

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1919

1. Public Schools—County High-School Board—Term of Office—Vacancy—Appointment.

CARSON CITY, January 9, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction.*

SIR: Referring to your inquiries under date of the 7th instant, as to whether or not a vacancy exists on a County High-School Board involving the questions:

First—Where the present member of the board was appointed to fill an unexpired term, and

Second—Where the present member was elected for a term of four years—you are advised as follows, namely:

The School Code of 1917 as amended, compiled and issued by the Superintendent of Public Instruction, in section 178, at page 63, provides:

If, at any time, a vacancy shall occur on said board, it shall be the duty of the Superintendent of Public Instruction to appoint a member for the unexpired term.

There is no other provision in the code referring to vacancies on County High-School Boards, and, therefore, the general provisions of law controlling vacancies must obtain.

Section 2799 of Revised Laws of 1912 enumerates eight instances how vacancies may occur in office, but among them the instances propounded by you are not given.

Section 178, *supra*, further provides:

Each person elected as herein provided shall enter upon the duties of his office on the first Monday in January, next following his election and shall hold office until his successor is elected and qualified.

The case of the People v. Osborne, 4 Pac. 1074, has construed such language, as follows:

What is the meaning of the clause, “and the appointee shall hold only for the unexpired term,” etc.? Counsel for the relator say this is a limitation imposed upon incumbents appointed to fill vacancies, restricting them to the unexpired terms simply, thus denying to this class of incumbents the constitutional extensions vested in the original appointees by the words, “and until their successors shall be elected and qualified.” Counsel for defendant in error say this construction is unwarranted, and argue that Osborne, upon his appointment and qualification, became entitled to hold the office in the same manner and to the same extend of term that his predecessor might have held it, including the conditional extension mentioned. In our judgment, the latter view is the correct one.

Accordingly, you are advised that where the present member of the Board was appointed to fill an unexpired term, or where the present incumbent in either case is entitled to “hold office until his successor is elected and qualified.”

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, *Deputy Attorney-General*.

2. Public Schools—School Intermission—Epidemic—Deduction of Salary.

CARSON CITY, January 14, 1919

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

SIR: We have your letter of this date, requesting an opinion as to the meaning of section 104, page 39, of the School Code of 1917, amended, as the same appertains to the condition arising from the influence epidemic.

You propound the inquiry, namely:

If school has been convened at the end of * * * thirty-day intermission period for any length of time, and subsequently has been closed again by proper authority, would the salaries have to be paid in full for the thirty-day period following such reopening and closing again?

We have to advise you in the affirmative; but, as the condition mentioned is of general interest and importance, we submit to you the reasons controlling our opinion. The section under consideration reads:

A school month shall consist of four weeks of five days each, and teachers shall be paid only for time in which they are actually engaged in teaching; provided, that when an intermission of less than six days is ordered by the trustees no deduction of salary shall be made therefor; and provided further, that, when on account of sickness or epidemic a longer intermission is order by the board of school trustees or by a duly constituted board of health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this act, shall be understood to mean teachers, principals, and superintendents of the elementary and secondary schools of this state.

Where, on account of sickness or an epidemic, several periods of closing, not exceeding thirty days are ordered, it might be said that, in construing this section to the end that the salaries should be paid, Boards of School Trustees may have the power to evade the law; but it is a rule of interpretation of statutes that officials in exercising their functions are presumed to fulfil their legal duties, and, therefore, it is not to be assumed that in reconvening the schools and then closing them on account of sickness or epidemic, after even a short period, Board of School Trustees would evade the statute governing them, but rather, should it be assumed that on reconvening the schools, they will continue them open, if the attendance, information from the teachers, and their general observations impel the conclusion that the epidemic has subsided to such extent that public health will not be endangered, and if their conclusion is otherwise, in closing the schools again they have acted as provided by law.

The school system is on a solid basis; and the construction of the law appertaining thereto should not be such as would impair its organization or retard its progress; hence it is apparent if teachers under contract, as they are, must hold themselves in readiness to resume their classes, after an enforced idleness, by reason of an epidemic through which the State is passing, they will, as should be expected of them, seek new fields of endeavor to earn a livelihood, thus disorganizing the teaching force of the state and impeding the consummation of the law—

namely, the due education of the child. Any other interpretation of this section could hardly be commended for public good, and, as it would be an injustice to the teachers of our schools, who have devoted their lives to education, it should be avoided. It is elementary that, in the interpretation of sautes, that interpretation should obtain which is reasonable, fair, and just, and any interpretation which is absurd, or which would not lead to the results contemplated, should not be followed.

If a case should arise where a Board of School Trustees would resort to subterfuge to evade the statute, the judicial power of the State is ample to protect the interests of the people.

Accordingly, we are of the opinion that when on account of sickness or epidemic, several periods of closing of the schools, not exceeding thirty days, are ordered, and the schools are reconvened for any time between each period, there should be no deduction or discontinuance of the salaries of the teachers.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

3. Public Schools—Superintendent of Public Instruction—Limitation of Authority to Apportion Funds—Title to School Equipment.

CARSON CITY, January 16, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction.*

SIR: In answer to your inquiry of the 15th instant we are of the opinion that under section 80, page 35, of the School Code of 1917, your authority is exclusively limited to dividing and apportioning the moneys mentioned in said section, and that the property, books, furniture, etc., must remain where the title thereto is now vested, since the law is silent in regard to a division or apportionment of the same.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

4. Public Funds—State Rabies Commission—Reversion of Biennial Appropriation.

CARSON CITY, January 21, 1919.

DR. EDWARDS RECORDS, *Secretary, State Rabies Commission, Reno, Nevada.*

DEAR SIR: Replying to yours of the 18th instant, I beg to advise that the appropriation made under and by virtue of chapter 51, Statutes of Nevada, 1917, applied only to the years 1917 and 1918; therefore, any money remaining in said fund has reverted to the general fund. The Act having specifically designated the two years mentioned, there is absolutely no way to stretch the Act so that it will apply to a subsequent period.

A bill may be introduced at any time which provides for the appropriation of money for the support of your Commission.

I beg to

Very truly yours,
L.B. FOWLER, *Attorney-General.*

5. Notary Public—Justice of Peace—Same Person Holding Each Office.

CARSON CITY, January 23, 1919.

HARRY G. PRAY, ESQ., *Attorney at Law, Reno, Nevada.*

DEAR SIR: Replying to yours of the 22d instant, I beg to advise you that there being no incompatibility in the offices of the Justices of the Peace and Notary Public, the same person may legally hold both the said offices.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

6. Revenue—Druggists Required to Obtain License to Sell Spirituous, Malt, or Vinous Liquors.

CARSON CITY, January 23, 1919.

MR. JOHN BARRIER, *Sheriff, Tonopah, Nevada.*

DEAR SIR: The Revenue Act of 1915 provides for the payment of a license tax by druggists of twenty-five (\$25) dollars per annum for the sale by them of spirituous, malt or vinous liquors for medicinal purposes. The license must still be paid.

If there is any doubtful point on which you wish to be informed and which is not covered by this answer to your letter to the Tax Commission, please inform me and I will gladly advise you thereon.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

7. Lotteries—Slot Machines So Declared—Constitutional Law.

CARSON CITY, January 25, 1919.

To the District Attorneys of the State of Nevada:

For several years there have been in use and operation in public places in this State, divers machines and devices, commonly called "slot machines," so well known as to require no further description, which, upon being operated by the player, for a consideration of money or other token of value deposited by him, he, by lot or chance, either loses the consideration so deposited, or wins money or other tokens of value, according to the result of the operation.

So extensive have the use and operation of these machines and devices become, and so many inquiries have been made as to their legality, that it becomes my duty to render an opinion thereon.

It is provided by section 24 of article IV of the Constitution that "no lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed"; and the Legislature, in sections 649406501, inclusive of the Revised Laws of 1912, has passed provisions of law, whereby the constitutional prohibition aforesaid shall be maintained.

The Supreme Court has had occasion to construe these provisions of the organic and statute law in the following cases: Ex Parte Blanchard, [9 Nev. 101](#), and State v. Overton, [16 Nev. 136](#).

In the latter case, Hawley, J., speaking for the Court, among other things, says: * * *

What is a lottery? Every scheme for the distribution of prizes by chance is a lottery. (Governors of the Almshouse of new York v. American Art Union, 7 N.Y. 239; Dunn v. The People, 40 Ill, 467; State v. Shorts, 32 N.J.L. 401; Randle v. State, 42 Tex. 585; Chavannah v. State, 49 Ala. 396; Commonwealth v. Manderfield, 8 Phil. 459; United States v. Olney, 1 Abb. U.S.C.C. 279.)

A lottery is a game of hazard in which small sums are ventured for the chance of obtaining greater. Bell v. State, 5 Sneed, 509. "A contrivance for the distribution of prizes by chance; a reliance upon the result of hazard; a decision of the values of the adventurer's investment of the favors of fortune" is a lottery. Wooden v. Shotwell, 4 Zab. 795. "Where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out to the public what the party who pays the money is to have for it, or whether he is to have anything, it is a lottery." State v. Clarke, 33 N.H. 335; Hull v. Ruggles, 56 N.Y. 427. * * *

It makes no difference what name is given to the scheme.

A rose by any other name would smell as sweet;

A thorn by any other name would prick as deep.

When the element of chance enters into the distribution of prizes it is a lottery, without reference to the name by which it is called. "He may choose to call his business as a gift sale," said the Court in Dunn v. People, supra, "but it is none the less a lottery, and we cannot permit him to evade the penalties of the law by so transparent a device as a mere change of name. If it differs from ordinary lotteries, the difference lies chiefly in the fact that it is more artfully contrived to impose upon the ignorant and credulous, and is, therefore, more thoroughly dishonest and injurious to the society.

In the case of Barry v. State, S.W. 571, the appellate court held, in construing the antilottery section contained in the Constitution of Texas, that the Legislature has no authority to license lotteries, and any attempt on its part to do so would be nugatory.

The following are also important cases on the subject:

MEYER v. STATE, 37 S.E. 96.

LOISEAU v. STATE, 22 South. 138.

PALK v. JASPER CO., 22 South. 495.

JOHNSON v. STATE, 34 South. 1018.

NEW ORLEANS v. COLLINS, 27 South. 532.

The courts in various cases have decided that the operation of a slot machine is a lottery, so that question is not a subject of debate. From a legal standpoint it is positive that such a machine is a lottery. In the face of our constitutional provision on the subject, it is likewise positive that the Legislature cannot pass an Act which will legalize slot machines. We, as law advisers, cannot construe the law so as to permit them, and peace officers in the discharge of their duties must recognize the unlawfulness of their existence.

I beg to remain

Very truly yours,

L.B. FOWLER, *Attorney-General*.

8. Lotteries—Punch Boards so Declared.

CARSON CITY, January 29, 1919.

HON. CLARK GUILD, *District Attorney, Yerington, Nevada*.

DEAR SIR: Replying to yours of the 26th instant, I beg to advise that a punch board, or chance board, is a lottery, and is in violation of the antilottery law of this State. The point has been ruled upon in 67 South. 35, and 74 South. 763. There is no escape from the conclusion that such a game violates the law of this State.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

9. Prohibition Law—Attorney-General Without Authority to Issue Permits for Shipment of Liquor Thereunder.

CARSON CITY, January 30, 1919.

THE CANN DRUG COMPANY, *Reno, Nevada*.

GENTLEMEN: This office is without any power to issue permits in regard to liquor shipments. If this office should issue any such permit, it would be an absolute nullity.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

10. Prohibition Law—United States Pharmacopeia and National Formulary—Brandy and Whisky Not Contained Therein, and Are Prohibited.

CARSON CITY, January 30, 1919.

HON. L.D. SUMMERFIELD, *District Attorney, Reno, Nevada*.

DEAR SIR: Immediately following my recent letter addressed to you giving an opinion as to the legality of the sale of intoxicating liquors by druggists, I orally informed you that I had been informed by District Attorney Thos. E. Powell of Humboldt County that the latest edition of the pharmacopeia and National Formulary have expunged brandy and whisky therefrom.

The ruling of this office when made during the administration of my immediate predecessor, and which ruling was sustained by me, was based upon the books and information that we had at hand.

In the Pharmacopeia furnished this office certain intoxicating liquors are listed which do not appear in the revised edition. At that time we knew nothing of a more recent edition of said book, and we therefore assumed that the information contained in the one that we used applied to the existing situation. An examination of the latest edition, however, establishes as accurate the information given this office by District Attorney Powell. The ruling of this office is therefore

modified and changed to comply with the revised edition of the Pharmacopeia. This office hold that pure grain alcohol, wine for sacramental purposes, and intoxicating drinks or drugs listed in the Pharmacopeia. This office hold that pure grain alcohol, wine for sacramental purposes, and intoxicating drinks or drugs listed in the manner provided for in the Prohibition Act. All other intoxicating liquors are barred from sale.

The Pharmacopeia lists in the neighborhood of 5,000 or 6,000 preparations, and it will become a question of fact rather than of law as to whether or not preparations sold by druggists are contained in the Pharmacopeia or are otherwise allowed by law.

No druggist has been misled by the ruling of this office if he has followed the latest editions of the Pharmacopeia and National Formulary.

Druggists are more thoroughly advised as to the contents of the works mentioned than are lawyers. In fact, the testimony of a druggist or chemist is necessary in order to prove whether or not a drug preparation is contained in either of said works.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

11. Prohibition Law—United States Pharmacopeia and National Formulary—Brandy and Whisky Not Contained Therein, and Are Prohibited.

