

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1922

86. Public Schools--Bond Issue Approved --Taxation for Payment Thereof.

CARSON CITY, January 6, 1922.

HON. GEO. W. FRANKS, County Treasurer, Pioche, Nevada.

Dear Sir: After a careful review of all the proceedings relative to the Caliente School District bond issue, I am satisfied that they are regular and that no legal complications can arise therefrom. Included in this declaration is the recent sale of said bonds. The issue was made prior to January 1, 1922, and the sale thereof was effected on December 31, 1921, when certain departments of the state government accepted an offer of sale of said bonds.

If I should be called upon to render an opinion in regard to the construction and interpretation of section 197 of the School Code, I would rule that where such bonds are issued and sale have occurred after the first of the year would not preclude a levy by the Board of County Commissioners; that the Legislature in using the language "and in the calendar year following the year in which the bonds are issued * * * shall levy and assess a special tax" did not contemplate the denial of a levy for the purpose of raising money to redeem bonds issued and sold prior to the time fixed by law for the making of said levy. It would only exclude the making of a levy for the payment of bonds issued and sold after the time fixed by law for the making of the necessary levy. Laws must be reasonably construed and interpreted, and I believe that the expressions herein given conform to reason and justice.

Yours very truly,

L. B. FOWLER, Attorney-General.

87. Public Officers--Removal from Office--Procedure Defined--State May Render Assistance in Certain Cases to Counties in Discharge of Public Duties.

CARSON CITY, January 7, 1922.

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

Sir: Section 2851 of the Revised Laws of the State of Nevada provides for the removal from office of any official who shall refuse and neglect to perform any official acts. The section reads as follows:

If any person now holding or who shall hereafter hold any office in this State, who shall refuse or neglect to perform any official act in the manner and form as now prescribed by law, or who shall be guilty of any malpractice or malfeasance in office, may also be removed therefrom as hereinafter prescribed.

Section 2852 provides for certain summary proceedings based upon a duly verified complaint. The complaint may be verified by any person.

Section 2853 provides for the filling of the vacancy, and Section 2854 prohibits an officer removed from filling office during the pendency of an appeal.

Necessarily, a strong case must be made against a public officer who is charged with malpractice, malfeasance, or any failure in the performance of his duties. No court would enter a judgment of removal in the absence of very strong evidence going to establish the guilt of the accused.

Section 6894, 6907, both inclusive, of the Revised Laws, provide that “an accusation in writing against any district, county, township, or municipal officer, for wilful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.”

Section 6903 recites that the trial must be by a jury. The law of this State provides for three methods for removal from office. One by accusation made by grand jury; one by impeachment by the Assembly, and one by accusation by a private citizen. The last method only permits of summary proceedings. Our law relative to the removal of a public officer from office is declared to be constitutional in the case of Gay v. District Court, 41 Nev. 330.

In answer to the first query propounded in your letter, I beg to advise that if any public officer of the county of Nye has failed and is failing to perform the duties connected with his office, proceedings may be instituted for his removal in the manner provided for by law. If the situation in Tonopah is such that the local officials cannot control it, then it is within your power to furnish them assistance through the State Police. The grand jury is possessed of the power to present formal charges against a negligent official. If such negligence does not exist and state assistance is required, then the grand jury should formally call upon you, as Chief Executive, for assistance.

Your second query is answered by the law cited in this letter. No special duties are imposed upon any official of the State relative to the removal of a county official for negligence in office.

A declaration of martial law by an executive empowered to make such declaration should necessarily only be declared when a state of affairs has arisen which is beyond ordinary civil control.

The Tonopah situation presents the following complications: Specific evidence of

misconduct in office on the part of any official has not been presented to you. If the grand jury is possessed of any such evidence, it should take action in the matter. Furthermore, the purported facts presented to you are more conclusions of certain persons than specific statement of facts indicative of negligence on the part of local officials. If the grand jury or people of Nye County desire state assistance, they should make a request based upon as full and complete a statement of facts as it is within their power to furnish.

Yours very truly,

L. B. FOWLER, Attorney-General.

88. Noxious Animals--County Taxation Therefor--Same May be Included in Budget.

CARSON CITY, January 12, 1922.

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

Dear Sir: The question as to whether or not a tax should be levied by the County Commissioners of your county for the purpose of creating a county rabies fund appears to be within the control of the Commissioners themselves. It is evidently the intent of the Act of the Legislature entitled "An Act providing for the eradication of noxious animals in the State of Nevada," etc., Stats. 1921, p. 230, that such a fund shall be raised by taxation in any county desiring state support to carry out the purpose of the Act mentioned. The Legislature of 1917 having repealed the Act which limited the tax rate of a county to 70 cents, there seems to be no specific limit fixed by law relative to the tax rate of a county, except as provided in section 3762 of the Revised Laws. It therefore follows that the Board of County Commissioners of your county may include in the budget an estimate of the money to be required for the county rabies fund and to make the necessary levy therefor.

Yours very truly,

L. B. FOWLER, Attorney-General.

89. Public Health--Quarantinable and Placardable Diseases--Case Stated Not Quarantinable.

CARSON CITY, January 18, 1922.

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

Dear Sir: We have your request, enclosing correspondence of Dr. John E. Worden, County Health Officer of Elko, calling for an official opinion as to whether or not the statutes of this State, or the rules and regulations promulgated thereunder relative to public health, classify

chicken-pox as a quarantinable or placardable disease, and whether or not an adult, living in the same house where a child has this disease during its continuance is precluded by law from following her profession of a school-teacher.

A thorough examination of the statutes, and the rules and regulations of the Nevada State Board of Health promulgated thereunder classify chicken-pox as a placardable disease only, and the only precautions in regard thereto are fully named and a following thereof would not subject the adult school-teacher from pursuing her profession. The disease is not a quarantinable one, but a placardable one, and this school-teacher should not be subject to the rules and regulations applicable to a quarantinable disease.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

90. Elections--Absent Voting--Procedure Defined.

CARSON CITY, January 19, 1922.

A. CARLISLE & CO., Reno, Nevada.

Gentlemen: You are hereby advised that under the Absent Voter Act of 1921, Stats. 1921, p. 153, an absent voter can only open the sealed envelope, provided therein to be sent to an absent voter, in the presence of the postmaster or County Clerk. Owing to the fact that the law definitely provides that said sealed envelope is to be opened only in the presence of the two officers specified, the injection of "Justice of the Peace," relative to the remailing of the ballot, cannot change the law in the respect mentioned. The Act should be read by eliminating the words "Justice of the Peace." The ruling herein given means that no complications can result if a voter follows the determination herein reached, while any other action on the part of the elector may invalidate his ballot.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

91. Emergency Loan--Act of School Trustees Should Be Transmitted to Board of County Commissioners--Tax for School District Does Not Include Tax for Emergency Loans.

CARSON CITY, January 20, 1922.

M. J. BURR, Deputy Superintendent of Public Instruction.

Dear Sir: We reply to your inquiries in the order named:

(1) The levy of a special tax to cover an emergency loan for a school district must be made and levied upon its records by resolution of its Board of School Trustees and this record transmitted, together with copies of the resolution, duly approved for an emergency loan, to the Board of County Commissioners of the county wherein the school district is situated, for the purpose of extending the same by proper resolutions in its tax levies.

(2) "When, in the judgment of the Board of School Trustees of any district, the school moneys to which such district shall be entitled for the coming school year will not be sufficient to maintain the school properly and for a sufficient number of months, said board shall have power to direct that a tax of not more than twenty-five cents on the one hundred dollars of assessed valuation of such district shall be levied."

