of an employee by an employer, or to require an employee to refund, rebate, or return any portion of wages paid him, is illegal under NRS 608.100, subsection 2. It provides:

It shall be unlawful for any employer of labor in this state to require his employee to rebate, refund or return any part of the wage, salary or compensation theretofore paid to such employee.

The requirement of a back-charge as specified in this contract is clearly a violation of law if the representative is in fact an employee. It follows that either the contract itself is illegal, or, if legal, the representative must be an agent.

We do not believe the fact that federal taxes and other contributions are deducted can in any way be controlling of the provisions of state law as applied to the foregoing facts, nor does that deduction in any way weaken the reasons heretofore stated in support of our conclusion.

conclusion

It is therefore the opinion of this office that the representatives described herein are not "regular employees" within the meaning of NRS 645.240, subsection 1, and sales of real estate in Nevada by them are unlawful unless they are licensed by the Real Estate Division.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Robert A. Groves, Deputy Attorney General

OPINION NO. 1969-617 Pharmacists—An applicant for reciprocal registration as a pharmacist in the State of Nevada need not necessarily have been registered in another state for a period of 5 years prior to the making of his application in Nevada.

OPINION NO. 1969-617 Pharmacists—An applicant for reciprocal registration as a pharmacist in the State of Nevada need not necessarily have been registered in another state for a period of 5 years prior to the making of his application in Nevada.

Carson City, September 17, 1969

Mr. W. L. Merithew, Secretary, Nevada State Board of Pharmacy, P.O. Box 1087, Reno, Nevada 89504

Dear Mr. Merithew:

You have written to this office requesting an opinion on the correct interpretation of the statute which defines eligibility of an applicant for reciprocal registration in the State of Nevada.

Specifically, your question is whether such an applicant must have been registered in another state for 5 years prior to application in Nevada, or merely whether, if an individual has been registered in another state for 5 years or more, he must have worked for 1 year during the 3 preceding years in the other state.

analysis

The statute in question is NRS 639.133, subsection 2. The answer to your question about the meaning and intent of subsection 2(b) is discernible only in the light of subsection 2(a), when the two are read together.

2. The applicant:

(a) Must have been registered as a pharmacist in good standing in another state prior to the filing of his application.

(b) Who has been registered as a pharmacist in another state for 5 years or longer must have been actively engaged in the practice of pharmacy for at least 1 year during the 3 years next preceding the date of his application.

* * * * *

As we construe this statute, an applicant is eligible for reciprocal registration if he is a registered pharmacist in good standing prior to the filing of his application in Nevada. He need not have been so registered for a period of 5 years in the other state prior to his application here. However, if he has been so registered in another state for 5 years or longer, he must have been actively engaged in the practice of pharmacy for at least 1 year during the 3 years next preceding his application here.

We regard this statutory language as an expression by the Legislature of its intent to insure reciprocal applicants are possessed of current practical experience in cases where they have been licensed in other states for longer periods of time.

We also note in passing that the reciprocal registration provisions apply only to pharmacists not possessing formal education as required by NRS 639.120.

conclusion

It is the opinion of this office that an applicant for reciprocal registration as a pharmacist in the State of Nevada need not necessarily have been registered in another state for a period of 5 years prior to the making of his application in Nevada.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Robert A. Groves, Deputy Attorney General

OPINION NO. 1969-618 Taxation-Vending Machines—The sales of candy, soft drinks, cigarettes, and the like in vending machines are subject to sales tax even though made on the premises of exempt agencies.
OPINION NO. 1969-618 Taxation—Vending Machines—The sales of candy, soft drinks, cigarettes, and the like in vending machines are subject to sales tax even though made on the premises of exempt agencies.

Carson City, September 17, 1969

Mr. Roy E. Nickson, Secretary, Nevada Tax Commission, Carson City, Nevada 89701

Dear Mr. Nickson:

You have requested an opinion from this office based upon situations.

facts

A taxpayer operates vending machines in which are sold products such as soft drinks, candy, cigarettes, and related items. The taxpayer operates under contracts with various federal agencies, state institutions and political subdivisions within the State of Nevada to provide vending machine services. In some instances the contracts provide that the political entity in question is the owner of products sold by reason of provisions which specify that title to the products passes to the entity prior to retail sale, regardless of whether such sales are physically made by the entity or not. In these cases the taxpayer receives a percentage of the gross sales in consideration for his services in maintaining the machines and periodic restocking of them. In other instances the contracts provide merely that the entity receives a share of the taxpayer's gross receipts in exchange for the privilege of operating the vending machines on its premises. Under the arrangements so described, the vending machine itself may be owned either by the entity or by the taxpayer.

The taxpayer has considered that sales under both types of contracts are exempt from the Nevada sales and use tax by reason of NRS 372.325. Where the entities in question are public or private educational institutions such as the University of Nevada or public elementary or high schools, the taxpayer further contends that such sales are exempt from the Nevada sales and use tax by reason of NRS 372.285 and Attorney General's Opinion No. 136 (December 12, 1955).

questions

Based on the foregoing facts, you have asked the following questions:

1. If a tax exempt entity, as defined in NRS 372.325, subsections 1 through 4, enters into an agreement or contract with a business firm authorizing such firm to conduct retail sales on the premises of the entity, and with a proviso that, for this privilege, the entity will receive a percentage of the gross receipts, are such retail sales exempt from the sales and use tax?

2. If a situation similar to that described in question 1, with the exception that the contract specifies that title to the products vended passes to the entities prior to the retail sale, whether such sales are physically made by the entity or not, are such retail sales exempt from the sales and use tax?

analysis

NRS 372.325 provides:

There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

1. The United States, its unincorporated agencies and instrumentalities.
2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.
3. The State of Nevada, its unincorporated agencies and instrumentalities.
4. Any county, city, district or other political subdivision of this state.
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.

This statute has previously been construed by this office to apply to and to afford exemption for not only sales to the enumerated exempt organizations, but also to sales by such exempt entities so long as such sales were an integral part of the services rendered by them. See Attorney General's Opinion No. 61 (June 5, 1959).

NRS 372.285 provides:

Meals and food products: Sales to students, teachers. There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school. (*Italics added.*)

This specific exemption is intended to apply to the service of food in the form of such things as school lunch programs and staff meals. The imposition of sales taxes thereon would have to be passed on to students and faculty in the form of higher dues, board, and overhead. Attorney General's Opinion No. 136 (December 12, 1955). The legislative purpose here is obvious. It is equally obvious that such purpose is neither enhanced nor served by extending the statutory exemption to one who sells at retail through vending machines for a profit. Attorney General's Opinion No. 136 (December 12, 1955), relied upon by the taxpayer, does not support his contention. It merely extended the exemption to fraternities and sororities as they are composed of students and intimately connected with colleges and universities, thus preserving the purpose of the Legislature.