CARSON CITY, January 30, 1919.

HON. JOSEPH C. PIERCY, *Tonopah, Nevada*.

DEAR SIR: This office, during the administration of Attorney-General Thatcher, made a ruling that whisky and brandy can be legally sold by druggists under the Nevada Prohibition Act. This ruling was based upon an inspection of the Pharmacopeia in the possession of Carson City druggists and after discussing the subject with them.

Not knowing of any revision which eliminates whisky and brand, I sustained this ruling. An inspection, however, of the latest edition of the Pharmacopeia sustains the statement that whisky and brandy has been expunged therefrom. The ruling of this office has, therefore, been changed to conform to the newly discovered edition.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

12. Public Funds—Security Required Therefor—United States Certificates of Indebtedness are Bonds.

CARSON CITY, January 31, 1919.

HIS EXCELLENCY, EMMET D. BOYLE, *Governor of Nevada*.

SIR: Replying to your of even date, wherein you inquire as to whether or not interim receipts, being United States of America's certificates of indebtedness, are bonds within the meaning of the provisions of the Act of the Legislature authorizing the deposit of state moneys in banks and requiring as security therefor bonds of the United States, or of this State, or any

county, municipality, or school district within this State, I beg to advise that such certificates are bonds within the intent and purpose of said Act.

The Government of the United States stands behind the certificates mentioned and this being the highest class of security, an opinion that would construe the law as barring the acceptance of such certificates would be manifestly unreasonable.

I am therefore of the opinion that such certificates may be safely classed as United States bonds.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

13. Prohibition Law—Patent Medicines of Alcoholic Content may Only be Kept by Druggists.

CARSON CITY, February 1, 1919.

MR. B.R. RUSSEL, *Sheridan, Nevada*.

DEAR SIR: Replying to your recent letter in regard to handling and selling patent medicine of alcoholic contents, I beg to advise that the Nevada Prohibition Act appears to prohibit the keeping and sale of such preparations by persons other than druggists. I am therefore constrained to advise you that the only way that you can be safe in the matter will be to decline to keep and sell such preparations.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

14. Prohibition Law—District Attorney's Interpretation—Patent Medicines of Alcoholic Contents May Only be Kept by Druggists.

CARSON CITY, February 1, 1919.

GEO. RUSSEL CO., *Elko, Nevada*.

GENTLEMEN: The law seems to confine the handling and sale of alcoholic preparations to druggists. Such being true, this office is not in position to declare that the District Attorney of your county has made a ruling that is contrary to law. It seems impossible to construe the Act in a way different from the construction given it by your District Attorney.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

15. Prohibition Law—Sacramental Wine Shipment Only to Druggists.

CARSON CITY, February 5, 1919.

MR. JNO. A. LENNON, *San Francisco, Calif.*

DEAR SIR: Your letter addressed to Governor Boyle has been delivered to me for reply.

I beg to advise you that, under the law of this State, you cannot legally make a shipment of wine to St. Mary's Hospital, even though it is to be used for sacramental purposes. Such wine must be purchased from a druggist. Any shipment by you must, therefore, be made to a licensed druggist of this State, and St. Mary's Hospital may obtain it therefrom by filing an affidavit required by law. In shipping to a druggist, label it "Wine for Sacramental Purposes."

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

16. Public Schools—School Trustees—Vacancy—Fill by Deputy Superintendent of Public Instruction.

CARSON CITY, February 6, 1919.

HON. GEO. E. McCracken, *Deputy Superintendent of Public Instruction*.

DEAR SIR: When a vacancy occurs in any Board of School Trustees and there is no election to fill such vacancy, as provided for in section 63 of an Act concerning public schools and repealing certain Acts relating thereto, approved March 20, 1911, the vacancy must be filled by the Deputy Superintendent of Public Instruction making an appointment, the appointee to hold office for the unexpired term.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

17. Prohibition Law—Interstate Liquor Shipment—Connecting Common Carrier Necessary.

CARSON CITY, February 6, 1919.

MR. H.E. HILLYGUS, *Mason, Nevada*.

DEAR SIR: The opinions of this office are rendered to state officers and District Attorneys, and opinions rendered to other persons are somewhat extraneous to the duties connected with the Attorney-General.

I am, however, willing to say that I do not believe that there can be a legal shipment of intoxicating liquors from San Francisco, Calif., to Woodfords, Calif., via Minden. The continuity of the transpiration will be broken at Minden. There will be no common carrier to take the shipment from the Virginia and Truckee Railroad and stand responsible for its delivery to Woodfords. If such shipments subterfuge would be created, and shipments made addressed to Woodfords could in reality be delivered to different points in this State.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

18. Prohibition Law—Flavoring Extract and Other Alcoholic Preparations Confined to

Druggists.

CARSON CITY, February 6, 1919.

HON. S.M. SUMMERFIELD, *State Senator*.

DEAR SIR: The Nevada Prohibition Act limits the sale of preparations containing a considerable percentage of alcohol to druggists; therefore, flavoring extracts, which always contain a high percentage of alcohol, cannot be sold by other merchants.

The people of this State in adopting the Prohibition Act were probably unaware of the fact that they were voting to make this restriction. I am, however, unable to find any opening that will permit a different construction of the Act as to the question propounded by you, other than as herein given.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

19. Legislature—State Senate—Number of Votes to Pass Bill or Resolution.

CARSON CITY, February 10, 1919.

HON. MAURICE J. SULLIVAN, *Lieutenant-Governor*.

SIR: The question propounded by you was considered by the Supreme Court of West Virginia in the case of Osburn v. Staley, 5 W. Va. 85, 13 Am. Rep. 640.

The following language was used by Justice Maxwell, who rendered the opinion:

The senate, when full, consists of twenty-two members, and it is conceded that at the commencement of the session of the legislature, at which the bill in question was passed, this branch was full. The pleadings in the cause are indefinite and uncertain, but it sufficiently appears, from the pleadings and the admissions of the parties, that at the time the vote was taken the journal will show that one member of the senate had resigned his seat, and that only eleven senators voted aye on the passage of the bill. The point of difference between the counsel is the construction to be given to the provision of the constitution: "No bill shall be passed by either branch without an affirmative vote of a majority of the members elected thereto." Counsel for appellees contend that "members elected" means persons elected as members at the last preceding elections, whether members at the time the vote is taken or not; while the counsel for the appellants contend that "members elected" means members who would be entitled to vote at the time the vote is taken on the passage of the bill, if present. It seems that, when the vote was taken on the passage of the bill, the president of the senate ruled that eleven yeas were sufficient to pass it. An appeal was taken from this decision of the chair to the senate, and the chair sustained. The true theory of representative government is that a majority of the representatives of all the people to be bound by any law, should assent to it, and it cannot be doubted that the people, when they put this provision in the constitution, intended to secure themselves against the passage of any law to which a majority of all the people should not consent.

The representatives of the people should be governed by the spirit of the constitution, and in doubtful cases should decline the exercise of power. For these reasons, with all respect, it was the duty of the senate to have declared the bill not passed. But the senate having declared the bill passed, this court is called upon to decide whether or not it can stand as a valid law. While the legislature is governed by the spirit of the constitution, the courts cannot declare an act of the legislature invalid unless its invalidity is placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the act be sustained. The courts must be guided by the express words of the constitution, and not but its supposed spirit. * * * In the light of these well-established rules, what is the meaning which should be given by the courts to the words "members elected"? If they can be held to mean persons who are members at the time the vote is taken, then the bill was passed by a sufficient number of votes. The words appear to mean that a person must be a "member," as well as "elected"; and if a senator resigns his seat, and his resignation is accepted, is he still a "member"? It is certainly not clear beyond a reasonable doubt, that the words "members elected" can only refer to persons elected at the last preceding elections, although they may have ceased to be members at the time the vote is taken on the passage of the bill; and a reasonable doubt as to this is sufficient to sustain the validity of the act in question. and, again, according to another rule of construction stated, that whenever an act of the legislature can be so construed as to avoid conflict with the constitution, and give it force of law, such construction will be adopted by the courts. The construction that "members elected" refers to those who were members at the time the vote was taken, should be adopted to sustain the validity of the act.

The intent and purpose of section 18 of article 4 of the Constitution of the State of Nevada is to prevent any bill or joint resolution being passed unless it receives a majority vote based upon the full membership provided for by law.

The present membership of our State Senate, as fixed by law, being sixteen, it is my opinion that nine votes in the affirmative are required to pass a bill or joint resolution. If a bill or resolution receiving eight votes should be declared passed, the courts of this State might not attempt to declare such action as unconstitutional or illegal, but, nevertheless, it would be clearly in violation of the real meaning of our constitutional provision on the subject.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

20. Fish and Game—Warden—Appointment of Deputies—County Commissioners may Consent or Recommend.

CARSON CITY, February 13, 1919.

MR. C.W. GROVER, *State Fish and Game Warden.*

DEAR SIR: Answering your inquiry relating to the interpretation of section 3 of an Act to provide a Board of Fish and Game Commissioners, etc., approved March 27, 1917, we have to

state that this section is clear and without ambiguity, and, accordingly, the appointing power thereunder of a deputy or deputies of the different counties rests exclusively with the State Fish and Game Warden, subject, however, to the consent or recommendation of the County Commissioners. It is therefore apparent that the County Commissioners have no right to appoint a deputy or deputies in the first instance. Their rights in the premises are exhausted when they exercise their consent or recommendation as aforesaid.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

21. Highways—Highway Department—Highway Routes Determined by Legislature—Eminent-Domain Proceedings—Immediate Possession—Legislative Policy in Eminent Domain.

CARSON CITY, February 14, 1919.

DEPARTMENT OF HIGHWAYS.

DEAR SIR: Replying to your letter, A-S-O, under date of the 13th instant, we have to advice you concerning your inquiries, in the order named by you, to wit:

1. You have not the right of determination and selection of routes, since the Act creating your department specifies the several routes for public highways. These are exclusive, and leave you no discretion, except that you adopt, between the points in routes specified, the most feasible courses.

2. If you mean by the term full power of condemnation of property, the right to take the necessary property without recourse to a court of competent jurisdiction in eminent-domain proceedings, you have no such power. The Act creating your department provides that you may secure rights of way by donation or agreement, and where those fail your remaining course is a proceeding in eminent domain under the general law. You therefore have the full power of condemnation of property for the purposes defined in the act, subject to the orders and decrees of a court of competent jurisdiction, acting pursuant to the general law regulating eminent-domain proceedings.

3. You have the right of immediate possession during the pendency of the proceedings for eminent domain, subject to the orders and decrees of a court of competent jurisdiction, in eminent-domain proceedings as aforesaid.

The Legislature, to give your department the power suggested, would be required to amend the Act creating your department, and, perhaps, the general law regulating eminent-domain proceedings. Whether or not it would give you the right of determination and selection of routes, or that it is expedient that it should do so, after it has already defined its policy in specifying the routes for the several highways, it is not for us to say; and whether or not the Legislature could specially give your department the right to exercise eminent domain for highway purposes, and leave the exercise of eminent domain for other public uses in the courts of competent jurisdiction, is a very serious question, in view of our constitutional provision relative to the passage of general and special laws. The exercise of eminent domain, however, is not necessarily a judicial function, unless the law so declares; the taking of private property for

public use is an exercise of the sovereign power of the State, subject only to the constitutional provision substantially that private property shall not be taken for public use without just compensation. Therefore, the exercising of the right of eminent domain could be, by the Legislature, reposed in the judicial power of the State, where it now reposes under general law, or delegated to any board, officer, or commission of legislative creation.

Lastly, it is the law now, and always has been, that courts in eminent-domain cases must instruct the jury substantially that in determining damages it "shall also consider benefits which accrue to the property by reason of the construction of the highway."

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

**22. Prohibition Law—United States Pharmacopeia—National Formulary—
National Pure Food Law—Enumerated Alcoholic Preparations May Be
Sold by Licensed Druggists.**

CARSON CITY, February 17, 1919.

Reno Italian and French Sausage Factory, Reno, Nevada.

GENTLEMEN: You may not conduct a drug-store in this State unless you have a duly licensed druggist therein.

The Nevada Prohibition Act permits druggists to sell the preparations enumerated in the United States Pharmacopeia and National Formulary. It also permits the sale by them of preparations which are exempted by the provision of the National Pure Food Law and the sale of which does not require the payment of United States liquor-dealer tax. They can, therefore, sell several thousand different preparations. As to what they can sell under the act, is a question of fact and not of law.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

23. Inquests—Reporter's Fees Thereon.

CARSON CITY, February 21, 1919.

HON. A.J. STEBENNE, *District Attorney, Las Vegas, Nevada.*

DEAR SIR: In the matter of the inquest of C.A. Pett, deceased, I am informed by the State Mining Inspector that Clark County has rejected the bill presented by the reporter for services therein. This is undoubtedly a legal claim and should be paid. The situation is somewhat peculiar in that, at the first inquest, the body could not be produced. At the second inquest, however, the body was actually inspected by the jury.

Section 7549 of the Revised Laws recites:

After inspecting the body and hearing the testimony, the jury shall render their verdict, etc.

The implication, therefore, results that according to the intent of the law the body shall be

produced at the inquest.

In the case that we are now considering it is very probably that two inquests were necessary, but one thing is certain, and that is that the second inquest was absolutely legal and should be so treated by Clark County.