The tax levied for any emergency loan is not included in the tax provided for in the quoted language.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

92. Motor-Vehicle Law--Provision for License Defined and Must Be Pursued.

CARSON CITY, January 26, 1922.

HON. GEO. BRODIGAN, Secretary of State.

Dear Sir: We have your inquiry, calling for our official opinion as to the interpretation to be placed upon subdivision "b" of section 2 of the motor-vehicle laws of Nevada. There is no ambiguity in the language of this subdivision. Its wording is plain and needs no interpretation; consequently, every truck, trailer or semitrailer is to be licensed at the rate of 35 cents per hundred pounds of weight or major fraction thereof, and, in addition thereto, the body-allowance weight and the rated load-weight capacity. This would include trailers attached to pleasure cars used for hauling camping equipment; therefore, an owner of such truck, trailer or semitrailer, on applying for such license, must furnish you with its actual weight and its potential carrying-weight capacity upon which you should compute the license fee provided for in the statute. You should issue a serial numbered license for such vehicles.

Answering your further inquiry, as to whether or not a transfer of an automobile may

include the transfer of the license plate, you are advised that the statute expressly prohibits such transfer of the license plate and makes it the duty of the owner transferring the care to forward such license plate to the Secretary of State. This is provided for in section 10 of the Act, reading as follows:

Upon the transfer of ownership of a vehicle its registration shall expire, and it shall be the duty of the original owner to notify the Secretary of State immediately of the name and address of the new owner or dealer, and return the registration card and license plates to the said Secretary of State.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

93. Criminal Law--Murder--Death-Watch Not Furnished by Law--Warden Should Use His Implied Discretion.

CARSON CITY, January 27, 1922.

HON. R. B. HENRICHS, Warden Nevada State Prison.

Dear Sir: We have your inquiry as to whether or not a death-watch is provided by statute for criminals in your custody awaiting capital punishment. There is no statute upon the subject, but a death-watch could very appropriately be said to be placed upon such criminals by custom as a precautionary measure to prevent a miscarriage of justice. If there is no express law upon the subject, you certainly, as Warden, have implied powers--not only to place such death-watch upon criminals, but also to incur the necessary expense therefor, payable out of the funds appropriated for your department, since responsibility is upon you by operation of law and judgment by a court of competent jurisdiction to carry out the sentence imposed.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

94. Criminal Law--Gambling--Punch-Boards Are Lotteries and Are Prohibited.

CARSON CITY, January 28, 1922.

HON. THOS. A. BRANDON, Winnemucca, Nevada.

Dear Sir: Replying to your letter of the 27th instant, you are respectfully advised that this department has ruled that so-called punch-boards, whether or not here is a resultant prize in the operation which itself or the value thereof depends upon chance, are lotteries.

We call your attention to Opinions 8 and 90, contained in the Biennial Report of the Attorney-General for the years 1919 and 1920. The decision law in other jurisdictions is conclusive on the subject.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

95. Motor-Vehicle Law--Law Deficient--Failure to Obtain License May be Reached by Civil Proceedings.

CARSON CITY, February 15, 1922.

HON. HARLAN L. HEWARD, Assistant District Attorney, Reno, Nevada.

Dear Sir: It has been my endeavor to find some provision of law whereby a violation of the license provisions of the Motor-Vehicle Act of 1921 can be enforced by criminal prosecution. The situation in this respect is hopeless. It will be necessary, therefore, to enforce the collection of said license tax against delinquents by the institution of civil proceedings.

Yours very truly,

L. B. FOWLER, Attorney-General.

96. Noxious Animals--Extent of State Appropriation for Destroying Same Stated.

CARSON CITY, February 23, 1922.

A. J. REED, Agricultural Agent, Churchill County Farm Bureau, Inc., Fallon, Nevada.

Dear Sir: Senator Kent is in error in regard to the existence of a \$35,000 specific appropriation made for the purpose of combating rodents and predatory animals.

Section 4 of an Act of the Legislature entitled "An Act providing for the eradication of noxious animals in the State of Nevada," etc., Stats. 1921, p. 230, reads as follows:

For the purpose of providing funds for the work mentioned in this Act, it is hereby provided:

First--That for the calendar year 1921, there is appropriated all moneys not theretofore expended which have been or shall be realized from the proceeds of the special ad valorem tax provided for in chapter 51, Statutes of 1917, as amended by chapter 29, Statutes of 1919, as assessed in the calendar year 1920, together with such further appropriation as may be made by the Legislature from the general fund of the state treasury.

Second--That for the calendar year 1922 and thereafter there is hereby appropriated from the general fund of the state treasury a sum of seven thousand and seven hundred and twenty-five (\$7,725) dollars.

I think that the law herein quoted is the only law which relates to appropriations for the purposes mentioned in your letter.

Yours very truly,

L. B. FOWLER, Attorney-General.

97. State Engineer--Statutes Fixing Time of Filing Protests, Etc., Must Be Strictly Construed, as State Engineer Has No Inherent Powers.

CARSON CITY, February 23, 1922.

HON. J. G. SCRUGHAM, State Engineer.

Dear Sir: We have your favor of the 21st instant, requesting our construction of section 62 of the water law, which provides that the State Engineer shall receive and file duly verified protests against the granting of an application within thirty days after the last date of publication.

The statute in this regard should be strictly construed, as the State Engineer has no inherent powers and, therefore, if any protests are tendered to you for filing after the statutory period of thirty days, you should not file the same or take any official cognizance thereof.

Yours very truly,

L. B. FOWLER, Attorney-General.

98. University of Nevada--Tuition Fees May Not Be Charged to Bona Fide Residents--Residence Is Matter of Act and Intent.

CARSON CITY, February 24, 1922.

CLEMENT G. CAFFREY, Reno, Nevada.

Dear Sir: We have your letter relating to tuition fees fixed by the Board of Regents under the Act approved February 17, 1921.

It is the ruling of this department that, under this Act, tuition shall be free to all bona fide resident students. A construction otherwise would operate as a denial of the qual protection of the law to residents of Nevada. Of course, residence is a question of intent and can only be established by all the surrounding circumstances in each particular case. A student coming here and claiming to have established a residence would have the burden of proving clearly and convincingly that fact in the face of the terms of the statute.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

99. Motor-Vehicle Law--Licenses--Description of Vehicle to Be Filed with Secretary of State--License Void Upon Transfer of Ownership.

CARSON CITY, March 14, 1922.

HON. GEORGE BRODIGAN, Secretary of State.

Dear Sir: The Act of the Legislature entitled "An Act regulating automobiles or motor vehicles in public roads," etc., Stats. 1921, p.375, requires the owner of every automobile, motorcycle or other similar motor vehicle, to file with you, as Secretary of State, a brief description of the vehicle to be registered, including the name of the maker, factory number, motor number and weight of such car as stated by the respective makers. This becomes an established record in your office and cannot be the subject of alteration. The correctness of the facts must be ascertained by the applicant prior to filing. If an error is made by him, the only remedy is to file a new application which will necessitate the payment of an additional fee. The transfer of ownership of a registered vehicle works an immediate expiration of the registration, and the owner must forthwith return the registration card and license plates to you. The purchaser must procure a new registration card and license plates.

Yours very truly,

L. B. FOWLER, Attorney-General.

100. Public Schools--Teachers' Salaries--Teachers' Contracts Are Valid Obligations and Funds for Payment of Their Salaries May Not Be Diverted When Set Aside in Budget.

CARSON CITY, March 18, 1922.

M. J. BURR, Deputy Superintendent of Public Instruction.

Dear Sir: We have your inquiry calling for our official opinion upon the following statement of facts:

Genoa School District No. 2, Douglas County, Nevada, has entered into the usual form of contract engaging teachers for a period of nine months, and the Board of School Trustees proposes to reduce that period to eight months for the purpose of paying other demands with the moneys reserved from the teachers' salaries.