Where, by contract, an exempt entity holds title to products sold in vending machines as described above, the inquiry becomes whether or not such sale is an integral part of the service rendered by the entity. Attorney General's Opinion No. 546 (November 12, 1968). Only if it is such an integral part of the function of the entity can it be exempt. An appropriate example is the sale of drugs and medicine to hospital patients.

The sale of candy, cigarettes, or soft drinks from vending machines is in no way peculiar to any or all exempt agencies. Rather, it is equally common to exempt and non-exempt bodies alike. Nothing connected with such sales constitutes an inseparable part of the function or service of such exempt entities. The statutory exemptions from taxation are to be strictly construed as exceptions from the general rule. The burden is on the taxpayer to show clearly and unequivocally that he falls within the exemption. Any doubt must be resolved against the taxpayer. Attorney General's Opinion No. 448 (October 12, 1968).

We are satisfied that when an otherwise exempt agency sells products it purports to own such as soft drinks, cigarettes, and candy bars in vending machines, it engages in conduct not directly connected with its exempt purposes but is engaged in the business of selling at retail. The sales tax applies to such activities. A fortiori, where such entity merely takes a share of gross vending machine sales on products it does not own, the sales are subject to sales tax. Ownership of vending machines itself is not material to the issues under consideration. We therefore conclude that each of the questions posed must be answered in the negative.

conclusion

It is the opinion of this office that sales of candy, soft drinks, cigarettes, and the like in vending machines are subject to sales tax even though made on the premises of exempt agencies.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Robert A. Groves, Deputy Attorney General

OPINION NO. 1969-619 Motor Vehicles—Dune Buggies—Dune buggies and other rough-terrain vehicles are not subject to license citations while being towed on state highways.

OPINION NO. 1969-619 Motor Vehicles—Dune Buggies—Dune buggies and other rough-terrain vehicles are not subject to license citations while being towed on state highways.

Carson City, September 18, 1969

The Honorable Dennis E. Evans, Churchill County District Attorney, Churchill County Courthouse, 10 W. Williams Avenue, Fallon, Nevada 89406

Dear Mr. Evans:

You have requested an opinion from this office as to whether the registration requirements of NRS 482.205 and NRS 482.545 apply to dune buggies and other rough-terrain vehicles towed, but not driven, on the highways of this State.

analysis

NRS 482.205 provides:

Except as otherwise provided in this chapter, every owner of a motor vehicle, trailer or semitrailer intended to be operated upon any highway in this state shall, before the same can be operated, apply to the department for and obtain registration thereof.

NRS 482.545 provides:

It shall be unlawful for any person to commit any of the following acts:

1. To operate, or for the owner thereof knowingly to permit the operation of, upon a highway any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number of plate of plates assigned thereto by the department for the current registration year, subject to the exemption allowed in NRS 482.320 to 482.355, inclusive, 482.385 to 482.395, inclusive, and 482.420.

* * * * *

NRS 482.075 defines a motor vehicle as:

“Motor vehicle” means every vehicle as defined in NRS 482.135 which is self-propelled.

NRS 482.125 defines a trailer as:

“Trailer” means every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

Although a dune buggy is capable of self-propulsion, it is not self-propelled while being towed on the highways of Nevada, and as such is not a motor vehicle as defined by NRS 482.075.

Since only motor vehicles, trailers, and semitrailers are required to be registered under NRS 482.205, and since only motor vehicles, trailers, and semitrailers are subject to the prohibitions of NRS 482.545(1), a dune buggy is not required to be registered as a motor vehicle if it is not using or being operated under its own system of propulsion on the highways of Nevada.

A dune buggy is not a vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, and as such is not a trailer as defined by NRS

482.125. It has an engine, and is designed to be driven. The registration requirements of NRS 482.205 and the prohibitions of NRS 482.545(1) do not therefore apply to dune buggies, even though they are being drawn by a motor vehicle and may be carrying property.

conclusion

It is therefore the opinion of this office that dune buggies and other rough-terrain vehicles are not subject to license citations while being towed on state highways.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Michael L. Melner, Deputy Attorney General

OPINION NO. 1969-620 County Fire Protection Districts—The amount of land owned by petitioners for the formation of a county fire protection district is not a factor in determining if the requirements of NRS 474.020(1) are met.

OPINION NO. 1969-620 County Fire Protection Districts—The amount of land owned by petitioners for the formation of a county fire protection district is not a factor in determining if the requirements of NRS 474.020(1) are met.

Carson City, September 19, 1969

The Honorable William J. Raggio, Washoe County District Attorney, Washoe County Courthouse, Reno, Nevada 89501

Dear Mr. Raggio:

You have requested our opinion concerning the petition for the formation of a county fire protection district. Your question concerns NRS 474.020, which reads in part as follows:

1. When 25 percent or more of the holders of title or evidence of title to lands lying in one body, whose names appear as such upon the last county assessment roll, shall present a petition to the board of county commissioners of the county in which the land or the greater portion thereof lies, setting forth the exterior boundaries of the proposed district and asking that the district so described be formed into a county fire protection district under the provisions of NRS 474.010 to 474.450, inclusive, the board of county commissioners shall pass a resolution declaring the board's intention to form or organize such territory into a county fire protection district, naming the district and describing its exterior boundaries.

* * * * *

question

Must a petition for formation of a county fire protection district be signed by holders of title to 25 percent of the land area of the proposed district?

analysis

We must answer your question in the negative. A careful reading of the statute in question requires 25 percent of the landowners to sign the petition.

NRS 474.020(1) reads in part: "When 25 percent or more of the holders of title or evidence of title to lands lying in one body, whose names appear as such upon the last county assessment roll * * *."

We see nothing in the act which makes land acreage owned by individuals a factor in the formation of a county fire protection district.

Other districts, for example water conservancy districts, Chapter 541 of Nevada Revised Statutes, and irrigation districts, Chapter 539 of Nevada Revised Statutes, require a minimum of acreage to be owned

by a petitioner. In these cases, land acreage is directly related to the purpose of the district and benefits to be achieved. This is not necessarily the case when the benefit contemplated is fire protection.

Had the Legislature intended such a requirement, we believe it would have so stated in clear language, such as is found in Chapters 539 and 541 of Nevada Revised Statutes.

conclusion

We thus conclude that NRS 474.020 requires 25 percent of the holders of title or evidence of title to petition for the formation of a county fire protection district, and not owners of 25 percent of the land area in the proposed district.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-621 Free Port Law—(1) Applicability of free port exemption to goods manufactured in transit. (2) Reporting requirements. (3) Assessment of goods.