Section 7558 specified the expenses and fees to be paid. I am assuming it to be a fact that the claim of the reporter is pursuant to such section, and if my assumption is correct, then it is the duty of your county to make the necessary payment.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

24. Bonds—State Indebtedness-Constitutional Limitation Thereof.

CARSON CITY, February 25, 1919.

MR. C.C. COTTRELL, *State Highway Engineer, Department of Highways*.

DEAR SIR: Section 3 of article 9 of the Constitution of the State of Nevada limits the amount of indebtedness that may be contracted by the State of Nevada to one (1) per cent of the assessed valuation of the property of the State. Section 7 of article 17 excepts from the provision of section 3 of article 17 excepts from the provision of section 3 of article 9 of the Constitution all debts and liabilities of the Territory of Nevada lawfully incurred and assumed by the State of Nevada.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

25. Public Schools—School Census—Indian Children Included Under Certain Conditions.

CARSON CITY, February 25, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: Replying to your inquiry under the date of February 25, 1919, relative to the taking of school census of Indian children, we have to advise you as follows:

It is provided in section 2 of an Act to amend an Act entitled "An Act concerning public schools, and repealing certain Acts relating thereto," approved March 17, 1913, Statutes of 1913, page 153, that the following classes of children shall be included in the census:

Children residing with their parents or guardians in such district.

That the following classes of children shall be excluded from the census:

Indian children who shall not have attended public schools at least eighty days of the twelve months preceding the date of taking the census during the last preceding year.

You are therefore advised that whether the Indian children referred to by you are citizens, sustaining tribal relation, or are not enrolled in any Indian reservation, they shall be included the census provided they are resident children and have attended public school at least eighty days in the twelve months preceding the date of taking the census during the last proceeding year.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*

26. Public Contracts—Member of Legislature Party to—Public Policy.

CARSON CITY, February 26, 1919.

Department of Highways.

DEAR SIR: In response to inquiry made, as to whether or not a member of the Legislature may lawfully enter into a contract for the construction of a highway for your department, we have to advise you that section 2827 of the Revised Laws of 1912 provides:

It shall not be lawful for any officer of state, or member of the legislature, alderman, or member of the common council of any city in this state, or for the trustees of any city, town, or village, or for any county commissioners of any county, to become a contractor under any contract or order for supplies, or any other kind of contract authorized by or for the state, or any department thereof, or the legislature, or either branch thereof, or by or for the alderman or common council, board of trustees, or board of county commissioners of which he is a member, or to be in any manner interested, directly or indirectly, as principal, in any kind of contract so authorized.

This section is an adoption and more definite expression of the common law by the Legislature regarding contracts between governmental departments and public officers, and fixes the policy of this State in regard to public contracts.

After no little examination of decision law on the subject, we are constrained to hold that a contract entered into by you with a member of the Legislature would be both unlawful and void as contravening the public policy of this State declared by the Legislature as aforesaid.

The decisions are very strict in the premises. In the case of *Noble v. Davison*, 177 Ind. 19, the Court said:

Even in the absence of the statute, the contract would, as appellee maintains, be void, because contrary to public policy. * * * This court has ever steadfastly adhered to the rule which invalidates all agreements injurious to the public, against the public good or which have a tendency to injure the public. Contracts belonging to this class are held void, even though no injury results. The test of the validity of such agreements is the tendency to public injury, regardless of the actual intent of the parties, and regardless of actual results (And cases there cited.)

See also, 9 Cyc. 473, et seq.; Ann. Cas. 1912D, 659.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

27. Publication—Notices—Newspaper must be Printed in County.

CARSON CITY, March 5, 1919.

HON. SEYMOUR CASE, *State Engineer*.

DEAR SIR: The provision of law which provides that water publications shall be printed and published in the county where the water is appropriated bars publication in a paper that is not printed and published in the county. The fact, however, that a part of the paper is what is known in printing as "patent" does not place the paper in the category of being printed outside of the county where it is published, if the other part of the paper is actually printed within the county when publication takes place.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

28. Public Schools—Discontinuance of Kindergarten.

CARSON CITY, March 8, 1919.

MR. CHAUNCEY W. SMITH, *Deputy Superintendent of Public Instruction, Fallon, Nevada*.

DEAR SIR: The maintenance of a kindergarten when the attendance exceeds ten pupils is optional with the Board of Trustees. When the attendance drops below ten pupils, it is mandatory that the board discontinue such kindergarten at the close of the school year, but where the attendance exceeds ten pupils it is within the discretion of the board to deem whether or not a kindergarten should remain in existence.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

29. Prohibition Law—Traffic in Near Beers Prohibited.

CARSON CITY, March 10, 1919.

HON. R.B. HENRICHS, *Superintendent of State Police*.

DEAR SIR: Responding to your inquiry as to whether or not traffic in so-called near beers is prohibited, we have to advise you that the Supreme Court in the recent case of the State ex rel. v. The Reno Brewery Company, in its opinion, among other things, has made the following order:

A consideration of the entire act and its scope * * * convinces us that the district court had jurisdiction to grant the injunction. The order of the District Court granting the injunction is affirmed.

The order of this court modifying the injunction is vacated and set aside, and the induction as originally granted is continued in full force and effect.

You are advised that further traffic in so-called near beers is prohibited, and you should govern yourself accordingly.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

30. Lotteries—Slot Machines—Constitutional and Statutory Law.

CARSON CITY, March 11, 1919.

HON. H.U. CASTLE, *District Attorney, Elko, Nevada.*

DEAR SIR: This office has ruled that slot-machines where played either for money for merchandise are lotteries within the meaning of our constitutional prohibition on the subject and the statutory law which penalizes the operation of lotteries.

It is not within the power of this office, or any district attorney, or any peace officer, to permit a person to conduct such a lottery. The law is plain and the law must govern.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

31. United States Treaties With Foreign Governments—State Statutes Conflicting Therewith Invalid.

CARSON CITY, March 13, 1919.

To His Excellency, EMMET D. BOYLE, Governor of Nevada.

SIR: In regard to your inquiry as to whether or not Senate Bill No. 22 will conflict with any treaty between the United States and some foreign power, I beg to advise that the law on this subject is given in volume 1, Ruling Case Law, page 807, in the following language.

The provisions in regard to the transfer, devise, or inheritance of property are recognized as fitting subjects of negotiation and regulation by the treaty-making power of the United States, and a treaty will control or suspend the statutes of the individual States whenever it differs from them. Hence, if the citizen or subject of a foreign government is disqualified under the laws of a State from taking, holding, or transferring real property, such disqualification will be removed if a treaty between the United States and such foreign government confers the right to take, hold, or transfer real property. But the treaty which will suspend or override the statute of a State must be a treaty between the United States and the government of the particular country of which the alien claiming to be relieved of the disability imposed by the State law is a citizen or subject. A treaty with some other country, of which such alien is not a citizen or subject, cannot have the effect of removing the disability complained of in the absence of the most favored nation clause in the treaty with his country. When such a treaty, made by the proper federal authorities, has been ratified, it becomes the law of the land, and the courts have no power to question it, or in any manner to look into the powers or rights of the nation or tribe with which it is made, the action of the treaty-making power being exclusive upon such inquiry.

In view of the law herein given, Senate Bill No. 22, if it is signed by you, will be perfectly valid in so far as the treaties of the United States are concerned, when provisions are not incorporated in the particular treaties with the country of the alien and the United States giving special protection and benefits to such alien. It will be invalid in the case of any alien who is specially protected by treaty.

If the bill becomes a law, the objection will perhaps be raised that it is in conflict with section 16 of article 1 of the Constitution of the State of Nevada, which reads as follows:

Foreigners who are, or may hereafter become, bona-fide residents of this State, shall enjoy the same rights in respect to possession, enjoyment, and inheritance of property as native-born citizens.

The law of this State relating to state lands provides that an applicant who purchases such lands must be a citizen of the United States, or a person who has declared his intentions to become such. Since this provision was placed in our State Land Act, there has been no adjudication of its validity by our Supreme Court.

In a doubtful case this office will treat an Act passed by the Legislature as valid and constitutional until it has been declared otherwise.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

32. Judicial Procedure—Jury Duty—Married Women may Claim Exemption Therefrom.

CARSON CITY, March 19, 1919.

MRS. E.F. HOWARD, *Dayton, Nevada*.

DEAR MADAM: A married woman, under the law, has the privilege of claiming exemption from serving on juries. It rests entirely with her as to whether or not she will serve in that capacity.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

33. State Engineer—Perpetuation of Testimony—State Engineer Without Power to Take.

CARSON CITY, March 19, 1919.

HON. SEYMOUR CASE, *State Engineer*.

DEAR SIR: In regard to the letter written to you by Attorney W.M. Kearney, in which he suggests that a deposition be taken for the purpose of perpetuating testimony in a water matter, I beg to advise that there is no provision of law that can be construed to make such a deposition valid, and if taken it will be devoid of legal effect.

There is no pending proceeding in your department and there is no action in any court to which such deposition would have application, I therefore rule that it would be absolutely valueless.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

34. Elections—Woman Suffrage—Constitutional Amendment Valid—Enrollment in Legislative Journals Unnecessary—Laches.

CARSON CITY, March 19, 1919.

MRS. F.G. PATRICK, *Reno, Nevada*.

DEAR MADAM: In regard to whether or not the Woman Suffrage amendment to the Constitution of the State of Nevada is in danger of being nullified by the Supreme Court of this State, I beg to advise that I do not believe that there is any such danger.

It is true that in the case of *State v. Tufly*, [19 Nev. 391](#), the Supreme Court of this State ruled that it is an absolute requirement of our Constitution that an amendment thereto be entered on the journals of both houses of the Legislature—the word “entered” to be construed as meaning that it must be spread in full. This case was decided in 1886 and was evidently decided without any vigorous argument or contest on the part of the attorneys connected therewith.

There are extensive authorities that hold that words of identification contained in the journals as a constitutional amendment are sufficient, and it is my belief that such will be the position taken by our court as to the Woman Suffrage amendment, if it becomes the subject of litigation.

A further ground for upholding this amendment will be that of laches. The women of this State have voted at two general state elections, at various primary, city, school, and other elections, and the court can wisely hold that it is now too late to attack the validity of the constitutional amendment mentioned.

I do not think that the Supreme Court of Nevada will render a decision that will emasculate our Constitution as to many important subjects.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

35. Public Funds—Bond Issue—Loan to Settlers—Act Providing for, Valid—Loans Must Be Made to Industrial Settlers.

CARSON CITY, March 28, 1919.

HON. EMMET D. BOYLE, *Governor of Nevada*.

SIR: In regard to your inquiry as to whether or not Assembly Bill No. 183, which provides for a bond issue by the county of Churchill for the purpose of raising money to be used in making loans to settlers for reclamation purposes, contravenes the Constitution of this State, I beg to advise that, in my opinion, it does not.

Section 9 of article 8 of the Constitution reads as follows:

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

Section 10 of article 8 of the Constitution reads as follows:

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

Article 8 relates entirely to municipal and other corporations. The State cannot donate or loan money or its credit to any company, association, or corporation other than as is specified in

section 9.

A county, city, or town or other municipal corporation cannot loan its credit to any company, corporation, or association except those allowed in section 10.

Any money that is raised pursuant to the Churchill County bond issue, as provided for in the Act mentioned, cannot be loaned to companies, corporations, or associations, but can be loaned to individual persons.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

36. Architect, State—Act Creating Liberally Construed—Payment of All Expenses Thereunder.

CARSON CITY, March 29, 1919.

HON. EMMET D. BOYLE, *Governor of Nevada*.

SIR: The Act creating the office of State Architect, passed by the Legislature, should be broadly and liberally construed for the purpose of making it effective and valuable.

The presumption is that the Legislature deemed it for the best interest of the State to create this office, so that the State would have good service and get the best results.

It is a fact, perfectly clear and evident, that the office created will be of no value to the State unless its occupant is provided with rooms and the necessary clerks and assistants in carrying into execution the real intent and purpose of the Act. The Legislature well knew that a competent architect would not attempt to perform the duties of State Architect unless provided with rooms and assistants in connection with his office.

The expense incident to the office of State Architect should be paid in the same manner that the salary of such official is paid—that is, should be paid pro rata out of the appropriations or bond issues made for the erection of the various state buildings.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

37. Prohibition Law—Interpretation Thereof—Superintendent State Police—Questions Thereunder Answered.

CARSON CITY, March 29, 1919.

HON. R.B. HENRICHS, *Superintendent of State Police*.

DEAR SIR: The various questions propounded by you are given herein, with my answers thereto.

1. May a man keep whisky or like strong liquors in a room at a hotel where he lives?

Answer—A man, keeping a room in a hotel and having no other residence, is in the same position as a man having an independent home. I, therefore, rule that such a man may keep in his room intoxicating liquors, if such have been legally obtained by him.

2. What can be done in case a person is strongly suspected, on reasonable

grounds, of carrying whisky or strong liquors from outside States to Nevada?

Answer—I believe a search warrant is required in such a case and that you should not act without such warrant.

3. What can be done in the case of a man who is carrying intoxicating liquors from one place to another place within the state?

Answer—A search warrant is likewise required in such a case. If a man is removing intoxicating liquors from his regular place of residence to a newly selected residence and he transports intoxicating liquors, legally obtained, and which he is keeping only for personal use I believe that he is not violating the law. It is very likely, however, that the Supreme Court of this State will adopt the contrary position.

4. What can be done in the case of a person transporting liquor in this State for other persons, with or without hire?

Answer—In the absence of absolute information or knowledge on the part of the officer that liquor is being transported by a person for the use of others, I believe that a search warrant is required.