You ask may this be lawfully done. We answer in the negative. The contract between the teachers and Board of School Trustees is a valid and subsisting contract according to its terms, and cannot be rescinded, nor can any of the funds provided for the payment of teachers' salaries be applied to any other purpose.

We note that Genoa School District No. 2, under date of February 21, 1921, for the school year July 1, 1921, to June 30, 1922, as provided by law, has duly filed its district-school budget containing therein the sum of \$2,070 for teachers' salaries. Section 10 of the Act, relating to the fiscal management of counties, cities, towns, school districts, and other governmental agencies, approved March 22, 1911, as amended, Stats. 1921, 327, provides:

It shall be unlawful for any governing board or any member thereof or any officer of any city, town, municipality, school district, county high school, or high-school district, or educational district to authorize, allow, or contract for any expenditure unless the money for the payment thereof has been specially set aside for such payment by the budget. Any member of any governing board or any officer violating the provisions of this section shall be removed from office in a suit to be instituted by the City Attorney in the case of cities, and by the District Attorney in cases of towns, school districts, county high schools, or high-school districts, or educational districts wherein such officer or member of the governing board resides, upon the request of the Attorney-General or upon the complaint of any interested party.

Accordingly, the fund in said budget for teachers' salaries may not be diverted from the purpose named therein either by the Board of School Trustees or the County Auditor whose duty it is to draw warrants for legal claims against the sums provided in the district-school budget. Should they violate this provision of law, they will be amenable to the penalties prescribed therein.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, Deputy Attorney-General.

101. Insurance Companies, Foreign, Not Qualifying--Policy Valid, But Jurisdiction in Judicial Proceeding Could Not Be Obtained without Resident Agent or by Consent.

CARSON CITY, March 20, 1922.

HON. GEO. A. COLE, State Insurance Commissioner.

Dear Sir: We have your favor transmitting a letter from the Reno National Bank, calling for our official opinion on the inquiry propounded as follows:

What kind of a situation would we be placed in, in case of a fire on property covered by insurance in a company not authorized to do business in the State of Nevada in case the insurance company in question refused to pay the claim?

The answer to this inquiry is severable:

First--Irrespective of the fact that the insurance company in question had not qualified to do business in the State of Nevada, the contract of insurance nevertheless would be valid and the liability of the insurance company would be fixed and could be judicially determined in accordance with the policy.

Second--However, the determination and enforcement of the liability under the policy in such insurance company could not be had in the courts of the State of Nevada without its consent because, the company not having qualified to do business in the State of Nevada or not having appointed its agent upon whom process might be served, no jurisdiction could be obtained over such insurance company by constructive service or process, as the action would necessarily seek a recovery *in personam*. In this connection your attention is called to Opinion 183, Biennial Report of the Attorney-General, 1919 and 1920, wherein this language is used:

After considerable research and due consideration, we beg to advise you that no effective legal proceedings may be brought either in the state or federal courts of Nevada, for the reason no jurisdiction over the offending corporation can be obtained therein by constructive service of process.

The process of this State, where the judgment is to operate *in personam*, must be personally served within its confines; or, if federal jurisdiction is sought to be obtained, the proceedings must be brought in that district of which the offending corporation is an inhabitant. Accordingly, under the facts submitted, proceedings could only be prosecuted either in the state courts or in the federal courts where the company referred to by you is a resident and inhabitant.

Accordingly, while the contract of insurance would remain valid, the liability thereunder without the consent of the insurance company could only be enforced wherever process might be served upon which to predicate a valid judgment *in personam*.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

102. Revenue--State Racing Commission--Excess Funds of Commission Should Be paid into General Fund of State Treasury.

CARSON CITY, March 25, 1922.

NEVADA STATE RACING COMMISSION, Reno, Nevada.

Gentlemen: His Excellency, the Governor, has transmitted to this department your communication of the 20th instant in regard to a surplus of moneys arising under the law creating the Nevada State Racing Commission. This surplus appears to be something like \$6,755.40, and your inquiry is as to the disposition thereof.

Accordingly, to consummate the purpose of the Act creating your commission, you are entitled to use and apply such sums out of this balance as could necessarily be applied under the Act creating your Commission, and we see no reason whatsoever that, if you turn in the balance of \$6,000 you could not retain the sum of \$755.40 for possible expenses that might occur; in fact, we think the amount that you request to be retained is abnormally reasonable. Accordingly, you should transmit to the State Treasurer, to be applied to the general fund of the State, this balance. This balance cannot be applied under the Act to the Department of Highways, for the reason that that Department has received its full quota under the Act.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

103. Elections--Registration--Designation of Elector--Elector Not Designating Party Affiliations May Not Vote at Primary Elections for Party Candidates.

CARSON CITY, March 28, 1922.

A. CARLISLE & CO., Reno, Nevada.

Dear Sirs: The law provides that the absent voter, who is duly registered, may vote at a general, special, or primary election. The registration law applies in the same way to an absent voter as it does to any other voter. The general registration Act provides that if an elector desires to vote at a party primary he shall designate his party affiliation. The designation given by him is controlling, and he can only vote in the primary of the party for which he is registered.

Section 3 of the absent-voter law apparently in parenthetical form seeks to give greater latitude in this respect to absent voters than exists in other voters. I do not think that such was the intent, purpose, or desire of the Legislature. Consequently, it is my ruling that the general registration law applies in this respect, and that the language referred to in section 3 of the absent-voter law has no valid effect.

Yours very truly,

L. B. FOWLER, Attorney-General.

104. Public Employment--A Partnership Composed of a Citizen and an Alien May No Be Employed on Public Work.

CARSON CITY, March 29, 1922.

HON. LeROY F. PIKE, City Attorney, Reno, Nevada.

Dear Sir: The Act of the Legislature entitled "An Act to amend an Act entitled 'An Act to prohibit the employment of any person except a native-born or naturalized citizen of the United States by any officer of the State of Nevada, or any political subdivision of the State.'" etc., Stats. 1921, p. 205, is constitutional. Heim v. McCall, 230 U.S. 175.

It applies to contractors for public work for the reason that the word "employ" must be defined in order to give effect to the intent and purpose of the Act in a broad sense.

In State v. Gohl, 46 Wash. 408, also reported in 90 Pac., the Supreme Court in Washington, in considering a statute, follows the definition of "employ" given by Webster: "to use; to have in service; to cause to be engaged in doing something; to make use of an instrument, a means, a material, etc., for a specific purpose."

In the case of the United States v. Morris, 39 U.S. 464, the Court uses the following language: "to be employed in anything, means not only the act of doing it, but also to be engaged to do it; to be under contract or orders to do it."

These cases justify the contention that the Act under consideration applies to contractors. If an alien is a member of a partnership, the partnership for the purpose of this Act must be treated as an alien--in other words, an individual person who is an alien cannot be allowed to

defeat the intent and purpose of the act by joining himself with a citizen. The law does not favor subterfuges and such would clearly be a subterfuge.

Yours very truly,

L. B. FOWLER, Attorney-General.

105. State Engineer--Overflowing Artesian Well--Same Prohibited by Statute and Decision Law.

CARSON CITY, April 5, 1922.

HON. J. G. SCRUGHAM, State Engineer.

Dear Sir: We have your letter transmitting inquiries of Mr. H. Blanding of Las Vegas, Nevada, in regard to uncased and overflowing artesian wells, the water therefrom running to waste and injuring land adjacent thereto.