OPINION NO. 1969-621 Free Port Law—(1) Applicability of free port exemption to goods manufactured in transit. (2) Reporting requirements. (3) Assessment of goods.

Carson City, October 8, 1969

The Honorable William J. Raggio, District Attorney of Washoe County, P.O. Box 2998, Reno, Nevada 89505

Dear Mr. Raggio:

The additional information provided in your letter of September 23 regarding American Match Company, Barwick Pacific Carpet Company, and Monarch Western, gives some guidance as to the scope of the questions originally asked you by the Washoe County Assessor dealing with the scope of the Nevada Free Port Law. These questions were:

questions

1. Does the inclusion of an ingredient (raw material) into the finished product preclude that finished product from exemption under the provisions of the Free Port Law if that ingredient is purchased from a source within the State of Nevada?

If so, are there any guidelines as to the percentage of the finished product attributable to the ingredient?

2. A distributor located within the State of Nevada orders inventory from a manufacturer located outside the State of Nevada for direct shipment to the customer of the distributor. The distributor bills the customer, who is located within the State of Nevada, as the transaction is treated as a purchase from the manufacturer and a sale to the customer on the books of the distributor.

(a) Should such shipments be reported monthly on Form WR-2 for assessment?

(b) Would the answer be different if the manufacturer billed the ultimate customer and paid a commission to the distributor?

(c) If the distributor and manufacturer were affiliated companies, would the answer be different?

3. Shipments that are made to Nevada firms and reported on Form WR-2 are totaled for the fiscal year, and an assessment is made on the total sales at cost. However, for those companies not claiming under the Free Port Law, an assessment is made on the average inventory (NRS 361.227, subsection 4) during the year. Is the current method of assessing the total shipments for the year proper?

analysis

1. Chapter 392 of the 1969 Statutes did away with any confusion as to the scope of permitted free port warehouse activities by adding the term "manufactured" to the list which already included "assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, and repackaged." The need for the tenuous distinction as spelled out by Albin J. Dahl in "Nevada's Free Port Law," University of Nevada Research Report No. 5, 1966, between processing and manufacturing has been swept away.

It should be noted that we do not reach the constitutionality of Chapter 392 of the 1969 Statutes. The word "manufactured" does not appear in Article X, Section 1 of the Nevada Constitution. The issue of constitutionality is one for the courts of this State.

Personal property in transit, consigned to a Nevada warehouse from outside Nevada for storage, where it awaits shipment to a final destination outside the State, may be subject to a complicated process of manufacturing which may completely change its form, substance, and character, without losing its free port exemption from taxation. "Manufacture" is a broad term including the transformation of raw materials into a changed form for use (*Industrial Fibre Co. v. State*, 166 N.E. 418). The addition of raw materials is a necessary requisite of many manufacturing activities when it is combined with the expenditure of labor. The inclusion of a raw material is encompassed within the term "manufactured," and as such is a permitted activity under NRS 361.160, as amended.

The source of the raw material gives greater problems. It would appear that the purchase of some ingredients and raw materials within the State to be used in manufacturing was contemplated by the Legislature, since exemptions are to be liberally construed and the complicated manufacture of a finished product requires varying kinds and amounts of ingredients. Since a manufactured product may have a completely different character from any of its components, it can be almost impossible to trace the components within the finished product. Additionally, many ingredients are not added for the purpose of being a continuing part of the finished product, but are rather added in limited quantities for the physical or chemical change they produce in the pre-existing product.

The inclusion of a Nevada ingredient does not alone preclude the finished product from exemption, since to do so would defeat the entire purpose of using the word "manufactured." But to allow a finished product to be exempt from taxation when it is primarily a Nevada product because most of its raw materials come from Nevada is also contrary to the statute, which talks in terms of property "in transit." The task is one for the assessor, and the question cannot be answered in terms of fixed percentages. The finished product must be examined in light of the standards of the industry involved, its normal use, and common sense. A match has value because of the chemical composition of the head, rather than the stick it is attached to.

The rough guideline, then, would seem to be: Is the finished product primarily manufactured from Nevada materials, so as not to be goods in transit, and is the primary useful value of the finished product attributable directly to the Nevada raw material or ingredient? If so, it is not covered by the Free Port Law. If, however, the manufactured product is made by using Nevada raw materials in the manufacturing process, added to goods in transit, it is a manufactured item covered by the Free Port Law. Each item must be examined in light of the intent of the Free Port Law, which is to promote warehousing and allow manufacturing in the warehouse. A common sense approach by the assessor as to the nature of the particular goods coming in to the State and their changed nature by the addition of Nevada ingredients upon leaving the State is necessary to determine free port status.

2. As to billing and distribution, NRS 361.175 requires monthly assessment reports only for property reconsigning to a final destination within the State. Reconsignment presumes a prior warehouse consignment of in transit goods. The products in your example have never been consigned to a Nevada warehouse and are not the goods described in either NRS 361.160 or NRS 361.175. Paying a commission to the distributor in this situation would not affect the necessity of reporting. The property has still never been consigned or reconsigned. Additionally, the relationship between distributor and manufacturer in your example is irrelevant to the reporting requirements, since the consignment and reconsignment of in transit goods has not occurred.

3. The present monthly report is required by statute and the method of assessment and taxation is appropriate. The provisions of NRS 361.227 for determining cash value of a merchant's stock in trade do not apply. A warehouseman has no such stock in trade because all goods held by him are in transit. Only when they are reconsigned to a Nevada destination do they become taxable.

conclusion

Your questions are answered as follows:

Question 1: No, with the exception that products manufactured in Nevada are precluded from free port exemption if they are primarily manufactured from Nevada raw materials or ingredients to such an extent that they can no longer be considered goods in transit, and have a primary useful value directly attributable to Nevada raw materials or ingredients.

Question 2: (a) No.

(b) No.

(c) No.

Question 3: Yes.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Michael L. Melner, Deputy Attorney General

OPINION NO. 1969-622 School Districts; Travel Expense—County school boards may not adopt any rule covering travel expense and subsistence allowances that conflicts with NRS 281.160.

OPINION NO. 1969-622 School Districts; Travel Expense—County school boards may not adopt any rule covering travel expense and subsistence allowances that conflicts with NRS 281.160.