5. How far can an officer go if he believes a person is keeping a large amount of whisky or like liquor in his possession?

Answer—In such a case, a search warrant is required. There is no limit to the quantity of liquor which a man may have in his own home, for his own use, if such liquor was legally obtained. If a man has liquor at a place other than in his home, it is a strong circumstance indicative of violation of the prohibition law.

6. If a druggist is selling liquor or alcohol without prescriptions, what action can be taken?

Answer—A complaint should be forthwith filed, charging such a druggist with the violation of the prohibition law.

One of the most precious rights guaranteed to the people of this country is to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches. The Constitution of this State (sec. 18, art. 1) protects the right in the following language:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

Certain provisions of our statutory law are as follow:

Grounds for issuance of search warrants.

1. When the property was stolen or embezzled; in which case it may be taken on the warrant from any place in which it is concealed, or from any person in whose possession it may be.

2. When it was used as a means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or

from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it. Sec. 7415, Revised Laws.

No search warrant shall be issued but upon probable cause, supported by affidavit naming or describing the person, and particularly describing the property and place to be searched. Sec. 7417, Revised Laws.

The magistrate must before issuing the warrant examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. Sec. 7418, Revised Laws.

If the magistrate be satisfied of the existence of the grounds of the application, or that there is a probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate. Sec. 7420, Revised Laws.

I have cited our constitutional provision and the statutory law in order to emphasize the importance of the subject and the care and caution that is required in searches and seizures.

We live in an age of rapid transition, and it may be that the courts will undergo great changes and in many respects alter, change, and modify the long-established theories in regard to searches and seizures.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

38. Fish and Game—Catfish Not Protected.

CARSON CITY, March 29, 1919.

MR. O.W. TENNANT, *State Fish Commissioner*.

DEAR SIR: In regard to your inquiry as to whether or not it is legal to fish for catfish in Washoe Lake, I beg to advise that such is not a violation of the Fish and Game Act of 1917, for the reason that catfish in said lake are not protected by the Act.

The mere fact that protected fish are in the same body of water with unprotected fish does not preclude persons from fishing for the latter. A person who is fishing in such a body of water for unprotected fish should immediately return to the water any protected fish that he may catch while legally engaged in fishing for unprotected fish.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

39. Shepherders—Desertion of Flock—Misdemeanor—Validity of Act.

CARSON CITY, March 31, 1919.

HON. EMMET D. BOYLE, *Governor of Nevada*.

SIR: In regard to the constitutionality of Assembly Bill No. 242, passed at the recent session

of our Legislature, which makes it a misdemeanor for a shepherd to desert a herd or flock of sheep, I beg to advise that, if it is signed by you, it will very likely be declared a valid enactment by the Supreme Court of this State.

It is a fundamental principle that criminal statutes should cover a public wrong rather than a mere private wrong. In recent years, however, the courts have recognized great latitude in the Legislature on this subject. Various criminal statutes have been upheld by the courts which make criminal the violation of a contract.

The Act under consideration must be considered on its merits rather than from the standpoint of its validity. If there is a public necessity which requires this special protection to be given to sheep owners, and which is not given to other owners of property, then there is a reason why the Act should become a law. If, however, there is no public necessity which demand such discrimination, then there can be no argument in favor of the Act.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

40. Architect, State—Act Creating—Applies to University of Nevada.

CARSON CITY, March 31, 1919.

HON. EMMET D. BOYLE, *Governor of Nevada*.

SIR: In reply to your inquiry as to whether or not Assembly Bill No. 287, which provides for a State Architect, will apply to any buildings to be constructed pursuant to an Act or Acts of the Legislature passed at the 1919 session, providing for the erection of certain buildings in connection with the University of Nevada, I beg to advise that said Assembly Bill no. 287 will apply to the university buildings in the same way that it applies to the other state buildings provided for in Acts enacted at the late session of the Legislature.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

41. Corporations—Fire Insurance Companies—Act and Amendments Regulating Same—Declared Constitutional.

CARSON CITY, April 1, 1919.

HON. EMMET D. BOYLE, *Governor of Nevada*.

SIR: The Act passed at the recent session of our Legislature entitled “An Act further regulating fire insurance companies, and providing a penalty for violation of the provisions of section 1a of this Act and to amend an Act entitled ‘an Act relative to reinsurance and the transaction of business by fire insurance companies or associations otherwise than through resident agents, ‘ approved March 6, 1901,” has been fully considered by me, and I am satisfied that there are no valid constitutional objections to it. I have examined the cases cited by former Attorney-General Geo. B. Thatcher, and I find that none of them has any resemblance to the Act under consideration. I shall briefly review said cases.

State v. Hallock, [19 Nev. 384](#), relates to an amended Act. The title of the amended Act, however, was changed by the insertion of new words and the placing in the Act of the new words constituted the objectionable feature.

State v. Silver, [9 Nev. 227](#), is a case whereby the Legislature, under a title to regulate marks and brands, attempted to fix a penalty for the unlawful killing of stock. This legislation was clearly outside the title.

State v. Hoadly, [20 Nev. 317](#), is an Act whereby the Legislature, under a title in regard to the purchasing and preserving of newspapers upon the subject of legal advertising and printing. IN this case the Court said in this respect:

Certainly, prima facie, the subject of legal advertising and printing, and the subject of purchasing and reserving newspapers are disconnected and independent matters.

The case of Bell v. District Court, [28 Nev. 280](#), is an Act providing certain punishment for public officers under the title “An Act relating to elections.” It was correctly held that such a title would not allow the Legislature to legislate as to officers who have already been elected.

The other cases cited by General Thatcher, being Ormsby County v. Kearney, [37 Nev. 356](#), 375, and Knox v. Holmes, [37 Nev. 356](#), 375, and Knox v. Holmes, [37 Nev. 393](#), have no application here. These cases related to a provision of law that attempted to give judicial effect to a decision of the State Engineer.

In the Act which we are considering it is provided that an insurance “company may appeal to a court of competent jurisdiction from the order of the Insurance Commissioner revoking its license, and pending the determination of such appeal such revocation shall be suspended.” This is not an attempt to confer judicial power upon the Insurance Commissioner. It does not treat as a decree or judgment the acts of the Insurance Commissioner from which an appeal may be taken in the same way that an appeal is taken from a lower court to a higher court. The word “appeal,” as used therein, has an entirely different meaning. The correct interpretation is that original proceedings may be instituted in court attacking the ruling of the Insurance Commissioner; that while the case is pending in the court the revocation of the Insurance Commissioner is suspended.

In the case of State v. Ah Sam, [15 Nev. 27](#), it is said by the court (on page 31 thereof), in ruling on the application of section 17 of article 4, which provides that the title of an Act must embrace but one subject:

But in dealing with this particular objection to parts of statutes, which, as a whole, embrace but one subject of legislation, the courts of the different States have adopted an exceedingly liberal rule of construction in favor of their validity. The decisions on the point are very numerous, but it would be unnecessary and unprofitable to attempt a review of them; for in scarcely a single instance is an attempt made to lay down any rule or principle more definite than is to be gathered from the remark of Judge Cooley (Conn. Lim. 146), that “there has been a general disposition to construe the constitutional provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted.

In Lewis’s Sutherland Statutory Construction, vol. 1, 2d ed., sec. 115, in treating of the constitutional provision which provides that the title of an Act shall embrace but one subject, it is said:

The courts with great unanimity enforce this constitutional restriction in all cases falling within the mischiefs intended thereby to be remedied. And, in cases not within those mischiefs, they construe it liberally to give convenient and necessary freedom, so far as is compatible with the remedial measure, to the law-making power. They agree that whilst it is necessary to so expound this provision as to prevent the evils it was designed to remove, it is no less desirable to avoid the opposite extreme, the necessary effect of which would be to embarrass the legislature in the legitimate exercise of its powers, by compelling a needless multiplication of separate acts as well as to introduce a perplexing uncertainty as to the validity of many important laws which must be daily acted upon. To facilitate proper legislation, it will not be interpreted in a strict, narrow, or technical sense, but reasonable.

Everything contained in the Act under consideration is germane to the title thereof.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

**42. Public Schools—County Division—School Buildings and Property Therein—
Appointment by County Board of Education.**

CARSON CITY, April 2, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: Certain questions having arisen and being propounded by you under date of March 31, by reason of the Act creating and organizing the county of Pershing out of a portion of Humboldt County, we have to reply to your inquiries in the order named by you.

1. The High School at Lovelock, as heretofore established, is now, by virtue of its organization, the Pershing County High school, and should so continue to be, though in its establishment and organization it is not known and does not appear of record by that name; the name is immaterial in this respect; it appertains to form and not to substance.

2. It is your duty to appoint a Pershing County Board of Education for the purposes defined under existing law.

Your inquires 3 and 4 are as follows:

3. What is the manner of payment of salaries of the teachers employed therein?

4. In what manner are warrants to be drawn in favor of the various elementary school districts in Pershing County on the county school funds to the credit of these districts (such funds now being in custody of the Humboldt County Treasurer)?

References to the Act creating and organizing the county of Pershing readily answer these questions.

Section 15 thereof provides for the ascertainment of moneys and funds in the county treasury of Humboldt County, "excepting funds of various precincts, districts, cities, towns, and townships," which latter funds are left intact, as they belong to the various precincts, districts, cities, towns, and townships as included in the exception.

Section 10 thereof provides as follows:

The election precincts, school districts, road districts, cities, towns, and townships, embraced within the territory comprising the county of Pershing, shall be as heretofore fixed and established during the time the same composed a part of Humboldt County until otherwise changed by the board of county commissioners of Pershing County, and the officers heretofore elected, or appointed to office in said precincts, districts, cities, towns, and townships shall hold their respective offices in the county of Pershing until their successors are appointed or elected and qualified. And the registration lists, school censuses, and the records of said officers respectively are hereby made the same in the county of Pershing that they were heretofore in the county of Humboldt. And the county treasurer of the county of Humboldt is hereby directed to pay to the county treasurer of the county of Pershing, on demand, all sums of money held by him as custodian for said precincts, districts, cities, towns, and townships, rendering proper accounts with each of said funds; *provided*, that all county officers of Humboldt County, elected at the general election in 1918, who have qualified and entered on the performance of their official duties, may continue to hold office as officials of Humboldt County, regardless of their present places of residence and county boundaries in the county of Humboldt, until the expiration of their several terms of office.

Therefore, during the transition period through which Pershing County is passing in perfecting its organization under the Act creating it the officials heretofore qualified have ample authority to draw and pay the warrants against the various funds to which your inquiries appertain, and their successors in the county of Pershing, when qualified, will have the same authority to do likewise.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

43. Flag, Union—Red Ground and Shield—Not Prohibited by Law.

CARSON CITY, April 12, 1919.

HON. EMMET D. BOYLE, *Governor of Nevada*.

SIR: In regard to your letter, referring to me the communication received by you from Silver City Miners Union No. 92, wherein information is requested as to whether or not the flag of the Union, which has a red ground with a shield and the letters "M.U." is prohibited by any Act enacted at the recent session of the Legislature, I beg to advise that it is not, and that the Union is free to continue to use it.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

44. Prohibition Law—Certain Amendments Thereto Invalid—Certain Drinks Not Prohibited.

CARSON CITY, April 12, 1919.

HON. GEO. J. KENNY, *District Attorney, Fallon, Nevada.*

SIR: This office will decline to treat the Harrington amendment to the Nevada Prohibition Law as being valid. I am of the opinion that it annuls a part of the Act that it pretends to amend, and is, therefore, in violation of the initiative and referendum provisions of our Constitution.

The ruling of this office is that a drink which is not brewed, is free of malt, and has less than one-half of one per cent of alcohol may be sold in this State.

I decline to rule whether or not any specifically labeled drink is permitted under the law. I am willing to rule at any time upon a statement of facts furnished this office as to whether or not a drink, based upon such statement is prohibited. If the statement is erroneous, then no responsibility rests upon me in the event of a violation of the law.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

45. Corporations—Amendment to Articles Concerning Assessable or Nonassessable Stock.

CARSON CITY, April 19, 1919

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: In regard to your inquiry as to whether or not a corporation, whose articles provide that the stock shall be assessable, has the right under the laws of this State to change its articles of incorporation so that the stock shall be nonassessable, I beg to advise that the law of this State permits of such a change. The converse, however, is not true—that is, stock which has been issued as fully paid up under articles which do not provide for assessments cannot afterwards be made assessable.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

46. Corporations—General Corporation Law—Conflicting Provisions Should Be Reconciled.

CARSON CITY, April 26, 1919.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: IN reply to your inquiry in regard to reconciling the provisions contained in section 3 and section 37 of the general corporation law, I beg to advise as follows:

The Legislature, at its session in 1917, amended section 3 by changing the place of filing the original articles of incorporation. Prior to the amendment the filing of the original articles was made in the office of the County Clerk in which the principal place of business of the corporation was located. This was changed by amendment in 1917, which provides that the original filing be made in the office of the Secretary of State and a certified copy of the articles to be filed in the

office of the Clerk of the county in which the principal place of business of the company is intended to be located.

It was clearly an oversight on the part of the framers of said amendment and the Legislature that section 37 was not also amended to make it consistent with the changed provision of section 3. Section 37 cannot be literally followed; that is positive. Therefore, it should be so construed so that it will receive intelligent application as applied to section 3. In that the original articles are no longer filed and recorded with the County Clerk, it becomes impossible for a County Clerk to do the things provided for in section 37. The Secretary of State can carry into effect the intent and purpose of said section, therefore an amended certificate prepared pursuant to the provisions of section 37 should be filed and recorded in the office of the Secretary of state and a certified copy thereof filed in the office of County Clerk in the proper county.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

47. Elections—Registration of Voters—Voters in Military or Naval Service Not Registering.

CARSON CITY, April 26, 1919.