The subject-matter of the inquiry is concluded by an Act of the Legislature of this State, being chapter 210 of the Statutes of 1915, and, according thereto, such wells are prohibited from being left open and the water escaping therefrom and the county officers of the State are enjoined thereby to take the steps contemplated to remedy the situation of which complaint is made.

Independent of the Act in question, the owner of adjoining ground could undoubtedly in a court of equity obtain an injunction against a continuance of this situation since it is a private nuisance to him, materially damaging his land. If the water should flow upon public roads or highways, a public nuisance arises, which could be enjoined independent of the act by public officials or any person sustaining material damage.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

106. Corporations--Assessable and Non-Assessable Capital Stock--Law Defined.

CARSON CITY, April 11, 1922.

STATE AGENT AND TRANSFER SYNDICATE, Carson City, Nevada.

Dear Sirs: We have your inquiry in the matter of the San Diego Water Company, requesting our opinion as to whether or not its capital stock is subject to assessment, its articles

of incorporation reading in part as follows: "That the capital stock of the corporation shall be subject to assessment."

This provision alone is sufficient to answer the inquiry in the affirmative, but, contrasted with the provision of the general corporation law, providing substantially that, where the articles state that the capital stock of a corporation shall not be subject to assessment to pay its debts after its subscription price has been paid, it makes an answer in the affirmative more apparent. The substantive law upon the subject, fortified by unanimous authority, provides that the capital stock of a corporation shall be subject to assessment unless it is relieved by law therefrom. Such is not the case here. The capital stock is not only not relieved from assessment, but the right to assess it is emphasized accordingly as aforesaid.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

107. Municipal Corporations--Attorney-General Not Required to Advise Such Corporations.

CARSON CITY, April 12, 1922.

HON. T. L. HAWKINS, City Trustee, Carson City, Nevada.

Dear Sir: Under date of December 4, 1920, I wrote to Supervisor W. W. Booher of the governing board of Elko, Nevada, in reply to his request for a legal opinion in connection with the city charter of Elko. In this letter the following language is used:

It is not within the province of this office to give legal opinions as to the provisions in city charters. The city in such cases should be governed by the opinion of its regularly chosen City Attorney or an attorney specially employed by the city for such purpose. * * * An opinion of this office construing or interpreting a provision of a city charter would be absolutely nonofficial in character and would, therefore, possess but slight importance.

If this office should attempt to control the legal affairs of the various municipal corporations in this State, it would face many serious complications. In that the question propounded by you is one that is absolutely foreign to the domain of this office. I feel that it would be an intrusion and an unreasonable invasion for me, as Attorney-General, to attempt in anywise to interfere with the legal affairs of Carson City, a duly created corporation operating under a city charter. The statute involved is not one of state-wide application, but is strictly an amendment of the city charter of Carson City. If the contrary existed and the statute was one that would affect the entire State, the situation would then be very different. I am satisfied that you

will realize the soundness of my attitude.

Yours very truly,

L. B. FOWLER, Attorney-General.

108. County Hospitals--Pay Patients May Be Received Therein.

CARSON CITY, April 13, 1922.

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

Dear Sir: In reply to your query as to whether or not it is lawful to receive pay patients in the County Hospital of Elko County, I beg to reply in the affirmative. Express law on the subject is meager. The conclusion that I have reached is based on law, custom, usage, and a consideration of public needs and public benefits. It has long been the custom of various counties of the State of Nevada to receive, at their respective county hospitals, patients other than indigents who pay for the immediate services and benefits received by them. A chaotic condition of affairs would exist in this State if this custom should be overthrown. Anything that is in the interest of public health should be upheld if possible.

Elko County has constructed and equipped, at heavy expense, a very fine hospital. This has been done pursuant to law. It is a hospital far beyond the needs of the indigents who require treatment at the hospital. In addition to this hospital, Elko County is supporting a poor farm. It seems unreasonable to contend that the hospital of your county, which possess such size, capacity, and equipment, exists only for the benefit of indigents, and that most of the people of Elko County are denied the benefit of this splendid institution, which they themselves have created. It is true that in the first instance indigents should be cared for by a county, but an enlarged benefit should not be condemned. Section 28 of the Public Health Act, Revised Laws, p. 289, recognizes the use of a public hospital by persons who are able to pay and provides for such payment. This provision of law is of value in adopting the theory that it is not the policy of the State to restrict the use of a county hospital to indigents alone. Subdivision 8 of section 1508 confers upon the Board of County Commissioners the power to control and manage the property, real and personal, belonging to the county. This provision must not be given an effect which is too narrow. Therefore, a county hospital which is allowed to be used by the Board of County Commissioners in the interest of public health and for the general benefit and welfare of the people of Elko County must be held to be a legitimate use. It is a highly commendable policy for the public to provide such an institution for its general benefit.

Yours very truly,

L. B. FOWLER, Attorney-General.

109. Public Schools--Bond Election Legal and Bonds Approved.

CARSON CITY, April 13, 1922.

NEVADA INDUSTRIAL COMMISSION, Carson City, Nevada.

Gentlemen: The record of the proceedings of the Board of School Trustees of Carson School District No. 1, Ormsby County, Nevada, relative to a bond issue in the sum of \$17,500 for the purpose of completing the erection of the second story, repair of the first story, and refurnishing of the Carson school building situate in Carson City, Nevada, recently damaged by fire, has been examined by me and I find that the proceedings taken are in compliance with the law. The bond issue is, therefore, valid.

Yours very truly,

L. B. FOWLER, Attorney-General.

110. Statute--Its Scope Defined--Case Stated Not Within Statute Cited.

CARSON CITY, April 13, 1922.

HON. L. G. WILSON, District Attorney, Winnemucca, Nevada.

Dear Sir: The Act of the Legislature of the State of Nevada entitled "An Act fixing the salaries of certain officers of Humboldt County, and repealing certain Acts in relating thereto," Stats. 1921, p. 151, is not possessed of a title that is sufficiently comprehensive to include the establishment of commissioner districts in the County of Humboldt. I, therefore, rule that such part of said Act has no legal effect.

Yours very truly,

L. B. FOWLER, Attorney-General.

111. Elections--Election of School Trustees--Sufficiency of Return of Elections--Law Cited and Defined.

CARSON CITY, April 18, 1922.

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

Dear Sir: We have your favor of the 13th instant, propounding certain inquiries for our official opinion and in reply we beg to advise you as follows:

First--It is a principle of law that where a majority of an official board or commission acts, the act of the majority is controlling, and, therefore, if a majority of a school-election board returns a legal certificate, that certificate would be held to be the certificate of the board and you should give it the same recognition as if it had been executed by all the members of the board.

Second--If a member of an election board, wilfully and knowingly, signs and returns a certificate or report required by law which is materially false, he is amenable to law. Section 54 of an Act relating to election, approved March 24, 1917, provides:

Every person charged with the performance of any duty under the provisions of any law of this State relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, shall be deemed guilty of a felony, and punishable by a fine of not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

We see no difficulty for the members of the election board of the recent Clear Creek School District to sign and return proper certificates according to the truth. For instance, if ballots were counted for long- and short-term candidates, although it appears there was no designation of the term, the members of the board could very appropriately state that fact in the certificate. Where the truth is stated there can be no violation of the law, and no one then would be subject to criminal liability.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

112. Highways, Department of--Claims Against--Certain Claim Allowed in Part.

CARSON CITY, April 18, 1922.

HON. GEO. W. BORDEN, State Highway Engineer.

Dear Sir: We note your letter of April 12, calling for our opinion as to whether or not the alleged claim of the California Corrugated Culvert Company is a legal liability against your department under Contract No. 9 in which one O'Keefe, the contractor, defaulted and under the terms of which the Department of Highways completed the project.