Carson City, October 14, 1969

Mr. Robert L. Petroni, Legal Counsel, Clark County School District, 2832 East Flamingo Road, Las Vegas, Nevada 89109

Dear Mr. Petroni:

You have asked whether or not a school district is subject to the limitations of NRS 281.160, or if the board of school trustees may adopt its own rules covering travel expenses and subsistence allowances for its school officials and employees.

analysis

NRS 386.010 declares that each school district is a "political subdivision of the State of Nevada whose purpose is to administer the state system of public education." Political subdivisions have been defined as divisions of the State created for the purpose of carrying out state functions and the inherent necessities of government. *State ex rel. Masiano v. Mitchell*, 231 A.2d 539, 155 Conn. 256 (1967). They are nothing more than subdivided governmental units of the State that have been delegated certain functions of local government. *Standard Oil v. National Surety Co.*, 107 So. 559, 143 Miss. 841 (1926). *Commander v. Board of Buras Levee Co.*, 11 So.2d 605, 202 La. 325 (1942).

It should also be noted that local school districts are subject to the supervision of the State Board of Education and the Superintendent of Public Instruction, including the prescription of courses of study (NRS 385.110), approval of library books (NRS 385.120, NRS 385.240), and qualification and certification of teachers (NRS 385.090). This is further indicia of the existence of a state system administered through political subdivisions.

NRS 281.160, subsection 1, provides entitlement within specified limits for travel expenses and subsistence allowances for any "district judge, state officer, commissioner, representative of the state, or other state employee of any office, department, board, commission, bureau, agency or institution operating by authority of law, and supported in whole or in part by any public funds * * *."

Employees and officials of school districts are performing tasks that are state functions in administering the state system of public instruction. While they do not neatly fall within the exact definitions of NRS 281.160, they are employees of subdivided state governmental units operating by authority of law, supported by public funds, which administer the state system of public education.

conclusion

Since employees and officials of school districts are performing tasks that are inherently those of the State in administering a state system of public education through the device of political subdivisions, it is our opinion that they are subject to the limitations of NRS 281.160 so that the board of school trustees may not adopt any rule covering travel expenses and subsistence allowances that conflicts with that statute.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Michael L. Melner, Deputy Attorney General

OPINION NO. 1969-623 Secretary of State—A fixture is a chattel so permanently annexed or attached to realty or such an integral part of the realty that its removal would severely damage the realty or change its essential character. The intent of the party bringing the chattel on the land, as determined by his conduct, should also be considered.

OPINION NO. 1969-623 Secretary of State—A fixture is a chattel so permanently annexed or attached to realty or such an integral part of the realty that its removal would severely damage the realty or change its essential character. The intent of the party bringing the chattel on the land, as determined by his conduct, should also be considered.

Carson City, October 23, 1969

The Honorable John Koontz, Secretary of State, Carson City, Nevada 89701

Attention: Mr. Ford E. Holmes, Deputy Secretary of State, Division of Securities

Dear Mr. Koontz:

You have asked for a definition of "fixtures" as applied to the filing of financing statements under the Uniform Commercial Code, and have included a letter from a manufacturing firm presenting a set of facts in which a collateral interest exists in retail store displays which are nailed or screwed to floors and walls.

analysis

In general, the proper place to file to perfect security interests under Article 9 of the Uniform Commercial Code is the office of the Secretary of State. Fixtures, however, are covered by NRS 104.9401, subsection 1(b), which provides that:

The proper place to file in order to perfect a security interest is as follows:

* * * * *

(b) When the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded.

NRS 104.9313, subsection 1, provides, in part, that:

The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this article unless the structure remains personal property under applicable law. The law of this state other than this chapter determines whether and when other goods become fixtures. * * *

The law of fixtures, as well as the concept of trade fixtures, is filled with varying tests and philosophies. (A workable definition of "trade fixtures" can be found in Attorney General's Opinion No. 41 of June 12, 1963.)

In the early case of *Brown v. Lillie*, 6 Nev. 244 (1870), the Nevada Supreme Court, in holding that a sawmill built upon timbers lying upon the surface of the ground and constructed to be easily removed was

not a fixture, stated that a fixture must be attached, annexed, or connected to the realty. Any personalty that was not attached to the realty, was not placed upon the land with a view of making it permanent, and was not essential to the full and complete enjoyment of the freehold, could not become a fixture. The court relied to a degree on the rules in the famous fixtures case of *Teaff v. Hewitt*, 1 Ohio S.R. 511, which called for:

the united application of the following requirements:

1st, Actual annexation to the realty or something appurtenant thereto. 2d, Appropriation to the use or purpose of that part of the realty with which it is connected. 3d, The intention of the party making the annexation, to make the article a permanent accession to the freehold—this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, the structure and mode of annexation, and the purpose and use for which the annexation has been made.

In the case of *Treadway v. Sharon*, 7 Nev. 37 (1871), the court held that a steam sawmill boiler, engine, and machinery which were placed upon a foundation and attached to the building frame by bolts, belts, shafts, and pipes were fixtures. The actual and firm annexation to the soil was enough to make the articles fixtures.

Mining appliances which form an integral part of a single mining mechanism and are annexed to the soil have been held to be fixtures. See *Arnold v. Goldfield Third Chance Mining Co.*, 32 Nev. 447 (1910).

In the case of *Reno Electrical Works v. Ward*, 51 Nev. 291 (1929), electric fans which were fastened to the walls of a restaurant with screws and nails but which were removable without injury to the property were held not to be fixtures. The court looked to the intention of the party bringing the chattel on the land, the use to which the chattel was applied, and its fitness for that purpose.

A recent definition of “fixtures” under the New Jersey Uniform Commercial Code (similar for these purposes to Nevada’s statute) used the “traditional test” of intention as a dominant factor in determining when a chattel becomes a fixture. See *In the Matter of Park Corrugated Box Corp.*, 249 F.Supp. 56 (D. N.J. 1966). Intention is inferred from the nature of the article affixed, the relation and situation of the party making the annexation, the structure and mode of annexation, and the purpose of annexation.

conclusion

A fixture would therefore seem to be a chattel so permanently annexed or attached to realty or such an integral part of the realty that its removal would severely damage the realty or change its essential character. The intent of the party bringing the chattel on the land, as determined by his conduct, should also be considered. In your example, the manufacturer’s retail trade display “fixtures” are not the “fixtures” discussed in NRS 104.9401. Filing with the Secretary of State would be sufficient to protect the manufacturer’s collateral interest in the items.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Michael L. Melner, Deputy Attorney General

OPINION NO. 1969-624 Local Government Purchasing Act—Las Vegas Convention Authority is governed by provisions of the Local Government Purchasing Act.

OPINION NO. 1969-624 Local Government Purchasing Act—Las Vegas Convention Authority is governed by provisions of the Local Government Purchasing Act.