HON. LESTER D. SUMMERFIELD, *District Attorney, Reno, Nevada*.

DEAR SIR: The questions propounded by you in your letter of the 25th instant are hereby answered as follows:

A man legally a resident of Reno, who has been discharged from military or naval service, but has reached home too late to register, but is otherwise qualified to be a voter, cannot vote at the coming municipal election, and a man who is legally a resident of Reno, but has not registered, although otherwise qualified to be a voter, who is still in the military service, but who may be in Reno on election day, is likewise barred from voting. If either man mentioned registered prior to the late November election, but did not vote at such election, and has not again registered, he is also barred from voting. The County Clerk could pursue no other course than to strike his name from the registration list.

The County Clerk, pursuant to a direct mandate of the law, has closed his registration books. There is no law that empowers him to reopen them prior to the municipal election of May 6, 1919. The registration list, as it now exists in his office, can alone be recognized by the election officers. Unfortunate circumstances that prevented brave and noble men from registering are to be regretted, but cannot be remedied.

Section 3 of article 2 of our State Constitution has no application to the case now presented. That section only applies to voting at the place of actual service, and directs the Legislature to pass the necessary laws on the subject.

I regret that the law is not sufficiently doubtful or flexible to permit of a ruling that would give them the privilege to vote. The law, however, is plain and positive. I am powerless to amend or change it. If I should usurp a legislative function, it would be overthrown by the judicial power of the State. The validity of the election is paramount. Individual persons often suffer so that legality, instead of illegality, may result. It is an incident of our social organization.

In this case the situation would be different if legislation had been different, but I am compelled to deal with reality and not with potentiality.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

48. Labor Commissioner—Public or Private Printing—Where Done.

CARSON CITY, April 26, 1919.

HON. ROBT. F. COLE, *Labor Commissioner*.

DEAR SIR: In regard to the printing that is to be done incident to the recent act of the Legislature of Nevada, which relates to the granting of licenses to employment agencies, I beg to advise as follows:

The printing necessary for your use as Labor Commissioner, in connection with your supervisorial power over employment agencies, should be done at the State Printing Office pursuant to the Act which provides that the printing used by the Labor Commissioner shall be done at the State Printing Office. The printing, however, which is required by the employment agencies themselves and which is to be delivered by you to them primarily for their use, and not for the use of your office, cannot be done at the State Printing Office, but must be done by contract with private printing-houses.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

49. County Division—Act Impliedly Repeals Certain Legislation for Bond Issue for Lovelock.

CARSON CITY, May 1, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: We are advised by you that the Board of County Commissioners of Humboldt County has declined to proceed to carry out the provisions of an Act entitled "An Act authorizing and directing the board of county commissioners of Humboldt County, State of Nevada, to issue bonds for the purpose of providing means for the erection and maintenance of a high-school manual-training building and the addition of two classrooms to the present building in the city of Lovelock, County of Humboldt, State of Nevada, providing for the expenditure of the moneys realized from the sale of such bonds, and providing for the payment of such bonds upon maturity," approved February 8, 1919.

You inquire whether or not this Act is now operative.

The reason for the attitude of the board is substantially that, assuming the legality of the Acts of the Legislature creating and organizing Pershing County out of the territory of Humboldt County (Stats. 1919, pp. 75-83), it has no jurisdiction as the Board of County Commissioners of Humboldt County to take any proceedings to issue the proposed bonds and make the necessary tax levy therefor for the erection and maintenance of the high-school manual-training building, etc., in question at Lovelock, Pershing County.

We have already ruled that Pershing County was erected, *ipso facto*, upon the approval of the

Act creating and organizing it as aforesaid. Commissioners of Humboldt County have been impliedly repealed in so far as the same relate to the territory and affairs of Pershing County, and that such board can exercise no powers except those powers contemplated in the Act providing for the high-school manual-training building, etc., are not so reserved.

The question then presents itself: Has the Board of County Commissioners of Pershing County the power to proceed under the Act in the negative, since no power is reserved to such board for that purpose, either in the Act itself or in the Act creating and organizing Pershing County, and since the Act providing for the bonds is a specific direction to the Board of County Commissioners of Humboldt County to issue them and make the necessary tax levy therefor which, for the reasons aforesaid, that board cannot do.

Legislative Acts providing for bond issues must be strictly pursued as they are, judicially, strictly construed, and it would be a very liberal construction indeed if the Board of County Commissioners of Pershing County could be permitted to carry out the provisions of the Act entitled and approved as aforesaid in the absence of specific authority therefor.

Accordingly, we are of the opinion that the Act providing for the issuance of the bonds for the high-school manual-training building, etc., and the necessary tax levy therefor, became inoperative upon the passage and approval of the Act creating and organizing Pershing County out of a portion of the territory of Humboldt County.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*

50. Lotteries—Slot Machines—Automatic Sellers.

CARSON CITY, May 2, 1919.

HON. P.A. McCARRAN, *Attorney at Law, Reno, Nevada.*

DEAR SIR: We have your letter of the 1st instant, in the matter of slot-machines, inquiring, substantially, whether or not it is our opinion that “mechanical devices or slot-machines, where, as a result of the play, value is guaranteed in merchandise for money played and no chance to lose is offered,” are prohibited.

The answer to this inquiry is not an open question in our minds. Irrespective of the fact that merchandise is guaranteed for the play and no chance to lose is offered, if the player, by lot or chance, may receive merchandise or other thing of value in excess of the guaranty, then the scheme is a lottery. At random we re-cite: Meyer v. State, 37 S.E. 96, Loiseau v. State, 22 South, 138, contained in the former opinion of the Attorney-General on the subject.

We do not, however, hold that devices, wherein lot or chance is eliminated in their operation, which might be termed automatic sellers or silent salesmen, through which the purchaser, for a fixed consideration, invested through them receives a fixed value in merchandise and no more or less, are prohibited. Among these are included United States postage stamp, chocolate, match, etc., machines.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

51. Railroad and Public Service Commissions—Appropriations Therefor—Declared Invalid.

CARSON CITY, May 6, 1919.

Public Service Commission of Nevada.

GENTLEMEN: The appropriations for the support of the Railroad Commission and the Public Service Commission, contained in the General Appropriation Act, constitute valid appropriations. The Public Service Commission has been made the successor of the Railroad Commission, and, by reason thereof, assumes all the powers and responsibilities that previously existed in the Railroad Commission. There is absolutely no rule of law or legal reasoning that will lead to a conclusion that the Public Service Commission cannot avail itself of the money appropriated in the Act mentioned. If, by reason of the change that has been made in the law, certain items or part thereof cannot be applied to the purpose for which they have been appropriated, such appropriations will necessarily revert to the General Fund; otherwise, the money may be used in a way that will carry into execution the intent and purpose of the Legislature in making appropriations.

I am compelled to decide that, under the law, the members of the Public Service Commission cannot be paid for the period between the 1st day of April and the 7th day of April, 1919. During this interim the Railroad Commission and the Public Service Commission lacked existence. Not being in existence, there could be no members thereof, and therefore salaries cannot be allowed under any possible theory.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

52. Prohibition Law—Druggists Alone May Sell Preparations of Certain Alcoholic Content.

CARSON CITY, May 6, 1919

HON. J.H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: It is unlawful for any merchant other than a druggist to sell any potable preparation that contains alcohol in excess of the minimum prescribed by the Nevada prohibition law. It is likewise unlawful for merchants other than druggists to sell flavoring extracts which contain a high-percentage of alcohol.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

53. Employment—Employment Agencies—Licenses Required in Certain Cases.

CARSON CITY, May 7, 1919.

HON. ROBT. F. COLE, *Labor Commissioner.*

DEAR SIR: In the case of a free employment agency conducted in connection with some

other business, where there is no charge made of any kind, it does not come within the provisions of an Act of the Legislature of 1919 which relates to employment agencies.

In the second case mentioned by you, where a collection of a fee is made from the employer and not from the employee, it comes within the provisions of the Act.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

54. Judicial Procedure—Practice of Medicine Without License—Prosecution Therefor and Procedure on Trial.

CARSON CITY, May 7, 1919.

HON. GEO. J. KENNY, *District Attorney, Fallon, Nevada*.

DEAR SIR: In a criminal action, wherein a person is prosecuted on the charge of practicing medicine without a license, it is incumbent upon the State to prove facts that go to establish the allegation that the defendant has actually engaged in the practice of medicine.

The State is not required to place on the witness stand the Secretary, or any other officer connected with the State Board of Medical Examiners, to swear to the fact that no license has ever been issued to the defendant. When the evidence is adduced as to the defendant practicing medicine, the burden then shifts and the defendant is placed in a position where, if he has a license, he must produce it; otherwise, the jury will be warranted in finding him guilty as charged. An important case on this subject is that of *People v. Boo Doo Hong*, 122 Cal. 607. I believe that the law is therein correctly enunciated.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

55. State Engineer—Contracts of, Must Be Signed by Him.

CARSON CITY, May 19, 1919.

HON. J.G. SCRUGHAM, *State Engineer*.

DEAR SIR: We have your letter of even date inquiring whether or not an agreement appertaining to the subject-matter of your department with certain departments of the United States Government, relating to irrigation investigations in the State of Nevada, should be drawn in the name of the State Engineer or the State of Nevada, signed by the Governor, and in reply thereto we would advise you as follows:

The functions of your office are fixed by positive law, the execution of which is reposed in you as State Engineer, and the appropriations made are specifically enumerated for your department.

Accordingly, the vital force for all contracts appertaining to your office under the law must emanate from yourself and not from the Governor, and therefore a contract such as you mentioned should be entered into and signed by you as State Engineer, and not otherwise.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

56. Public Schools—Teachers' Contracts—Salary—Vacancy of School Trustee.

CARSON CITY, May 19, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: We have your letter of the 13th instant, requesting our opinion upon certain questions therein contained, and beg leave to reply thereto in the order named by you:

1. What is the effect of Section 97, School Law of 1917, on the contract of the school district, with the teacher employed for the time? Is she entitled to pay for the full period of contract, or not?

You are advised that if the teacher is ready, able, and willing to fulfil her contract, and has not committed any breach thereof sufficient to terminate the same, the contract is a subsisting obligation against the district, and she is entitled to pay for the full period of the contract according to its terms.

2. How long must a School Trustee be absent from the State before his office is declared vacant? If he has property or family living in Nevada, does he lose the office of School Trustee?

We think subdivision 7 of section 2799 of the Revised Laws of 1912 fully answers your questions:

Every office shall become vacant upon the occurrence of either of the following events before the expiration of the term of such office * * * 7. The ceasing of the incumbent to discharge the duties of his office for the period of three months, except when prevented by sickness, or by absence from the State, upon leave as provided by law.

Therefore, if the School Trustee has ceased to discharge his duties for three months when not prevented by sickness, or has been absent from the State without the leave permitted by law, then his office is vacant.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

57. Employment—Employer and Employee—Discharge of Employee—Traveling Expenses.

CARSON CITY, MAY 20, 1919.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: Referring to your question whether or not an employer, upon one of his employees being discharged or quitting his employment, is entitled to receive, in addition to his wages, his fare or other expenses in going to the place at which he was hired, I have to advise you that the law is silent on the subject, and, without a provision requiring the payment of such fare or expenses, in the law, the employer is not required to pay the sum unless such terms were agreed upon at the time the contract of hiring was entered into by the parties.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

58. Industrial Insurance—Assignment of Award—Payment of Award—Alien Property Custodian Not Entitled to Award.

CARSON CITY, June 4, 1919.

Nevada Industrial Commission.

DEAR SIR: Referring to your letter of March 7, 1919, and your supplementary letter of May 13, propounding certain inquiries for official opinion, we beg leave to reply in the order mentioned by you, namely:

First—The alien property custodian is not entitled from your commission to accrued compensation in the case of alien dependents, for the reason that such payment is prohibited from being made to him under the provisions of the Act creating your Commission, reading as follows:

Compensation payable under this Act, whether determined or due, or not, shall not, prior to the issuance and delivery of the warrant therefor, be assignable; shall be exempt from attachment, garnishment, and execution, and shall not pass to any other person by operation of law.

It is apparent that the language quoted was included in the Act to prevent involuntary deraignment or sequestration of your award, thus assuring the reason and spirit of the law being adequately fulfilled, to wit, payment of the compensation to the insured and his or her dependents, for whom the Act is intended to directly benefit.

Second—If you mean by this inquiry that compensation is due for injuries prior to the death, then such compensation became vested, whether collected or not, and the reason and to the widow, as such payment is made in behalf of the person for whom the Act is intended to benefit and would not be the involuntary deraignment or sequestration of the award prohibited as aforesaid.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

59. Public Service Commission—Violation of Act—Prosecution Therefor.

CARSON CITY, June 4, 1919.

Public Service Commission of Nevada.

DEAR SIR: Referring to your letter of May 14, enclosing complaints from Mr. Hoffman and others regarding jitney operations and the course of procedure to be pursued, we beg to advise you that in the first instance the District Attorneys and officers of the respective counties, wherein these violations of the law occur, should be requested to take such steps as are provided by law, and then, if their efforts are not successful or the opposition to them is too great, this office should be called upon to cooperate with them.