It seems that the Corrugated Culvert Company has a balance of \$4,310.63 against this project for corrugated pipe, but that on account thereof Mr. O'Keefe paid \$2,000, although he had theretofore been allowed \$3,484.14 for payment of the pipe then delivered while he had the contract. The pipe was ordered by Mr. O'Keefe, and you allowed and caused to be paid to him

the sum mentioned, and accordingly you are entitled to the deduction on the claim of the company of \$1,484.14, and the balance of \$2,826.49 is justly due the company and should be paid by you since you incurred the same after taking over the contract on the project.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

113. Boxing Exhibitions--All Such Public Exhibitions Must Be Licensed and Statutory Fee Paid.

CARSON CITY, May 4, 1922.

LAS VEGAS POST NO. 8, AMERICAN LEGION, Las Vegas, Nevada.

Gentlemen: Your letter of April 29, 1922, is received and noted. In the absence of the Attorney-General I have to advise you as follows:

There seems to be no escape from the provisions of the act entitled "An Act to restrict and license glove contests between man and man, and to repeal all other Acts in conflict therewith," as amended, Stats. 1919, p. 69, since the question submitted by you is answered by the text of the Act itself--namely, "Any male person over the age of 21 years may procure a license for an exhibition in a public place for any contest or exhibition with gloves between white men." This squarely covers your statement, which is that the Post is planning on staging a boxing exhibition in the near future.

You will note that it is immaterial whether or not an admission charge is to be made, or whether or not the proceeds are to be applied for a certain purpose. The situation evolved is to be regretted, but the plain language of the statute admits of no other construction.

The same question arose from Las Vegas about two years ago and your District Attorney there will be able to enlighten you upon the ruling made by me then. There being no escape from the statute, I was compelled to abide by its terms as in this letter set forth.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

114. Health, State Board of--Power Rests Therein to Appoint Child's Welfare Division

in Cooperation With Federal Government.

CARSON CITY, May 9, 1922.

HON. EMMET D. BOYLE, Governor of Nevada.

Dear Sir: It is my opinion that the State Board of Health has the power to appoint a Child's Welfare Division for the purpose of working in cooperation with the Federal Government pursuant to the Sheppard-Towner bill. A committee appointed by the State Board of Health for such a purpose will aid in making effective the power given the Board of Health wherein it has general supervision over all matters relating to the preservation of the health and life of citizens of the State. I, therefore, advise that the procedure outlined by you is legal.

Yours very truly,

L. B. FOWLER, Attorney-General.

115. Public Schools--Advertising for Bids--Evasion of Law--Advertising Required.

CARSON CITY, May 12, 1922.

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

Dear Sir: Any attempt to evade the provisions contained in sections 1 and 2 of "An Act requiring School Trustees to advertise for bids on contracts," etc., will be dangerous. The fundamental principle which prohibits the doing of a thing indirectly which cannot be done directly must be followed. In that the total amount to be expended by the Eureka School District will approximate \$1,500, I am of the opinion that the only safe course to pursue is to follow the statute.

Yours very truly,

L. B. FOWLER, Attorney-General.

115. Public Schools--Advertising for Bids--Evasion of Law--Advertising Required.

CARSON CITY, May 12, 1922.

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

Dear Sir: Any attempt to evade the provisions contained in sections 1 and 2 of "An Act requiring School Trustees to advertise for bids on contracts," etc., will be dangerous. The fundamental principle which prohibits the doing of a thing indirectly which cannot be done

directly must be followed. In that the total amount to be expended by the Eureka School District will approximate \$1,500, I am of the opinion that the only safe course to pursue is to follow the statute.

Yours very truly,

L. B. FOWLER, Attorney-General.

116. Criminal Law--Procedure--Preliminary Examination Not Dispensed With Unless Waived.

CARSON CITY, May 13, 1922.

HON. ARTHUR E. BARNES, District Attorney, Goldfield, Nevada.

Dear Sir: We have your inquiry calling for our official opinion as to the procedure according to section 2, chapter 209, Stats. 1913, and in reply thereto you are advised:

We do not think a preliminary examination may be dispensed with unless the same is waived in the Justice Court, and that therefore, as a basis for jurisdiction, a formal complaint should be filed for the preliminary examination in the Justice Court. Such complaint is not the information referred to in the Act. The information is filed after the preliminary examination has been had or waived in the District Court. We think the procedure here outlined is sound in law and our observations lead us to conclude that this procedure is generally followed. We, followed, advise you to proceed accordingly.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

117. Elections--Certain School Election Held Legal.

CARSON CITY, May 20, 1922.

MISS MAUDE FRAZIER, Deputy Superintendent of Public Instruction, Las Vegas, Nevada.

Dear Miss Frazier: The election board of Kiernan School District, Lincoln County, correctly declared the result of the school election held in said district on the first day of April. The votes cast for certain candidates for both the short and long term cannot be added together, but must be separately counted. This the board proceeded to do and thereby pursued the legal method. Mrs. Ethel S. Henrie, Henry Schlarman, and L. L. Dixon are, therefore, the duly elected

trustees.

Yours very truly,

L. B. FOWLER, Attorney-General.

118. Criminal Law--Search Warrants--Who May Issue Same.

CARSON CITY, May 24, 1922.

HON. J. H. GALLAGHER, Mayor, Ely, Nevada.

Dear Sir: We have your letter of the 22d instant, requesting an official opinion upon the following inquiry

If the city of Ely were to pass an ordinance authorizing the Police Judge to issue search warrants, would it conflict in any manner with state laws?

As an ordinary proposition, assuming that the ordinance concerned a subject-matter within the scope and delegated powers of the city as provided in its charter, we would state that the city could pass such ordinance, for the reason that section 7415, et seq., of the Revised Laws, provide that search-warrants may be issued by magistrates, and section 6929 thereof provides that Police Judges and others, upon whom are conferred by law the powers of a Justice of the Peace in criminal cases, are magistrates. We have not the ordinance of the city referred to by you, similar to the national and state law relating to the sale and traffic of intoxicating liquors, and, hence, are not able to give you an opinion whether or not the same is within the delegated powers of the city as specified in its charter. If it is within such delegated powers, then the Police Judge may issue the search-warrants and conduct further proceedings relating thereto in accordance with the sections of the Revised Laws hereinabove referred to.

In regard to your statement that the Justice of the Peace maintains the offense is a felony and beyond the jurisdiction of his court, you are respectfully referred to the case of Ex Parte McGee, 44 Nev. 23, wherein the syllabus reads: "In view of Revised Laws, 4851, District Court had jurisdiction to try petitioner charged with misdemeanor of having in her possession intoxicating liquor in violation of the prohibition statute, section 3 whereof provides for fine of \$1,000 and of imprisonment in the county jail from one to twelve months." According to this language you will note that the District Court may try cases, not because they are felonies, but because the penalty brings them within its jurisdiction.

This department has made several rulings to the effect that its opinions can hardly be rendered officially to incorporated cities, but application would be made at least in the first instance to their legal advisors since we would assume, in rendering such official positions, to go beyond the statute delegating our powers which would be confusing to the administration of local law.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

119. Public Utilities--Act Providing Same for Town of Caliente Construed--Suggested Plan Held Illegal.

CARSON CITY, May 31, 1922.

HON. F. E. WADSWORTH, District Attorney, Panaca, Nevada.

Dear Sir: We have your request, calling for our official opinion concerning the application of the Act entitled "An Act authorizing the acquisition of certain public utilities for the town of Caliente, the issuance and sale of bonds therefor, the levy and collection of taxes for the payment thereof, and other matters relating thereto," approved March 4, 1921, to the facts submitted as noted herein.