Carson City, October 28, 1969

Mr. Wesley G. Howery, Chairman of the Board, Las Vegas Convention Authority, P.O. Box 14006, Las Vegas, Nevada 89114

Dear Mr. Howery:

You have asked for an opinion as to whether the Local Government Purchasing Act, Chapter 332 of Nevada Revised Statutes, governs purchases made by the Las Vegas Convention Authority, which was organized and exists under the provisions of NRS 244.640 to NRS 244.7806.

analysis

NRS 332.020, the Local Government Purchasing Act, defines local government as “every political subdivision or other entity which has the right to levy or receive moneys from ad valorem taxes.” The act specifically applies, “without limitation,” to cities, towns, school districts, public libraries, fire protection districts, irrigation districts, drainage districts, watershed protection and flood prevention districts, and flood control districts. The act specifically does not apply to local improvement districts or general improvement districts. (*Italics added.*)

The term “without limitation” means that governmental units or entities not specifically enumerated in the act may also be governed by the act. The application of the act is therefore not restricted to the enumerated governmental units or entities, and can include governmental units or entities not listed which have the right to levy or receive moneys from ad valorem taxes.

The Las Vegas Convention Authority is “authorized and empowered” by NRS 244.687, subsection 6, upon behalf of the county and with the consent of the county commissioners, “to provide for the levy by the board of county commissioners of ad valorem taxes, the proceeds thereof to be used in connection with the recreational facilities.” It is clear that the Las Vegas Convention Authority has the right to receive moneys or proceeds from ad valorem taxes, and whether it does so or not is irrelevant to the terms of the Local Government Purchasing Act. NRS 244.735, subsection 2, affirms the authority's power to levy, although such levying is done by and through the county commissioners.

conclusion

It is therefore our opinion that the Las Vegas Convention Authority is governed by the provisions of the Local Government Purchasing Act and must comply with the terms of said act in making any and all purchases.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Michael L. Melner, Deputy Attorney General

OPINION NO. 1969-625 Public Schools—A student should not be suspended from engaging in any school activity because of a criminal charge involving an act committed off school property, pending a determination of guilt or innocence by a court of competent jurisdiction.

OPINION NO. 1969-625 Public Schools—A student should not be suspended from engaging in any school activity because of a criminal charge involving an act committed off school property, pending a determination of guilt or innocence by a court of competent jurisdiction.

Carson City, October 29, 1969

Mr. Robert L. Petroni, Legal Counsel, Clark County School District, 2832 East Flamingo Road, Las Vegas, Nevada 89109

Dear Mr. Petroni:

You have asked this office whether a student may have his athletic competition privileges suspended or revoked pending a determination of guilt or innocence for a crime purported to have occurred off school property.

analysis

To begin with, we do not believe NRS 392.030 is applicable. The ordinary rules of order and discipline therein referred to are those enunciated by the school authorities to govern conduct while students are on school property, or while under control of school authorities acting in loco parentis while away from school, on activities related to educational or athletic purposes.

To suspend a student accused of a crime committed off school property prior to a determination by the courts as to the guilt or innocence of the defendant, would be to punish without proof, thus violating the ancient rule of law that a person is to be presumed innocent until proved guilty beyond a reasonable doubt.

conclusion

It is therefore the opinion of this office that a student should not be suspended from engaging in any school activity because of a criminal charge involving an act committed off school property, pending a determination of guilt or innocence by a court of competent jurisdiction.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-626 Cities; Licenses—Cities may collect a business license from land surveyors who have been certified and licensed by the State Board of Registered Professional Engineers.

OPINION NO. 1969-626 Cities; Licenses—Cities may collect a business license from land surveyors who have been certified and licensed by the State Board of Registered Professional Engineers.

Carson City, October 29, 1969

Mr. Mario G. Recanzone, City Attorney, 65 South Maine Street, Fallon, Nevada 89406

Dear Mr. Recanzone:

The City of Fallon has attempted to license a surveyor, pursuant to city ordinance, for the privilege of doing business in Fallon. You have asked our opinion on the following question:

question

Can a city collect a license fee from a surveyor despite the fact that he has been licensed to practice his profession by the State of Nevada?

analysis

The power of cities to collect license taxes is found in NRS 266.355 and NRS 268.095, which, in part, provide respectively:

NRS 266.355:

The city council shall have the power to fix, impose and collect a license tax and to regulate all character of lawful trades, callings, industries, occupations, professions and business conducted in whole or part within the city, including:

* * * * *

(v) All and singular each, every and any business, and all trades and professions, including attorneys, doctors, physicians and dentists, and all character of lawful business or callings not herein specifically named.

NRS 268.095:

1. The city council or other governing body of each incorporated city or town in the State of Nevada, whether or not organized under general law or special charter, shall have the power and jurisdiction:

(a) To fix, impose and collect for revenues or for regulation, or both, a license tax on all character of lawful trades, callings, industries, occupations, professions and business conducted within its corporate limits. * * *

Chapter 625 of Nevada Revised Statutes deals with the State Board of Registered Professional Engineers, and its certification and licensing of professional engineers and land surveyors. The purpose of the chapter is to insure a uniform and high level of conduct and professional competence of these professions throughout the State of Nevada. The fees collected under this chapter are solely for the purpose of meeting expenses of examinations, certifications, and conducting the office of the board (NRS 625.150), and not for the purpose of raising revenue.

On the other hand, NRS 266.355 and NRS 269.085 contemplate a tax for revenue purposes upon the privilege of doing business within city boundaries. We see nothing in Chapter 625 which either pre-empts or restricts the powers conferred by the foregoing quoted statutes.

conclusion

We conclude that a city may impose and collect a license tax from a land surveyor for the privilege of doing business within its boundaries, despite the fact that the land surveyor may be certificated and licensed by the State Board of Registered Professional Engineers.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

OPINION NO. 1969-627 Election Laws; Candidate; Certificate Of Candidacy—(1) One who changes his political party affiliation registration subsequent to the preceding primary election cannot file as a candidate at the succeeding election. (2) Registered voters who designate a candidate need only be of the same political party as the candidate at the time of filing the certificate of candidacy.

OPINION NO. 1969-627 Election Laws; Candidate; Certificate Of Candidacy—(1) One who changes his political party affiliation registration subsequent to the preceding primary election cannot file as a candidate at the succeeding election. (2) Registered voters who designate a candidate need only be of the same political party as the candidate at the time of filing the certificate of candidacy.

Carson City, November 3, 1969

The Honorable John Koontz, Secretary of State, Carson City, Nevada 89701

Dear Mr. Koontz:

You have asked for an opinion regarding two questions relative to the filing of a certificate of candidacy by an individual who has changed his registration since the last primary election. These questions are based upon the possible candidacy for the Assembly of an individual who changed his registration from Republican to Independent Party of America subsequent to the last primary election.

analysis

NRS 293.176 provides that:

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

This provision clearly prohibits the candidacy for party nomination of the individual in your example, since he has in fact changed the designation of his political affiliation since the last primary election. See Attorney General's Opinion No. 120 of March 16, 1964.