We take this view for the reason that we do not desire to supersede constituted authority in local jurisdictions unless necessary, and, as you are aware, the force of this office is limited and is hardly equal for the general business of the State entrusted to it by law.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

60. Nevada Life Insurance Company—Acquiring Real Estate in Foreign Jurisdiction Not Prohibited.

CARSON CITY, June 13, 1919.

HON. GEO. A. COLE, *State Controller*.

DEAR SIR: Answering the inquiry of the Nevada State Life Insurance Company propounded by you as to “whether or not it would be permissible for this company to acquire real estate outside of the State of Nevada over and above \$100,000 paid-up capital required by the insurance laws of this State,” we beg to advise you that there is nothing in the statute precluding this company from so acquiring such real estate.

However, it should also be noted that the laws of the State where the investment is to be made must also permit the transaction and be complied with.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

61. Public Schools—Expenses of School Trustee Meetings—Payment Thereof.

CARSON CITY, June 16, 1919.

HON. T.W. CHAPMAN, *Deputy Superintendent of Public Instruction, Las Vegas, Nevada*.

DEAR SIR: We have your letter of the 3d instant, enclosing voucher for Educational District No. 1, Overton, Clark County, Nevada, and calling for our opinion as to the legality of the charge represented thereby.

On the face of the voucher we see nothing to indicate that the charges are not necessary and proper. It is apparent that if the officials drawing the warrant are given under the law the power to supervise and regulate school affairs, they are also impliedly given all necessary powers to properly consummate such supervision and regulation. Therefore, if it was necessary for the board to convene at Bunkerville and Mesquite, the means whereby they might convene is impliedly given them under the law, for they could not be required to advance their own funds for necessary traveling expenses and accommodations. However, we do not intend to say to you that any funds may be drawn arbitrarily, but their necessity must be apparent, and we see nothing in the voucher presented that would indicate that the claim presented was an arbitrary exercise of the powers of the board.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

62. Public Contracts—County Physicians—Interpretation.

CARSON CITY, June 16, 1919.

MRS. EDNA COVERT PLUMMER, *Attorney at Law, Eureka, Nevada.*

DEAR MADAM: We have your favor of the 6th instant, relating to the contract of Eureka County with its County Physician, and have noted its contents.

After no little consideration of the provisions of the contract quoted by you and the facts set forth in your letter, we are inclined to the opinion that the supplies furnished come under the provisions: "Furnishing all necessary medicines and stimulants for said patients." This phrase of the contract necessarily must be read with the one that precedes it providing: "Services shall consist of attending professionally, both as physician and surgeon, the patients in the county hospital of said county." Medicines and stimulants for services rendered pursuant to such provision, from the view we take, do not necessarily mean preparations or prescriptions taken internally, but the medicines and stimulants necessary for the services contracted for, namely, both as physician and surgeon and whether the same be internally consumed or externally applied.

The provision of the contract is too broad to admit of any other construction.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

63. Ore Sampler—Act Creating—Custom Mill Required to Report.

CARSON CITY, June 16, 1919.

HON. F.C. LINCOLN, *State Ore Sampler, Reno, Nevada.*

DEAR SIR: We have your letter of the 6th instant, propounding the inquiry whether or not the mill of the MacNamara Mining and Milling Company at Tonopah, Nevada, should make monthly reports as prescribed by law.

Based on the fact that the company informs you that: "We are not buying ore outright, but are simply running a custom mill. At the present time we are milling the Tonopah Divide or at a fixed extraction and value per ton, paying them at the end of each month on their net returns," we have to advise you that such reports should be made as provided in the Act entitled "An Act creating the office of state or sampler and providing for the appointment of such officer, defining his duties, and other matters relating thereto," approved March 27, 1919. The words custom mill is therein defined as follows: "The words 'custom mill' shall include any mill, smelter, or any other plant used for the reduction of ores and extracting the mineral therefrom, which treats and reduces ores other than those produced and extracted from a property owned and operated wholly by it"; and further: "It is hereby made the duty of the owner, lessor, lessee, agent, manager, or other person in charge of each and every sampler, ore purchaser, and custom mill of any kind or character in Nevada, to forward monthly on the first day of each and every month to the state ore sampler, a statement of tonnage of ores received other than those produced from its own property and the camp from which shipped." Accordingly, under the statement of fact and the law as

aforesaid, it is our opinion that it is apparent that the mill of the MacNamara Mining and Milling Company is amenable to the law in the premises.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

64. Employment—Semimonthly Pay-Day Act—Interpretation—Special Occasion Relieving Compliance Therewith.

CARSON CITY, June 17, 1919.

HON. ROBERT F. COLE, *Labor Commissioner.*

DEAR SIR: We have your letter of June 12, calling for an opinion for your information and guidance in carrying out the provisions of an Act commonly called the semimonthly pay-day law, and have quoted its contents.

This Act is self-explanatory, and we perceive but little therein requiring interpretation.

You advise us that, “acting under the provision of this section a small number of employers are attempting to maintain their old system of monthly pay-days by taking a poll of their employees to ascertain whether or not they are agreeable to entering into an agreement to receive their pay monthly.” The course pursued by the employers referred to evidently is taken by them under a misapprehension or strained construction of section 8 of this Act. If it had been the intention that such agreements could be entered into as a general rule, we see no reason why the Legislature used the language contained in the section in question. A special occasion under no construction can be made to apply generally. What may be a special occasion is not necessary to define, but certainly a special occasion does not appear in the facts quoted from your letter. It might be that where to pay semimonthly a particular hardship would be experienced both by employer and the employee, arising from climatic conditions, inaccessibility, or something of a like situation, in regard to them the agreement referred to may be legally made, but a mere convenience induced from fiscal operations is not a special occasion under the Act.

The public policy of the State has been declared in the premises, and there must be something in addition showing a special occasion than the mere agreement of the employer and employee for a pay-day other than is prescribed in the Act, for it is provided therein “that it shall be unlawful for any employer to require any employee to enter into any such agreement as a condition to entering into or remaining in his service.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

65. Public Schools—Principal Teaching Voluntarily, Without Agreement, Receives No Compensation Therefor.

CARSON CITY, June 19, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your favor of June 9, propounding the inquiry calling for an official

opinion as follows:

Where a principal teaches extra classes because he has not been able to secure a full faculty, and for this extra work asks that additional pay be granted him, would it be legal to pay same from funds belonging to the district, upon mutual agreement of two members of the board without holding a board meeting to consider the action, and without changing the contract salary for which the principal was hired for the year?

It is apparent from the statement quoted that, notwithstanding the fact that the principal taught the extra classes because he could not obtain a full faculty, nevertheless his services in that behalf were rendered voluntarily without authorization from competent authority as required by law. Accordingly, we hold that the principal in question is not entitled to pay for these services, and he should be paid only as provided in the contract.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

66. County Division—Counties Created Have Respective Officers and Governments—Must Function Accordingly.

CARSON CITY, June 23, 1919.

HON. THOMAS E. POWELL, *District Attorney, Winnemucca, Nevada.*

DEAR SIR: Answering your inquiry as to whether or not the property of Pershing County should be included in the assessment roll of Humboldt County, or should each county have a separate assessment roll, or may the Assessor of Humboldt County exercise his official functions in what has been declared Pershing County, you are respectfully advised that, as Pershing County is not only created but organized out of the territory of Humboldt County, the officers of the respective counties must discharge their duties for and within their territorial limits, and accordingly each county must have its separate assessment rule. The Assessor of one county has no jurisdiction to exercise his functions over the property of the other county.

This ruling is made clear by the Pershing County Statutes of 1919, pages 75-83, particularly section 11, page 78, and section 16, page 83.

This opinion is brief on account of your expressed anxiety in the premises.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

67. County Recorders—Deeds Not Subject to Recording Unless Acknowledged.

CARSON CITY, June 26, 1919.

HON. F. GERMAIN, *County Recorder and Auditor, Winnemucca, Nevada.*

DEAR SIR: We have your favor of the 17th instant calling for our opinion as to whether or not if a deed is not duly acknowledged you should record the same on application and the tender of the necessary fee.

You are advised that you should decline to record any deed not acknowledged as required by law.

While a deed not acknowledged may be valid between the parties, it is not entitled to be recorded it then gives them notice to the world of the transaction between the parties construed, among which might be stated that if unacknowledged or unverified instruments, unless specifically permitted by law, could be legally recorded, then the avenue would be open for frauds of all kinds, and the security titles to property would be impaired.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

68. Revenue—Delinquent Tax Sales—Advertising Sale—Redemption.

CARSON CITY, July 1, 1919.

HON. CLARK J. GUILD, *District Attorney, Yerington, Nevada.*

DEAR SIR: The amendatory Act, approved April 1, 1919, Statutes of 1919, page 412, provides that immediately after the second Monday in June of each year, the tax receiver shall advertise the property upon which delinquent taxes are a lien for sale, when in all cases the delinquent tax, exclusive of poll-taxes and penalties, does not exceed the sum of \$300, such notice to be published in a newspaper at least once a week for a period of twenty-five days prior to the date of sale.

The law does not contemplate that, after the publication has begun, there shall be any revision thereof by the tax receiver. Therefore, any delinquent taxpayer who redeems his property at any time within the period of publication becomes liable and must pay for the publication in the same amount for which he would become responsible if no redemption was made within the period of said publication.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

69. Revenue—License Tax Paid on Exempted Sheep—Refund Thereof.

CARSON CITY, July 9, 1919.

HON. A.L. SCOTT, *District Attorney, Pioche, Nevada.*

DEAR SIR: We have your letter of June 27, relating to the demand of Gregorio Urrutia for the refund of \$350 to cover exemption on 1,000 head of sheep.

The gentlemen in question is an alien but a bona-fide resident of this State. You are advised that under section 16, article 1 of the Constitution "Foreigners who are, or may hereafter become, bona-fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native-born citizens," and that in consequence of which this alien is entitled to the same protection and exemptions in the premises as a citizen and resident of this State. The Constitution is paramount over legislative enactments. However, we are not passing upon the question, since we do not know the facts whether or not the payment

made by Mr. Urrutia was a voluntary or an involuntary one. If this payment was voluntarily made, in law he may not be entitled to recover same. If there is any doubt concerning his phase of the matter, justice demands that it be resolved in his favor.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

70. County Division—Date of Closing Books.

CARSON CITY, July 9, 1919.

HON. R.M. HARDY, *District Attorney, Lovelock, Nevada*.

DEAR SIR: Answering your letter of July 5, relating to the closing of the books by Humboldt and Pershing Counties, we beg to advise you that we are of the opinion that the books should be closed as of the date of approval of the Act creating Pershing County.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

71. Marriage—Marriage License—Form Approved.

CARSON CITY, July 11, 1919.

A. Carlisle & Co., Reno, Nevada.

DEAR SIR: We have your favor of July 1, enclosing your form of marriage license, together with a copy of a letter from P.R. Coryell, Deputy County Clerk of Storey County, criticizing the same in certain particulars.

You are respectfully advised that the form presented is sufficient in substance for all purposes intended under the laws of this State, as it substantially complies therewith.

Concerning the contention that the clergyman or other officer performing the marriage ceremony must retain the license, we find no provision in law requiring him to do so, although, as a practice, he does so until he has recorded a certificate of the marriage as the law provides. Referring to the objection to the wording of the certificate, we have to state that, while the certificate is more full and complete than the statute provides, that fact does not vitiate it in the least. The certificate appended to the license is more than sufficient to meet all the requirements of law.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

72. County Health Officer—Salary—Budget Controls and Precludes Increase.

CARSON CITY, July 11, 1919.

HON. W.R. REYNOLDS, *District Attorney, Eureka, Nevada*.

DEAR SIR: We have your letter of July 7, relative to the petition for the increase of the salary of the county health officer and physician, and have noted its contents.

You are correct in your construction of the Statutes of 1917, page 249, relative to the budget system, and, accordingly, no matter how advisable the requested increase in the premises may be, such increase cannot be made in derogation of the plain provisions of law. If this action could be taken in one instance, it may be taken in all instances, and thereby the budget system, created by the Legislature, would be absolutely nullified.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

73. Revenue—Bullion Tax—Evidence for Recovery—Duty of County to Act.

CARSON CITY, July 11, 1919.

HON. F.N. FLETCHER, *Secretary, Nevada Tax Commission.*

DEAR SIR: Referring to the letter of W.G. Adams, Assessor of Lander County, to your Commission transmitted to us, relative to alleged unpaid bullion taxes, we have to advise you that if there are such taxes unpaid, whether for the year 1918 or 1917, it is the duty of the proper county officials to take such steps as to ascertain the fact of such unpaid taxes and from the evidence obtained to predicate appropriate proceedings for their recovery.

We know of no provision of law making funds available through your Commission to obtain the necessary evidence. The proper method of procedure would be for the County Commissioners of Lander County to authorize the Assessor to investigate the subject-matter of his letter to you and to allow him his necessary expenses upon a claim duly filed for that purpose.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

74. Gambling—Percentage Games—Certain Games Permitted—Duty of Peace Officers.

CARSON CITY, July 12, 1919.

HON. L.D. SUMMERFIELD, *District Attorney, Reno, Nevada.*

DEAR SIR: The Act of the Legislature of the State of Nevada which relates to gambling, Statutes of 1915, p. 462, has been carefully considered by me and, after verbal consultation with you, I have reached the following conclusions:

1. That poker, stud-horse poker, five hundred, solo, and whist may be lawfully played for money, with no limit as to stakes or amounts wagered, where the deal alternates and no percentage is taken.