The Act provides for the acquisition of certain public utilities for the town of Caliente, to wit: an electric-light and -power system, a water system, and a sewerage system. It is proposed that the Board of County Commissioners enter into an agreement whereby the bonds authorized to be issued may be disposed of directly to the Dixie Power Company of Utah or to others, and that with the proceeds thereof this company, its source of power and plant being in Utah, extend or cause to be extended its transmission lines to the town of Caliente. These transmission lines in no sense will be an electric-light and -power system, but they constitute merely a necessary appurtenance thereof. The source of power and generating plant are and will be owned by the company and located in Utah, and the town of Caliente will have no interest therein.

Under these statements of facts, the Act entitled as aforesaid cannot be made to apply. It contemplates an electric-light and -power system to be acquired and owned by the town of Caliente, and not a power line consisting of poles, transformers, etc., from the town of Caliente to the state-line between Nevada and Utah. There should be no reasonable doubt concerning this decision. The Act is plain and its reading concludes the question.

In addition to this, while not necessary to this opinion, it may be said that neither the State nor any municipal subdivision thereof may own property or property rights of the kind in question in a foreign State without the express consent of the latter, and if it be contended that the town of Caliente seeks eventually to obtain an interest in the source of power-generating plant situate in Utah, then this could not be done, except under the express authority of Utah through its executive officers acting pursuant to legislative grant; otherwise there would be an invasion of the sovereignty of the State of Utah.

These views may contravene the desires of a majority of the inhabitants of Caliente, but

what is expedient is not always the law. Where the law conflicts with the public will, the law is paramount and the remedy rests with the Legislature.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

120. Nepotism Law--Case Stated Discussed--Its Application Defined.

CARSON CITY, June 1, 1922.

HON. L. G. WILSON, District Attorney, Winnemucca, Nevada.

Dear Sir: We have your letter of May 31, calling for our official opinion as to whether or not certain facts stated come within the inhibition of the nepotism statute, so-called, Stats. 1915, p. 17.

Succinctly stated these facts are: The Board of County Commissioners employ certain persons within the prohibited degree of consanguinity or affinity. The question is whether or not the Act in question is applicable. The Act reads: "It shall be unlawful for any state, township, municipal, or county official, elected or appointed, to employ or to keep in his employ on behalf of the State of Nevada, or any county thereof, in any capacity, his wife, son, daughter, or any person related to him (by blood or marriage) within the third degree of consanguinity or affinity." It is contended that this Act should be strictly construed since it is criminal in nature, and, being criminal, it is also civil in its nature, in that it provides that no compensation shall be allowed to the person so employed. While the Act itself makes it unlawful for a county official to employ, or to keep in his employment, such persons, we think that, as such official, being a member of the board, necessarily adopts and is bound by the action of the board in creating the employment, he will be responsible under the Act.

Accordingly, we are of the opinion that in the instant case the employment contravenes the provisions of the Act.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

121. Elections--Political Parties Recognized by Law--Methods for Recognition of New Political Parties Defined.

CARSON CITY, June 20, 1922.

HON. GEO. BRODIGAN, Secretary of State.

Dear Sir: There are two ways whereby a political party may receive recognition at a state primary election. This is provided for in subdivision g of section 1 of the primary election law, which provides:

First--That any organization of electors which, under a common name or designation, at the last preceding November election polled for any of its candidates equivalent to 10 per cent of the total vote cast for Representative in Congress, shall be, under the Act, a political party.

Second--That any organization of electors which, under a common name or designation, shall become a political party by filing a petition signed by qualified electors equal in number to at least 10 percent of the vote cast at the last preceding November election for Representative in Congress. Such petition must be filed at least sixty days prior to the date of the primary.

Only two political parties can be recognized at the coming state primary election under the first provision of said subdivision g of section 1 of the primary election law. No other party can receive recognition at said primary election unless it complies with the second provision of said subdivision of said election.

At the election held November 2, 1920, only two parties polled for any of its candidates votes equivalent to 10 percent of the total vote cast for Representative in Congress, said parties being the Democratic and Republican parties.

In the absence of some action by the petition method, only two parties can be considered at the next state primary election--the Democratic and Republican parties. If the petition method is not adopted by any party, provision will only be made for ballots and tally-books for the Democratic and Republican parties. Provision must also be made as to ballots and tally-lists for nonpartisan candidates, as such nominations are specifically provided for in the primary election law.

Yours very truly,

L. B. FOWLER, Attorney-General.

122. Live Stock--Method of Shipment Immaterial.

CARSON CITY, June 24, 1922.

STATE BOARD OF STOCK COMMISSIONERS, Reno, Nevada.

Dear Sirs: We have your inquiry calling for our official opinion as to whether or not section 21, chapter 268, Stats. 1915, appertains to any particular method of shipment of cattle from this State. The section is:

Said inspectors shall also inspect all stock or cattle about to be shipped from the State, and the consignor, upon demand, shall establish fully his title to such stock.

You are advised that the method of shipment by rail or otherwise is immaterial. You may apply the section to all cattle shipped from the State whether aboard cars or being driven therefrom.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

123. Elections--Special Election for Certain Purposes May Be Held on Same Day as General Election.

CARSON CITY, June 24, 1922.

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

Dear Sir: We have your letter calling for our official opinion as to whether or not a high-school election may be held on the same day as the ensuing primary election, namely, September 5, 1922.

In reply thereto, we beg to advise you that, as there is no inhibition in the statute laws of this State against the holding of one or more of the elections of the class indicated, a high-school bond election may be held on the date named.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

124. Nepotism Law--Application Already Defined Adhered To.

CARSON CITY, June 26, 1922.

HON. W. J. BELL, Winnemucca, Nevada.

Dear Sir: I received your letter regarding the construction placed by me on the Nepotism Act, as far as covering the situation presented by you. My delay in answering you was occasioned by the fact that I desired to review the situation with the Attorney-General to

ascertain if he thought my conclusions were incorrect, and, if so, the same could be reversed by him. After a thorough discussion of the matter and the application of statutory rules of construction, we are agreed that the ruling heretofore made by me is sound and will stand the test of the courts. In accordance therewith, we are applying my ruling to two instances in White Pine County, a copy of the opinion to the District Attorney being enclosed for your information.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

125. Nepotism Law--Its Application Defined in a Certain Instance.

CARSON CITY, June 26, 1922.

HON. CHAS. A. WALKER, District Attorney, Ely, Nevada.

Dear Sir: We have your inquiries calling for our official opinion as to whether or not (1) a brother of a County Commissioner may serve as Deputy County Treasurer, and (2) whether or not the County Board of Education may employ the son of one of its members to superintend the construction of a high school at a certain per cent of the contract price.

Wherever the power of appointment subsists in a board, no valid appointment may be made by that board of an employee within the prohibited degrees of consanguinity or affinity, even though the member of the board so related did not vote or voted against the appointment, as the appointment when made is the act of the board for which each member is legally responsible. If the Nepotism Act, Stats. 1915, p. 17, were otherwise construed, it would be subject to repeated evasions and the policy of the Act would thereby be frustrated.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

126. Elections--Ballot--Alphabetical List of Candidates Thereon--Certain Candidates' Place Thereon Defined.

CARSON CITY, June 30, 1922.

HON. GEO. BRODIGAN, Secretary of State.

Wherever the power of appointment subsists in a board, no valid appointment may be made by that board of an employee within the prohibited degrees of consanguinity or affinity, even though the member of the board so related did not vote or voted against the appointment, as the appointment when made is the act of the board for which each member is legally responsible. If the Nepotism Act, Stats. 1915, p. 17, were otherwise construed, it would be subject to repeated evasions and the policy of the Act would thereby be frustrated.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

127. Criminal Law--Strikes--Railroads Have Constitutional Right to Employ upon Their Property, for Its Protection, Armed Guards.