NRS 293.200, subsection 7, provides:

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

The individual in your example is therefore also precluded from filing as an Independent, because he has been registered as a member of a political party since the date of the last primary election. See Attorney General's Opinion No. 120 of March 16, 1964.

While it is true that two district courts have held these statutory conditions to be unconstitutional, the issue has not reached the Supreme Court of Nevada. A.B. 87, introduced in the 1969 Legislature, would have repealed the provision prohibiting a candidate for party nomination from changing his party affiliation after the last primary election. A.B. 87 was amended in the Assembly to change the requirement of no change in registration from the last primary to no change in registration for 6 months prior to filing for office. The bill in this form passed the Assembly, but died in committee in the Senate. The legislative intent is clear. The Legislature desires that the statute not be changed and that the requirements as set out remain in effect. The clerk's function is ministerial. He cannot place an individual on the ballot who does not meet the requirements of NRS 293.176 or NRS 293.200, subsection 7. The individual who does not qualify by the aforementioned terms and who desires to be a candidate will have to proceed through the courts of this State to attempt to gain a place on the ballot.

You have also asked whether there is any requirement that the 10 or more registered voters that designate an elector as a candidate not have changed their party affiliation since the last primary election, in view of the fact that they must have the same party affiliation as the person they are designating. NRS 293.180 does not place any time requirement or time limitation of any kind upon the party membership of the registered voters who designate a candidate by a certificate of candidacy. The only qualification is that they be of the same political party as the candidate designated. It appears that this would be at the time of the filing of the certificate of candidacy.

conclusion

It is therefore our opinion that the county clerk, acting in his ministerial capacity, has no authority to place on the ballot the name of any candidate who does not meet the requirements of NRS 293.176 or NRS 293.200. It is also our opinion that the 10 or more registered voters who designate an elector as a candidate under NRS 293.180 need only have the same party affiliation as the person designated, as of the time of filing the certificate of candidacy.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Michael L. Melner, Deputy Attorney General

OPINION NO. 1969-628 Insurance Premium Tax—Chapter 541, 1969 Statutes of Nevada, providing for exemption of certain life insurance policies and annuity contracts from the imposition of the premium tax, construed. Held, a company, qualified and issued a "Class 1" license (covering both life insurance and annuity business transactions) under NRS 681.020, nonetheless is obliged to pay the state premium tax on its previously-issued and outstanding Nevada life insurance policies, even though it voluntarily elected to discontinue further writing of Nevada life insurance, upon such licensing. Such required payment of the premium tax on any such previously-issued and outstanding Nevada life insurance is based on the fact that the liabilities and correlative benefits thereof exist and continue, or remain, legally effective independently and irrespective of whether or not the tax-exempt plan qualifies, or ceases to qualify, under the United States Internal Revenue Code.

OPINION NO. 1969-628 Insurance Premium Tax—Chapter 541, 1969 Statutes of Nevada, providing for exemption of certain life insurance policies and annuity contracts from the imposition of the premium tax, construed. Held, a company, qualified and issued a “Class 1” license (covering both life insurance and annuity business transactions) under NRS 681.020, nonetheless is obliged to pay the state premium tax on its previously-issued and outstanding Nevada life insurance policies, even though it voluntarily elected to discontinue further writing of Nevada life insurance, upon such licensing. Such required payment of the premium tax on any such previously-issued and outstanding Nevada life insurance is based on the fact that the liabilities and correlative benefits thereof exist and continue, or remain, legally effective independently and irrespective of whether or not the tax-exempt plan qualifies, or ceases to qualify, under the United States Internal Revenue Code.

Carson City, November 12, 1969

Mr. Louis T. Mastos, Commissioner, Insurance Division, Nevada Department of Commerce, Carson City, Nevada 89701

Dear Mr. Mastos:

You have requested our legal opinion concerning the interpretation properly to be given to Chapter 541, 1969 Statutes of Nevada, which amended NRS 686.010 by providing that certain life insurance policies and annuity contracts are exempt from the imposition of the premium tax. The said 1969 amendment provides as follows:

As used in subsection 1 (Ed., NRS 686.010) “total premium income” does not include premiums or considerations received from life insurance policies or annuity contracts issued in connection with the funding of a pension, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404 or 501 of the United States Internal Revenue Code as now or hereafter amended or renumbered from time to time.

questions

1. May a company, qualified and issued a “Class 1” license under NRS 681.020 (covering both life insurance and annuity transactions), voluntarily limit itself under such license to the writing of annuity contracts only in Nevada?

2. Assuming an affirmative answer to the foregoing question, would the phrase “from all classes of business,” contained in NRS 686.010, subsection 1, nonetheless require payment of the premium tax on previously issued and outstanding Nevada life insurance policies by such a company upon such Nevada licensing?

analysis

As relevant hereto, NRS 681.020 includes “annuities” under the Class 1 license which also authorizes life insurance transactions. Said section disjunctively provides as follows:

Insurance on the lives of persons, and every insurance appertaining thereto or connected therewith and granting, purchasing or disposing of annuities. Policies of life or endowment insurance or annuity contracts * * * shall be deemed to be policies of life or endowment insurance, or annuity contracts within the intent of this subsection.

As also relevant hereto, NRS 686.010, subsection 1, provides:

Every insurance or annuity company or association of whatever description * * * doing an insurance or annuity business in this state, shall annually pay * * * a tax of 2 percent upon the total premium income * * * from all classes of business covering property or risks located in this state during the next preceding calendar year * * *. (Italics added.)

(NOTE: Chapter 56, 1969 Statutes of Nevada, now permits an election in the payment of the premium tax on moneys accumulated for the purchase of annuities, either upon receipt or upon actual application of such funds to the purchase of annuities.)

Legislative grant of the exemption from the premium tax, as provided in Chapter 541, 1969 Statutes of Nevada, does not relieve a company from the license requirement for doing an insurance and/or annuity business in Nevada. The disjunctive language of NRS 681.020, including "annuities" under the Class 1 license, presumptively authorizes a qualified and so-licensed company to do an annuity business only in Nevada, if it voluntarily so elects, waiving its right under such Class 1 license to write any or further Nevada life insurance.

The fact that a company (previously doing both a life insurance and an annuity Nevada business) voluntarily discontinued further writing of Nevada life insurance, and under a Class 1 license henceforth were to issue retirement annuity contracts only, would not effectively relieve such company of its legal obligation to pay the premium tax on its previously-issued and outstanding Nevada life insurance policies, upon licensing. The phrase "from all classes of business" contained in NRS 686.010, subsection 1, would control, requiring payment of the premium tax on such previously-issued and outstanding Nevada life insurance policies, unless otherwise provided.