2. That a flat rate or charge for chairs, tables, cards, lights, etc., having no reference or relationship to the stakes, wagers, or amounts in play, is lawful, and does not constitute taking a percentage.

The following suggestion offered by you should be followed:

That municipal corporations where charter authority is granted to license and

regulate lawful business, trades, professions, callings, and such gambling as is permitted by law, should and they are hereby recommended to pass ordinances licensing and regulating the said games when played in the manner aforesaid, with specific provisions for the revocation of such licenses for the violation of proper conditions to be therein set forth.

It is incumbent upon peace officers to see that the five legalized games are played in conformity with the law. The temptation is great for a house where said games are operated to run them on the percentage basis. This is a clear violation of the law and under the Act is a felony.

The policy of my administration will be to rigorously enforce this law as well as the other laws of this State.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

75. Public Schools—Corporal Punishment Permitted.

CARSON CITY, July 16, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: It is my opinion that school authorities have the right to inflict reasonable corporal punishment in the process of maintaining school discipline. I do not base my opinion upon the sections cited by you, but upon the general law on the subject as dictated by the decisions of various courts.

The law is given in 35 Cyc. 1137, in the following language:

As a general rule a school-teacher, in so far as it may be reasonable necessary to the maintenance of the discipline and reasonable rules and regulations, may inflict reasonable corporal punishment upon a pupil for insubordination, disobedience, or other misconduct; but a teacher cannot inflict corporal punishment to enforce an unreasonable rule, to compel a pupil to pursue a study forbidden by his parents, or to compel him to do something which his parent has requested that he be excused from doing, although the teacher may be justified in refusing to permit the attendance of a pupil whose parent will not consent that he shall obey the rules of the school. The infliction of corporal punishment by a teacher is largely within his discretion, but he must exercise sound discretion and judgment in determining the necessity for corporal punishment and the reasonableness thereof, under the varying circumstances of each particular case, and must adapt the punishment to the nature of the offense, and to the age and mental condition and personal attributes of the offending pupil, and, considering the circumstances and conditions of the particular offense and pupil, the punishment must not be inflicted with such force or in such a manner as to be cause it to be cruel or excessive, or wanton or malicious.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

76. Library Commission—Expenditure of Funds—Employment of Extra Help—Powers of Commission.

CARSON CITY, July 19, 1919.

HON. GEORGE A. COLE, *State Controller.*

DEAR SIR: Pursuant to your verbal request for an opinion as to the legality of employment of extra help in the State Library by the State Librarian, acting under the direction and authorization of the State Library Commission, I beg to advise you that the said Commission is given broad latitude in connection with the expenditure of library funds, and the said Commission assuredly has the power, when there is a congestion of work in the Library, to employ extra help for the purpose of accomplishing the purposes for which the Library exists.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

77. Revenue—Mines—Operating Expenses—Industrial Insurance Included Therein.

CARSON CITY, July 21, 1919.

Nevada Tax Commission.

GENTLEMEN: It is my opinion that industrial insurance costs may be legally included in operating expenses in arriving at net proceeds of mines.

I make this ruling for the reason that any other position would be manifestly unjust.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

78. Gambling—Prohibited Games.

CARSON CITY, July 24, 1919.

HON. ANTHONY JURICH, *Attorney at Law, Ely, Nevada.*

DEAR SIR: We have your letter of recent date, requesting our opinion as to the legality of maintaining black-jack or twenty-one and kindred gambling games.

In reply to your inquiry this office is of the opinion that such games are prohibited under the statute since they are not within the exceptions therein contained, and it may be that, if they are games depending upon lot or chance, even though they were within the exceptions, they would contravene the constitutional and statutory provisions relating to lotteries.

The lottery question is now before the Supreme Court in *Ex Parte Pierotti*, involving the operation of slot-machines, and it is quite probable that the law to be laid down in that opinion may be so broad that it will cover all gambling games depending in the play upon lot or chance, as contradistinguished from skill, in the operation.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

79. Prohibition Law—Sale of Certain Materials Not Prohibited—District Attorneys Required to be Present at Meeting of County Commissioners.

CARSON CITY, July 26, 1919.

HON. R.M. HARDY, *District Attorney, Lovelock, Nevada.*

DEAR SIR: We have your letter of the 25th instant, wherein you propound certain questions and we will answer them in the order named by you.

1. We have reexamined the provisions of the initiative prohibition law and are unable to find any provisions there prohibiting the possession or sale of materials which, though innocent in themselves, may be used with other materials to produce a liquor or beverage prohibited by the Act. The Act itself prohibits the manufacture, sale, etc., of liquor, and we do not think that its terms could be judicially extended to prohibit materials which would produce, when used according to formula, a result prohibited by the Act. Penal statutes are strictly construed, and it would be a very liberal construction, indeed, through which materials referred by you could be brought within the Act. We do not desire you to infer from this that, because these materials are not prohibited, the prohibited liquor or beverage may be manufactured therefrom. Such manufacture would be a violation of the law.

2. The reason why District Attorneys are required by general law to be present at all meetings of the County Commissioners, when considering bills, is not because of any power the District Attorneys may have upon the allowance or rejection of bills, but that they may advise the County Commissioners of the legal principles involved concerning such bills. The statutory provisions could hardly be said to be idle ones, because, when a spirit of cooperation subsists between county officials, as it should and as we know it does in Pershing County, the advice of the District Attorney in the meetings of the County Commissioners necessarily may tend to the good of the county.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

80. Revenue—Bullion Tax—Computation of Net Income of Mines.

CARSON CITY, August 2, 1919.

Nevada Tax Commission, Carson City, Nevada.

GENTLEMEN: Answering your inquiry as to what deductions may be made under section 3687, Revised Laws of 1912, in computing the net proceeds of mines as a basis of taxation, we have to advise you that under the section in question necessary repairs and replacements constitute a legitimate deduction, but these do not include, under any reasonable interpretation, construction costs and equipment of a mine. Accordingly, you are advised that the same should not be considered as items of deduction.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

81. Revenue—Widow's Exemption—Exemption Allowed Though Distribution of Estate Pending.

CARSON CITY, August 8, 1919.

HON. G.J. KENNY, *District Attorney, Fallon, Nevada*.

DEAR SIR: Replying to your letter of August 6, relative to widows' exemption from taxation under section 3621 of the Revised Laws of 1912, you are respectfully advised that in this State title to real and personal property vests in the heir immediately on the death of the ancestor, and that the District Court having jurisdiction thereof in probate does not create title, but merely deraigns it of record to the heir at law, and, accordingly, a widow who could otherwise bring herself under the section aforesaid would be entitled to the statutory exemption, notwithstanding that distribution of the estate is still pending.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

82. Revenue—Delinquent Tax Sale—Form of Advertising.

CARSON CITY, August 9, 1919.

HON. D.J. SULLIVAN, *State Auditor*.

DEAR SIR: Answering your letter of August 5, calling for an opinion regarding chapter 229, Statutes of 1919, relative to the uniformity of advertising of delinquent tax lists, we have to advise you as follows:

That the specifications in section 3 of the Act, regarding the contents of the notice of publication for 10 per cent in addition on the taxes delinquent, is apparently an inadvertence on the part of the Legislature, since in section 1 of the Act the penalty is there levied as 15 per cent, and this section 3 is merely a legislative scheme to enforce the payment of the delinquent taxes and the penalty levied as aforesaid.

Accordingly, that there may be the uniformity suggested in your letter, the notice of publication, besides the matters otherwise required, should contain substantially the following:

Fourth—And that fifteen per cent on such taxes, together with three per cent month on such taxes from the date of delinquency, and the cost of advertising, will be collected in addition to the original tax.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

83. Physicians—Physician Without License May Act as Internes, or Otherwise Aid, Under Certain Conditions.

CARSON CITY, August 11, 1919.

DR. S.L. LEE, *Secretary of State Board of Health.*

DEAR SIR: There is no legal obstacle or objection to Dr. R.A. Ostroff, a regularly licensed physician and surgeon under the laws of the State of California, who is a resident of Reno, Nevada, acting in the capacity of interne and otherwise aiding Dr. R.H. Richardson. He may so act without having a Nevada license, but he cannot present himself to the public as an independent practitioner until he has been duly licensed pursuant to an examination by the State Board of Medical Examiners.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

84. Public Schools—School Trustees—Recall Election Thereof Not Provided by Law.

CARSON CITY, August 12, 1919.

MR. CHAUNCEY W. SMITH, *Deputy Superintendent of Public Instruction, Fallon, Nevada.*

DEAR SIR: The question propounded by you to this office, as to whether or not a School Trustee, in a district having a voting population of less than one hundred, is subject to the recall provisions of the Constitution of the State of Nevada relating to that subject and the Act of the Legislature of 1913, supplementary thereof, I beg to advise that, as the State Legislature failed to make a requisite for any candidate for the office of School Trustee, in such a district, to file a petition for nominating therefor, a recall election cannot be had for such office. The Constitution clearly states: "The recall petition shall be filed with the officer with whom the petition for nomination to such office shall be filed, and the same officer shall order the special election when it is required."

In the absence of any action by the Legislature, requiring the filing of such petition and the designation of the officer who shall become the depository of a petition for a recall, I am compelled to decide that there can be no recall election. It may be that the courts may reach a different conclusion, and, through a process of judicial legislation, hold contrary to this opinion. The courts will be, probably, reluctant in this case, where the language of the Constitution and the statute on the subject of recall is so plain, to make a ruling that will be in conflict with the position herein taken.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

85. Public Schools—Yearly Salary of Teachers May Be Fixed—School Trustees Have Exclusive Power to Contract for Salary.

CARSON CITY, August 15, 1919.

HON. THOS. E. POWELL, *District Attorney, Winnemucca, Nevada.*

DEAR SIR: In regard to your inquiry as to whether or not a school board has the power to fix a yearly salary for a teacher, payable in twelve monthly installments, I beg to advise that I am of the opinion that such power exists. The law gives the school board full control of the subjects of salaries of teachers.

There is no limit fixed by law as to the amount of money that may be paid under the direction of a school board teacher for salary. If a school board, for the purpose of illustration, should fix the salary of a school principal at \$2,400, payable in ten equal monthly installments, which would be \$240 monthly, there would be no question of its validity. This being the case, it would be difficult to reach a conclusion that the board would be barred from fixing the same salary, but providing that it be paid in twelve equal monthly installments. In the latter case, the said principal would, during the vacation period, be absolutely within the control of the board as far as his employment is concerned and could order him to return to duty at any time.

The policy of paying teachers for every month in the year is wise and just and should be encouraged, and the law should be construed, if possible, to allow such a policy. There is assuredly no law which prohibits it, and I believe that the extensive power vested in school boards, as to fixing of salaries, allow this method.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

**86. Public Funds—State Livestock Commission—Bonds Procured Through Public Funds
Should Be Deposited With State Treasurer.**

CARSON CITY, August 16, 1919.

HON. ED. MALLEY, *State Treasurer of Nevada*.

DEAR SIR: In regard to your inquiry as to whether or not \$45,000 in United States Government bonds, purchased from the funds of the State Stock Commission, should be deposited in your office, I beg to reply in the affirmative.

Section 4327 of the Revised Laws relates to this subject in the following language:

The state treasurer shall securely keep in the safe provided for him for that purpose, in his office at the seat of government, all the public moneys, bonds and securities of the State appertaining to his office and shall not deposit any part or portion of the same with any individual, copartnership, or corporation.

In that the bonds mentioned were purchased from money of the State of Nevada, which money at the time of said purchase was under your custody and control, it seems conclusive that said bonds appertain to your office and should be held and kept by you.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

87. Revenue—Tax Due—Notification to Taxpayer by Mail.

CARSON CITY, August 20, 1919.

HON. D.J. SULLIVAN, *State Auditor*.

DEAR SIR: In answer to your request for an opinion on the question propounded by a County Treasurer as to whether or not post-cards should be mailed to every taxpayer whose address is known, notifying him of the amount of taxes due, I beg to advise that the law requires the mailing of such a post-card to every such taxpayer.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

88. Revenue—Delinquent Taxes—No Penalty on Second Installment.

CARSON CITY, August 20, 1919.

HON. D.J. SULLIVAN, *State Auditor*.

DEAR SIR: In regard to your inquiry as to what penalty attaches in a case where a taxpayer pays the first installment, but fails to pay a second installment, I beg to advise there is no penalty in such a case.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

89. Revenue—Delinquent Taxes—Penalty and Interest—Costs of Sale—No Penalty on Second Installment.

CARSON CITY, August 22, 1919.

HON. J.W. WHITE, *District Attorney, Hawthorne, Nevada*.

DEAR SIR: If a taxpayer fails to pay the first installment of his taxes forthwith become due and payable and become the subject of a penalty of 15%, and 3% monthly.

If a taxpayer pays the first installment, but becomes delinquent as to the second installment, no penalty attaches to the latter.

In any case where real property is sold for taxes, the cost incident to the sale attaches to the property.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

90. Lotteries—Punch-Board Is a Lottery.

CARSON CITY, August 23, 1919.

MR. A.P. CANNON, *Deeth, Nevada*.

DEAR SIR: Replying to your favor of the 21st instant, we have to advise you that the scheme or device commonly known as a punch-board is a lottery and, therefore, against the law.

It makes no difference if a prize is given with each punch. It is the distribution of prizes by chance of different values which brings the scheme under the statute regulating lotteries.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

91. Prohibition Law—National and State Statutes Relating to Making of Wine.

CARSON CITY, August 30, 1919.