CARSON CITY, July 12, 1922.

HON. EMMET D. BOYLE, Governor of Nevada.

Dear Sir: We have your letter of this date calling for our official opinion upon the following inquiry:

May railroad companies employ watchmen and guards for the purpose of protecting their property and their employees, while upon their property and premises, from injury, harm, destruction or molestation, and who, being so employed upon such property and premises, may carry arms, concealed or unconcealed, for the declared purpose of such protection?

Irrespective of any statutory provision upon the subject, it is an inalienable right that every one shall be secure in his person and his property. This inalienable right has been carried into positive expression in the Constitution of the United States and the Constitution of the State of Nevada: the provision of the latter in this respect being as follows: "All men are, by nature free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and pursuing and obtaining safety and happiness." This declaration is paramount; and therefore persons employed to watch or guard property have the right to wear arms, concealed or otherwise, so long as they remain on the property or premises of those employing them, and are actually discharging such functions.

Section 6568 of the Revised Laws of 1912 provides that "it shall be unlawful for any person in this State, except peace officers, or persons while employed upon or traveling upon trains, stages, or other public conveyances, to wear, carry or have concealed upon his person, in

any town, city or village, any duck-knife, pistol, sword in case, slung-shot, sand-club, metal knuckles, or other dangerous weapon,” but this section is at all times subject to the paramount declaration of the Constitution hereinabove quoted, and is an exercise of the usual legislative authority regulating the indiscriminate carrying of weapons, in the interest of the public peace and order, and cannot be construed as limiting the provisions of the Constitutions of the United States and of the State of Nevada to which we have referred.

The question may suggest itself as to the limits of the authority of peace officers in conditions appertaining to the premises. These limits are well settled by statute and decision law, and a mere reference thereto is sufficient; when the public peace is actually, or is in imminent danger of, being broken, in an emergency a peace officer has the right to enter premises and arrest and disarm law-breakers, known criminals and the like; but in other cases he, or any person conversant with the facts, should sign and swear to a complaint, and secure a warrant of search or arrest thereon, before invading private property.

By order of the Attorney-General:
Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

128. Criminal Law--Strikes--Picketing Not Forbidden by Law--Offenses Akin to Picketing Enumerated.

CARSON CITY, July 19, 1922.

HON. EMMET D. BOYLE, Governor of Nevada.

Dear Sir: We have your letter of the 14th instant, relating to picketing and situations potentially issuing therefrom, and requesting our official opinion as to the lawfulness thereof.

A legal definition of picketing is essential to a due consideration of the subject-matter of your inquiry. Picketing is the “stationing of persons near the premises of another for the mere purpose of observing and obtaining information, for the purpose of conveying information to persons seeking or willing to receive the same, or for the purpose of using orderly and peaceful persuasion with those willing to listen,” generally at the time of, and in connection with, a labor strike, and in aid thereof.

There is no statute making such situation a criminal offense in this State; the right to picket within the purview of the definition herein laid down, even in equity cases seeking injunctive relief, has been repeatedly sustained. See 24 Cyc. 834, et seq., and the authorities cited thereto.

We quote *Karges Furniture Co. v. Amalgamated Woodworkers' Local Union No. 131*. 75 N. E. 877:

It is, however, generally conceded in this country and in England that workmen, when free from contract obligations, may not only themselves, singly and in combination, cease to work for any employer, but may also, as a means of accomplishing a legitimate purpose, use all lawful and peaceful means to induce others to quit or refuse employment. The law, having granted workmen the right to strike to secure better conditions from their employers, grants them also the use of those means and agencies, not inconsistent with the rights of others, that are necessary to make the strike effective. This embraces the right to support their contest by argument, persuasion and such favors and accommodations as they have within their control. The law will not deprive endeavor and energy of their just reward, when exercised for a legitimate purpose and in a legitimate manner. So, in a contest between capital and labor on the one hand to secure higher wages, and on the other to resist it, argument and persuasion to win support and cooperation from others are proper to either side, provided they are of a character to leave the persons solicited feeling at liberty to comply or not, as they please. Likewise a union may appoint pickets or a committee to visit the vicinity of factories for the purpose of taking note of the persons employed, and to secure, if it can be done by lawful means, their names and places of residence for the purpose of peaceful visitation. Eddy on Comb., sec. 537; Perkins v. Rogg (1892), 28 Wkly. Law Bul. 32.

See, also, the authorities therein cited: Eddy on Comb., secs. 537, 539; Beach on Mon. & Ind. Trusts, sec. 107; Union P. Ry. Co. V. Ruef (C.C.) 120 Fed. 102; Foster v. Retail Clerks Association, 39 Misc. Rep. 48, 78 N. Y. Supp. 860; Rogers & Evarts (Sup.) 17 N. Y. 264; Perkins v. Rogg, 28 Wkly. Law Bul. 32; Reg. v. Druitt, 10 Cox, Cr. R. 592; Reg. V. Hilbert, 13 Cox. Cr. R. 82.

The nearest approach to declaring picketing a crime by statute in this State is observed in sections 6377 and 6740 of the Revised Laws, 1912. These, as far as necessary to illustrate the proposition, provide:

SECTION 6377. Whenever two or more persons shall conspire * * * 5. To prevent another from exercising any lawful trade or calling or from doing any other lawful act, by force, threats or intimidation or by interfering or threatening to interfere with any tools, implements or property belonging to or used by another, or with the use or employment thereof; or, * * * 7. To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or unlawful means--every such person shall be guilty of a gross misdemeanor.

SECTION 6740. Every person who, with intent to compel another to do or abstain from doing an act which such other person has a right to do, or abstain from doing, shall wrongfully and unlawfully--

1. Use violence or inflict injury upon such other person or any of his family, or upon his property, or threaten such violence or injury; or

2. Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

3. Attempt to intimidate such person by threats or force--shall be guilty of a misdemeanor.

It is apparent, therefore, that a potential situation must first issue from the alleged picketing before the same is denounced by the criminal laws of the State, such as force, threats, intimidation, interference, etc., covered by the sections of the Revised Laws cited and quoted. See 24 Cyc. 834, and authorities therein cited.

We note from your letter that you have information from Las Vegas, Nevada, that "seven men were taken off Train 20 on the outskirts of the town, put in automobiles and taken to Arden, Nevada, where they were put on train there and sent back to Las Angeles." No discussion is necessary to declare that the sections of the Revised Laws cited and quoted, and others, were violated in this instance; and if the strike in question proceeds according to a plan of which such conduct is an index, then it is incumbent upon the State to interfere, upon proper state of facts and sufficient evidence in support thereof, through criminal proceedings and actions seeking injunctive relief.

However, a right may be invaded and nevertheless a crime may not be committed. If such invasion contravenes a right of the State, is continuous, or is gravely imminent or threatened of being so, through a conspiracy or concerted plan to do an unlawful act or acts, the consummation of which will disturb general order, public peace and the common welfare of the people, the State would have undoubted authority to seek and obtain injunctive relief on account thereof, not to prevent the commission of crime, which is never allowed, but to preserve unimpaired such order, peace, and welfare in which all citizens are vitally interested, though incompetent to pursue a judicial remedy on account thereof; accordingly the State in its sovereign capacity, as *parens patriae* may pursue it for them, and thus afford society as a whole requisite protection of constitutional right. See *People ex rel. Miller v. Toole*, 6 L. R. A. (N.S.) 822.