Does legislative intent, as expressed in the amendatory provisions of Chapter 541, 1969 Statutes of Nevada, sufficiently otherwise authorize extension of such exemption from imposition of the premium tax on such previously-issued and outstanding Nevada life insurance policies?

The rule of strict construction is, of course, applicable to claims for exemption from a general tax. Under such criterion, taxation is the general rule; immunity from the general tax, the exception. Otherwise stated, tax exemption is not to be presumed or implied; claimed tax exemption must be clearly authorized.

It will be noted that the exemption from the premium tax which is authorized in Chapter 541, 1969 Statutes of Nevada, shall apply to *"* * * premiums or considerations received from life insurance policies or annuity contracts issued in connection with the funding of a pension, annuity or profit-sharing plan qualified or exempt under sections * * * of the United States Internal Revenue Code * * *"* (Italics added.) However, such "plan" may comprise or include a number of different features or provisions not necessarily mutually-integrated or interdependent. Generally, the various elements or features of such a "plan" actually are not "packaged" or provided for in the same, or one comprehensive written instrument or contract. In short, the life insurance feature (for example) of such a "plan" can, and generally does, exist separately or independently of the annuity feature, as respects the legally-effective liabilities and correlative benefits contained and afforded in such life insurance policies.

This circumstance is crucial and determinative of the legal question and issue as to whether or not the premium tax exemption applies to previously-issued and outstanding Nevada life insurance policies, in the described situation. The absence of "packaging" or mutual legal interdependency of all of the different features or provisions of such a "plan" in one and the same written instrument or, analogously, the fact that, for example, the liabilities and correlative benefits provided in such life insurance policies do continue in existence and remain legally effective independently and irrespective of any such "plan" continuing or not continuing to qualify for tax exemption under the United States Internal Revenue Code, renders such previously-issued and outstanding Nevada life insurance policies subject to the State's insurance premium tax.

conclusions

1. The provisions of NRS 681.020, relative to a Class 1 license (covering both life insurance and annuity business transactions) sufficiently authorize a company to engage in and to do only an annuity business, if it so elects, in Nevada, voluntarily discontinuing writing any Nevada life insurance.

2. A company, voluntarily discontinuing writing life insurance under a Class 1 license, electing thereunder to issue retirement annuity contracts only, would nonetheless be required to pay the premium tax on previously-issued and outstanding Nevada life insurance policies. Such requirement is based on the fact that the liabilities and benefits pertaining to such Nevada life insurance policies separately exist and remain, or are, legally effective, independently and irrespective of any other feature or factor of a "plan" qualifying, or ceasing to qualify for, tax exemption under the United States Internal Revenue Code.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John A. Porter, Deputy Attorney General

OPINION NO. 1969-629 Public Service Commission—General improvement districts formed pursuant to Chapter 318 of the Nevada Revised Statutes are subject to the filing fees required pursuant to Chapter 606 of the 1969 Statutes of Nevada.

OPINION NO. 1969-629 Public Service Commission—General improvement districts formed pursuant to Chapter 318 of the Nevada Revised Statutes are subject to the filing fees required pursuant to Chapter 606 of the 1969 Statutes of Nevada.

Carson City, November 18, 1969

Mr. Reese H. Taylor, Jr., Chairman, Public Service Commission, Carson City, Nevada 89701

Attention: Mr. William W. Proksch, Acting Secretary

Dear Mr. Taylor:

statement of facts

The Round Hill General Improvement District is preparing to file with the Public Service Commission an application seeking a certificate of public convenience and necessity. You have requested from this office an opinion based upon the following question:

question

Do the provisions of Chapter 606 of the 1969 Statutes of Nevada apply to general improvement districts formed pursuant to Chapter 318 of the Nevada Revised Statutes?

analysis

NRS 318.144 makes it clear that the Public Service Commission of Nevada has jurisdiction over districts formed pursuant to Chapter 318 of the Nevada Revised Statutes. The statute reads as follows:

1. The board shall have the power to acquire, construct, reconstruct, improve, extend or better a works, system or facilities for the supply, storage and distribution of water for private and public purposes.
2. Notwithstanding any other provision of this chapter, each district exercising the power granted in this section shall be under the jurisdiction of the public service commission of Nevada in regard to rates charged and services and facilities furnished in the same manner as a public utility as defined in NRS 704.020.

The 55th Session of the Nevada Legislature enacted Chapter 606, a portion of which reads as follows:

Chapter 704 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The Commission shall collect from any person, partnership, corporation, company, association, lessee, trustee or receiver (appointed by any court whatsoever) a fee for the filing of any official document as provided for in chapters 318, 704, 705, 706, 707 and 708 of NRS, or which may be required by any rule or regulation of the Commission. Such fees shall not exceed:

- (a) for applications, \$200.
- (b) for petitions seeking affirmative relief, \$200.
- (c) for each tariff page which requires public notice and is not attached to an application, \$10, but if more than one page is filed at one time, the total fee shall not exceed the cost of notice and publication.

(d) for all other miscellaneous papers or documents not otherwise provided for which require public notice, \$10. * * *

The purpose of Chapter 606 was to assist in defraying some of the costs incurred by the commission in the performance of its duties in regulating utilities which are placed within the commission's jurisdiction. The Legislature in section 1, supra, specifically provided that filing fees shall be assessed when any official document, as provided in Chapter 318, is filed with the commission. This legislative directive is clear and constitutes a legislative mandate to the commission to collect the fees from general improvement districts.

conclusion

Accordingly, we conclude that the application sought to be filed by Round Hill General Improvement District must be accompanied by a filing fee of \$200 or the same should be rejected by the commission.

Respectfully submitted,

Harvey Dickerson, Attorney General
By John J. Sheehan, Deputy Attorney General

OPINION NO. 1969-630 Motor Vehicle Department—Funds allocated under Chapter 641 of the 1969 Statutes of Nevada may be earmarked to pay salaries of state highway patrolmen, provided by Chapter 611 of the 1969 Statutes of Nevada, to end of the biennium, with surplus to be deposited in State Highway Fund in the State Treasury.

OPINION NO. 1969-630 Motor Vehicle Department—Funds allocated under Chapter 641 of the 1969 Statutes of Nevada may be earmarked to pay salaries of state highway patrolmen, provided by Chapter 611 of the 1969 Statutes of Nevada, to end of the biennium, with surplus to be deposited in State Highway Fund in the State Treasury.