MRS. SILVIO PAGNI, *Mound House, Nevada*.

DEAR MADAM: Replying to your favor of the 29th instant, we have to advise you concerning your inquiries in the order named by you.

1. Grapes may be shipped into this State for the purpose of making wine or any other purpose.
2. Under the laws of this State, farmers may make wine for their own use in any amount whatsoever.

It becomes unnecessary to answer your third question as to the removal of wine made.

You will, therefore, appreciate the fact that the laws of the United States control this situation, and that, if wine were made as suggested by you, its laws may be violated.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

92. Revenue—County Assessor Failing to Assess Lands—Liability—Procedure.

CARSON CITY, October 1, 1919.

HON. G.J. KENNY, *District Attorney, Fallon, Nevada*.

DEAR SIR: Answering your letter of September 25, 1919, relative to the construction of section 3625 of the Revised Laws of 1912 appertaining to liability of the County Assessor for failing to assess certain lands listed with him by the owners thereof, and the enforcement of such liability, we have to advise you as follows:

After consulting the Attorney-General, we have come to the conclusion that, on the facts submitted, the latter part of the section mentioned can hardly be made to apply, since all the available data was before the County Assessor for the making of due and proper assessment of the lands in questions; and therefore we do not appreciate how the Board of County Commissioners can with propriety excuse the official of record, as you intimate they are likely to do.

On further investigating and at the suggestion of the Tax Commission, it seems there is another remedy available under the *ninth* section of the Tax Commission law, a copy of which is enclosed for your information. If you will prepare and forward direct to the Commission all the necessary facts in the premises in sworn form, it may be that, under this section, the Commission will order the property to be listed and assessed.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

93. Revenue—Delinquent Tax Sale—Misdescription on Assessment Roll—Treasurer Bound by Record.

CARSON CITY, October 11, 1919.

HON. G.J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: Your letter informs me that a certain parcel of land, described as being in Block B, became delinquent; that thereafter the same was sold because of such delinquency, and the Treasurer gave a deed to the purchaser, describing the property as being in Block B.

You further inform me this parcel of land is in realty in Block A. You have propounded the query as to whether or not the Treasurer has the power to give a corrected deed, describing the property as being in Block A. I desire to advise you that the Treasurer has no such power. He is bound by the description given in the assessment roll.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

94. State Engineer—Water Rights—Right to Water Commences as of Date of Appropriation.

CARSON CITY, October 14, 1919.

COL. JAMES G. SCRUGHAM, *State Engineer.*

DEAR SIR: We note the opinion of Hon. Geo. B. Thatcher, relating as to when a right to waters by appropriation commences.

While there are many authorities upon this subject, it is apparent that the right to the water relates to the initiation by appropriation in the method prescribed by law and not to the time of application of the water to a beneficial use, particularly for the reason, if the doctrine were otherwise, that the initiation of the appropriation might become futile. However, the right once initiated is subject to forfeiture if future provisions of law are not pursued, but, when once the law has been fully complied with, the right becomes irrevocable and thereafter may only be lost by abandonment or for some similar reason.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

95. Revenue—Nevada Tax Commission—Property Escaping Taxation—Commission May Order Same Subsequently Assessed.

CARSON CITY, October 27, 1919.

Nevada Tax Commission.

GENTLEMEN: We have a letter of the District Attorney of Churchill County of October 4, to which is attached the affidavit of C.M. Way, relative to certain property of the Douglass-

Renfro Land Company, a corporation, escaping taxation for the year 1918, transmitted to us by you.

We have examined the inquiry as to whether or not your Commission may order the proper officer to place this property on the roll under subdivision 9 of section 3 of the Nevada Tax Commission law (Statutes of 1919, chap. 118).

The only question presented, this property having escaped taxation for the year 1918, is whether or not it is now too late to place it on the assessment roll. We have examined decision law upon the subject, wherein similar provisions of law in other States have been acted upon by commissions similar to your Commission, and these decisions hold that such property escaping assessment and taxation may be placed upon the roll at any time, and we accordingly are of that opinion.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

**96. Revenue—Nevada Tax Commission Has Power to Raise or Lower Assessments,
Where Board of Equalization Fails to Act.**

CARSON CITY, October 27, 1919.

Nevada Tax Commission.

GENTLEMEN: Your letter of the 23d instant propounds two queries. The first one relates to your power to reduce the assessment of the Minerva Tungsten Mines Company, it being positive that a mistake was made in the assessment, and that it would be unjust to compel the company to pay taxes based upon the existing assessment valuation.

The second query presents the converse situation, which is as to your power to raise an assessment that is flagrantly disproportionate to the real value of the property and to other property of a similar character.

Your queries have taken into consideration the fact that certain powers are vested in the State Board of Equalization, which board has ended its session and can no longer act as such a board during the present year.

I am of the opinion that under an by virtue of section 6 of the Nevada Tax Commission law, as it now exists, your Commission now possesses the powers given by law to the said Board of Equalization shall fail to perform the duties enumerated in this section, the Nevada Tax Commission may make such equalization as will be necessary. This provision is complete in its application, and is not one of limitation. The section does not attempt in any respect to fetter the powers of the Tax Commission when the Board of Equalization is powerless to act. In the two cases mentioned in your letter you have the power to lower the assessment valuation in the one case and to raise the assessment valuation in the other.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

97. Lotteries—Punch-Board Are Lotteries.

CARSON CITY, October 29, 1919.

HON. C.P. FERREL, *Sheriff, Reno, Nevada.*

DEAR SIR: We have your letter of October 27, inquiring for our official opinion as to whether or not the scheme or device known as a “punch-board” is a lottery.

We assume that this inquiry is made through you from your correspondent on account of the recent decision of the Supreme Court of this State holding that a nickel-in-the-slot machine is not a lottery, but is permitted by law. We are not inclined to extend the opinion in that case beyond the subject-matter thereof, and are in absolute accord that case beyond the subject-matter thereof, and are in absolute accord with the ruling of the District Attorney of Washoe County holding that such slot-machines may only be operated with nickels for cigars or drinks, a nickel or a cigar or a drink having a well-defined meaning in the statute permitting such machines; but until the Supreme Court the statute permitting such machines; but until the Supreme Court of this State decides that other schemes or devices pronounced lotteries in other jurisdictions are not lotteries, we are inclined to follow the rulings in such jurisdictions holding such other schemes or devices lotteries and inhibited both by organic and statute law of this State, among which are the “punch-boards” referred to by you. These are lotteries pure and simple, and it has been so decided in the cases of *In Re Kahn*, 67 South, 35 and *Brewer v. Woodham*, 74 South, 763.

The scheme or device referred to in your letter depends upon chance, and nothing more, for the distribution of the larger prizes mentioned, and this fact makes it contravene the Constitution and statute.

In conclusion, we adopt the language of *Dunn v. People*, 40 Ill, 467, as *Hawley, J.*, adopted it, in *In Re Overton*, [16 Nev. 136](#), as follows:

If it differs from ordinary lotteries, the difference lies chiefly in the fact that it is more artfully contrived to impose upon the ignorant and credulous, and is, therefore, more thoroughly dishonest and injurious to society.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

98. Public Schools—Unapplied Fund in Budget Is a Surplus, and May be Expended by Board of School Trustees.

CARSON CITY, October 30, 1919.

HON. W.J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your inquiry as to whether or not funds set aside in the budget, for the payment of teacher’s salary for the school at Jack’s Valley, may be used for the payment of the purchase price of an automobile to transport the pupils of that locality to school at Carson City, Nevada.

From the facts submitted it seems that when the budget was prepared it was the intent of the Trustees of Jack’s Valley school to employ a teacher for the school, but, after further consideration and it being for the best interest of the pupils, an arrangement was made, as permitted by law, to have these pupils attend the school at Carson City, and to that end the automobile in question was purchased. In view of the fact that the end for which the moneys specified in the budget is being accomplished by attendance of the pupils at Carson City, and that

no circumstance can arise whereby a call may be made upon the moneys for the employment of teachers, in this case we hold that this money may be used in payment for the automobile as it becomes a surplus, since the specific purpose for which it has been designated can no longer exist.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

99. Public Schools—Board of School Trustees Bound by Budget—Purchase of Certain Equipment Prohibited.

CARSON CITY, November 6, 1919.

MR. L.E. McFADDEN, *Superintendent of Fallon Elementary Schools, Fallon, Nevada.*

DEAR SIR: Replying to your inquiry of November 5, you are respectfully advised that since the budget system has been adopted by the Legislature for the government of official bodies, including Boards of Trustees of School Districts, a Board of School Trustees cannot legally order and pay for out of school funds play equipment and apparatus, such as footballs, basketballs, baseballs, bats, tubular-steel play apparatus, etc., unless funds for the payment of the same have been duly included and provided in the budget.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

100. Prohibition Law—Railroads Permitted to Deliver Denatured Alcohol.

CARSON CITY, November 13, 1919.

Virginia and Truckee Railway Company, Carson City, Nevada.

GENTLEMEN: Mr. A.G. Meyers of this city has called for a ruling of this office as to whether or not you are prohibited under the initiative prohibition law from delivering to him a consignment of denatured alcohol.

This question has arisen in this office during the tenure of Hon. George B. Thatcher, Attorney-General, in another form, upon which an opinion was rendered (Biennial Report of the Attorney-General, 1917-1918, p. 10), and upon the authority of that opinion, in which we concur, we hold that the delivery of a shipment of denatured alcohol is not prohibited. We enclose you a copy of the opinion referred to.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

101. Public Schools—Public-School Teachers' Retirement Fund—Deduction From Salaries Therefor.

CARSON CITY, November 15, 1919.

Public-School Teachers' Retirement Salary Fund Board.

DEAR SIR: We have your letter, propounding the inquiry as to whether or not those teachers who were teaching half-time and drawing pay accordingly should be held liable for full contribution to the Public-School Teachers' Retirement Fund.

Section 4 of an Act entitled "An Act to provided for the payment of retirement salaries to public-school teachers of this State, and all matters properly connected therewith," approved March 23, 1915, provides that there shall be deducted each school year, commencing September, 1915, from the salary of every teacher subject to the burdens of the Act \$9, and imposes official duty for the making of such deduction at the times of payment.

No distinction is made between teachers teaching full-time and half-time and drawing pay accordingly, but as the Act specifies that the deduction shall be made at the rate of \$9 each school year, we are of the opinion that the deduction is intended to be made against the salaries of all teachers at the rate of \$9 if their teaching service covers a period of the minimum school year, which is six months.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

102. Pollution of Streams—Dumping of Tailings, etc., Therein.

CARSON CITY, November 19, 1919.

HON. C.W. GROVER, *State Fish and Game Warden.*

DEAR SIR: We have your request for our official opinion, under date of the 19th instant, inquiring whether or not the dumping of tailings into any public stream of this State is contrary to law.

The Ac relating to the pollution or contamination of the public waters of this State (Stats. 1917, p. 412) provides that it shall be unlawful to deposit in such waters any sawdust, pulp, oil, rubbish, filth, or poisonous or deleterious substances which affect the health of persons, fish or live stock, or renders the said waters unpalatable or distasteful.

Accordingly, if such tailings are in any wise mixed with poisonous or deleterious substances when deposited, it is unlawful to deposit the same in any of the public waters of this State. Tailings permitted to be so deposited must be free from such substances.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General.*

103. Public Schools—Board of School Trustees Bound by Budget—Purchase of Certain Equipment Prohibited.

CARSON CITY, November 25, 1919.

MR. L.E. McFADDEN, *Superintendent of Fallon Elementary Schools, Fallon,*

Nevada.

DEAR SIR: This office is compelled to stand upon the ruling made by it, dated November 6, 1919.

The Object of the Budget Act is to definitely inform the public as to the specific application that will be made of the moneys raised for school the specific application that will be made of the moneys raised for school purposes. The articles mentioned by you cannot come within the designation of school supplies, stationery, etc. It may be that in certain particulars the Act mentioned operates to the detriment of certain schools. This office is, however, powerless to amend, change, or modify a legislative enactment, and we are therefore compelled in this instance to decide that the money raised pursuant to the budget cannot be used for the purposes mentioned by you.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

104. Revenue—State Charges—County Recorders May Not Collect Fees for Recording State Documents.

CARSON CITY, December 18, 1919.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: Your inquiry as to the legality of a bill rendered by the County Recorder of Ormsby County against the State of Nevada, for the recordation of a deed which conveys property to the State of Nevada, has been considered by me.

I am of the opinion that the State, by reason of its sovereignty, is exempt from the payment of any such charge.

The fee being a tax imposed solely for revenue, upon well-settled rules of law the state could not be included unless expressly named. (*State v. Rhodes*, [6 Nev. 373.](#))

In this same case it is intelligently said:

And a tax levied by the State upon itself, or its own transactions, is so anomalous that it cannot be supposed it was intended, unless upon the clearest language. A more appropriate application of the rule of the common law could not be made than to cases of this kind.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General.*

105. Architect, State—Expenses, How Paid.

CARSON CITY, December 22, 1919.

Honorable Board of Regents, University of Nevada, Reno, Nevada.

DEAR SIR: Replying to your inquiry, this day submitted to us through your controller as to the payment of the expenses of the State through your controller as to the payment of the expenses of the State Architect incident to the Teacher-Training Building at the University, we

have to advise you that under date of April 3 we rendered an opinion to the State Engineer in the premises, stating among other things: "That expenses incident to the office of State Architect should be paid in the same manner as the salary of such official is paid." We adhere to that opinion.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.