Carson City, December 2, 1969

Mr. James C. Bailey, Director, Department of Motor Vehicles, Carson City, Nevada 89701

Dear Mr. Bailey:

This is in reply to your inquiry concerning conflicts between Chapters 611 and 641 of the 1969 Statutes of Nevada.

You have asked whether, in view of the directive of Chapter 641 that all moneys remaining in the fund created by section 1(10) shall be deposited in the State Highway Fund in the State Treasury at the end of the fiscal year, the Director of the Motor Vehicle Department may set aside a sum sufficient to pay the salaries for the newly appointed patrolmen to the end of the biennium.

analysis

If the directive of Chapter 641 were followed literally, a situation would arise where patrolmen hired under the provisions of Chapter 611 would have to serve without pay until additional funds were secured by the imposition of the \$1 fee per vehicle provided for in section 1(10).

The title of Chapter 641 reads, "An act relating to vehicle registration fees; increasing fees and appropriating the increase to the Nevada Highway Patrol; and providing other matters properly related thereto." This tends to show legislative intent to provide sufficient funds to guarantee a continuance of the salaries of the patrolmen hired under Chapter 611.

The Legislature is presumed to have avoided an absurdity in the enactment of legislation. Sutherland in his work on statutory construction points out that in recognizing a strict or liberal construction of a law, courts have come to adopt that interpretation which accords with the purposes and objects of the statute (Sutherland on Statutory Construction, Vol. 3, page 41, Sec. 5505).

We believe the legislative intent was to provide funds which would enable the Director of the Motor Vehicle Department to continue the services of not to exceed five additional patrolmen.

conclusion

It is therefore the opinion of this office that the Director of the Motor Vehicle Department may earmark a sum sufficient to pay the salaries of the new officers to the end of the biennium, and deposit any surplus in the State Highway Fund in the State Treasury.

Respectfully submitted,

Harvey Dickerson, Attorney General

OPINION NO. 1969-631 Department of Agriculture—Nurseries—(1) Landscapers come under the provisions of the Nevada Nursery Act, NRS 555.235 to NRS 555.249. (2) The licensing requirements of the Nevada Nursery Act do not distinguish between a nurseryman and a peddler.

OPINION NO. 1969-631 Department of Agriculture—Nurseries—(1) Landscapers come under the provisions of the Nevada Nursery Act, NRS 555.235 to NRS 555.249. (2) The licensing requirements of the Nevada Nursery Act do not distinguish between a nurseryman and a peddler.

Carson City, December 17, 1969

Mr. Harry E. Gallaway, Director, Division of Plant Industry, Department of Agriculture, P.O. Box 1209, Reno, Nevada 89504

Dear Mr. Gallaway:

You have requested our opinion on the question of licensing landscapers under the Nevada Nursery Act.

facts

As we understand it, the Department of Agriculture has required either a nursery license or a peddler's license from landscapers who include nursery stock as part of their landscape contract. The license is required depending on whether the landscaper has a registered place of business in Nevada. You divide landscapers into the following categories:

1. A landscaper who purchased the nursery stock at retail prices from a licensed nursery (paying the state sales tax). This landscaper usually charges the customer the retail price; however, you have encountered instances where a percent profit has been charged.

2. A landscaper who purchases the nursery stock at wholesale from a licensed nursery. This individual may or may not have a state use-tax permit. The consuming customer is charged a retail price reflecting a profit.

3. A landscaper who may or may not have a fixed place of business in this State and who makes purchases of nursery stock from an out-of-state wholesale outlet. This individual is usually the successful bidder or subcontractor for the landscaping of a building site or roadside beautification project.

With the foregoing in mind, you pose the following questions:

questions

1. Does a landscaper come under the provisions of NRS 555.235 to NRS 555.249, inclusive?
2. Under what circumstances would a landscaper be classified as a peddler, rather than a nurseryman?

analysis

Your request indicates the possibility that by paying the state sales tax, the licensing requirements of this act may be affected. It is for that reason that we feel it necessary to set forth the purpose of the act. The purpose is to control and prevent the spread of harmful plants and animals and their disorders to nursery

stock in Nevada. The fees collected under the licensing requirements of the act are for the support of this purpose and not for revenue. Thus, we do not believe that the payment of sales tax affects the licensing requirements.

NRS 555.236(1) provides:

Every person who sells nursery stock shall obtain a license from the executive director, except;

(a) Retail florists or other persons who sell potted, ornamental plants intended for indoor decorative purposes.

(b) A person not engaged in the nursery business, raising nursery stock as a hobby in this state, from which he makes occasional sales, if such person reports to the executive director his intention to make such sales and does not advertise or solicit for the sale of such nursery stock.

(c) Persons engaged in agriculture and field-growing vegetable plants intended for sale for use in agricultural production.

(d) That the executive director may, to relieve hardships imposed by the licensing requirements of NRS 555.235 to 555.249, inclusive, upon persons residing in sparsely settled areas of the state in which there exist no licensed nurseries, waive nursery licensing requirements for any established business concern to permit occasional sales of nursery stock for customer accommodation.

(e) At the discretion of the executive director, persons selling vegetable bulbs or flower bulbs, such as onion sets, tulip bulbs or similar bulbs.

We should point out that under license exemption statutes like those set forth above, the case for the person claiming the exemption must be construed against that person and in favor of the public. (See Attorney General's Opinion No. 69, September 10, 1963).

NRS 555.235(12) defines "sell" as follows:

"Sell" means exchange, offer for sale, expose for sale, have in possession for sale or solicit for sale.

We do not believe that any of the categories of landscapers fit within the exemptions of NRS 555.236(1). It appears to us that nursery stock is necessarily included and reflected in the total price for the landscapers' services to the ultimate consumer. Nursery stock is in fact an integral part thereof.

Furthermore, in each of your instances, it is the landscapers who provide the stock to the ultimate consumer. After this is done, the effectiveness of the executive director under this act to inspect and control pests would most probably be useless. He should thus have the opportunity to examine the conditions under which the landscaper stores and provides the nursery stock to the public.

In answer to your second question, we see no distinction between a peddler and a nurseryman.

It is true that subsection 8 of NRS 555.235 defines a "peddler." However, NRS 555.236 through NRS 555.241 provide for only one type of license, and does not make a distinction between a nurseryman and a peddler.

conclusion

It is therefore the conclusion of this office that:

1. A landscaper comes under the licensing provisions of NRS 555.235 to NRS 555.249, inclusive.
2. The licensing requirements of NRS 555.235 to NRS 555.249 do not distinguish between a nurseryman and a peddler.

Respectfully submitted,

Harvey Dickerson, Attorney General
By Peter I. Breen, Deputy Attorney General

By John Sheehan, Deputy Attorney General