Nevertheless, the injunctive relief suggested is not a remedy exclusively afforded the State; if such invasion contravenes a private right--be it of an individual, firm, or corporation, is continuous, is gravely imminent or threatened of being so through a conspiracy or concerted plan to do an unlawful act or acts, the consummation of which will lessen or impair such private right secured by statute or organic law, such individual, firm, or corporation, has authority *a fortiori* to seek and obtain injunctive relief on account thereof by reason of the special and continuous injury to person and to property. Such is fundamental law, and it is needless to cite decision law in support thereof; but this phase of the situation is merely incidental to this opinion, and its further discussion is unnecessary.

Courts, in proceedings for injunction, in cases appertaining to the subject-matter of the premises, have, according to the current course of decision, applied a strict interpretation as against the accused until hearings had on the merits. Juries, on the other hand, have been prone

to give force to those provisions setting forth exceptional cases in which the activities of the accused may be viewed as lawful.

Accordingly, we recapitulate:

1. Picketing, as herein defined, does not contravene any criminal statute of this State.
2. Picketing, with the added elements of force, threats, interference, etc., contravenes sections 6377 and 6740 of the Revised Laws, 1912.
3. If there should arise an invasion of the State's rights as hereinabove laid down, the State as *parens patriae* may seek and obtain injunctive relief on account thereof; and
4. If there should arise an invasion of private right, as hereinabove laid down, the individual, firm, or corporation, whose right is invaded, may seek and obtain injunctive relief on account thereof.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, Deputy Attorney-General.

129. Elections--Vacancies in Office--There Is No Vacancy in Office of State Senator of Humboldt County.

CARSON CITY, July 21, 1922.

HON. L. G. WILSON, District Attorney, Winnemucca, Nevada.

Dear Sir: We have your letter calling for our official opinion as to whether or not the State Senator from Humboldt County, at the general election held in 1920, was elected for an unexpired term or for the full term of four years. The facts sufficiently appear in this opinion.

The Constitution, after providing for the election of members of the Assembly biennially for the term of two years, in section 4 of article 4, declares:

Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

Section 19 of the Act entitled "An Act creating and organizing the County of Pershing out of a portion of Humboldt County, and providing for its government and to regulate the affairs of Humboldt County and Pershing County," approved March 18, 1919, as amended, approved March 18, 1919, provides:

At the general election to be held in 1920, Humboldt County shall elect one State

Senator and two Assemblymen, and Pershing County shall elect one State Senator and one Assemblyman, and thereafter said counties shall, as provided by law, elect such Senators and Assemblymen as may by law be to each of them respectively apportioned.

The Constitution has created the office; the Legislature has applied the organic provision to the office so created, not as a vacancy therein, but without limitation, for the full term of four years. In passing the Act entitled and approved as aforesaid the Legislature had all subsisting legislation appertaining to the premises before it, and section 2 of the Act entitled "An Act reapportioning Senators and Assemblymen of the several counties to the Legislature of the State of Nevada." approved march 5, 1915, provides:

Nothing in this Act shall be construed as to affect the term of office of Senators and Assemblymen now in office.

This is the last expression of general law on the subject and is still in full force and effect.

It is apparent, therefore, that the incumbent Senator from Humboldt County, in the general election held in 1920, was chosen for the full term of four years as by the Constitution declared.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

130. Elections--Statute Not Unconstitutional in Not Providing Compensation for Primary Election Officers.

CARSON CITY, July 22, 1922.

HON. F. T. DUNN, District Attorney, Tonopah, Nevada.

Dear Sir: We have your letter of July 7, calling for our official opinion as to the constitutionality of that portion of section 14, page 394, Stats. 1921, wherein it is provided that officers at a primary election are not entitled to receive compensation.

This office has not been prone to declare a statute unconstitutional except in a very clear case and of extreme urgency. Your inquiry, therefore, is not one of this kind. However, we can see no reason why this section should be unconstitutional because the officers at a primary election are not entitled to receive compensation. It is not compulsory for any person named by the committee of a political party to serve as an election officer, and, this element being eliminated, it would seem that the section is, therefore, constitutional. There are many duties

imposed upon citizens to be performed without compensation, yet the statute providing for the performance of such duties has not been declared unconstitutional. For instance, jury duty in a criminal cases in Justice Courts is not paid for; the Sheriff may want a posse when necessary-- this service is not paid for; and surely there is no stronger reason to pay members of a party for supervising their party's primary than the instances noted.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

131. Elections--Enrolled Partisan May Seek Nomination as an Independent--An Official Is Not Required to Resign Office to Become Candidate for Another Office.

CARSON CITY, July 22, 1922.

HON. J. W. BURROWS, City Attorney, Sparks, Nevada.

Dear Sir: Your letter of July 11 to the Secretary of State has been transmitted to this department for reply. Accordingly, you are advised that an enrolled Republican may secure nomination for an office as an Independent; that the securing of a nomination for an office in Sparks township would not necessitate resigning an office already held under the city of Sparks. Your questions 2 and 3 are answered by section 31, page 28, of the Election Laws, which we are enclosing you under separate cover.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

132. Elections--Laws Relating Thereto Construed in Certain Respects.

CARSON CITY, July 25, 1922.

To the County Clerks of Nevada:

Dear Sirs: This department is in receipt of several urgent requests calling for our official opinion concerning the subject-matters hereof. Accordingly, to the end that there may be uniformity throughout the State of the application of the law in regard thereto, you are severally advised as follows:

1. "Registration offices shall be open for registration of voters for any election, Sundays and legal holidays excepted, from and after the first day of June, in any general election year, except as otherwise provided in this Act, up to the twentieth day next preceding such election and between the hours of 9 a.m. and 5 p.m."

This is the language of the statute (Stats. 1919, p. 264); it is clear, it requires no interpretation, and must be pursued.

The doubt in the premises is more apparent than real, and arises from the proviso following the language quoted, namely: "*provided*, that the office of the County Clerk, as ex officio registrar, shall be open for registration of voters for any election at all times when said office is open for the transaction of his business as County Clerk; *provided further*, that during the ten days previous to the close of registration the registration office shall be open evenings until 9 p.m."

These provisos, if taken according to the letter and not according to the spirit of that portion of the statute quoted, defining the periods when the registration offices shall be open and closed, respectively as aforesaid, nullify the statute in that regard. It is an ancient rule in the interpretation of statutes that provisos in a statute, which, taken literally, render the body of the statute inoperative, have no binding force. Moreover, as laid down in 36 Cyc. 1132, "where one part of a statute is susceptible of two constructions and the language of another part is clear and definite, and is consistent with one of such constructions and opposed to the other, that construction must be adopted which will render all clauses harmonious." This rule is fortified by abundant decision law.

Therefore, the registration office shall be open from and after the first day of June in any general election year, up to the twentieth day next preceding such election, as aforesaid.

2. "No elector shall be entitled to vote a party ballot at primary elections unless he has theretofore designated to the registry agent his politics or political party to which he belongs and has caused the same to be entered upon the register by such registry agent; *provided, however*, that no elector shall be denied to vote a nonpartisan ballot for judicial and school offices at such primaries." Stats. 1917, p. 276.

This language is equally clear.

Therefore, no elector shall be entitled to vote upon the ballot of the party with which he is not affiliated as disclosed by the registration records; except, if he is not affiliated of record with any party, he, with all other electors registered, shall have the right to vote a non-partisan ballot for judicial and school officers, as laid down in the statute.

A political party stands for certain principles, and each of its members stand for these same principles. It would be destructive of party organization and, as a consequence, of the party itself if unaffiliated electors would be permitted to vote at

primaries the ballots of any political party, or if affiliated electors would be permitted to vote at primaries ballots of any political party with which they are not affiliated.

3. No filing fee shall be exacted of candidates for the office of Public Administrator.

The statute provides: "Any candidate filing a nomination paper * * * shall pay to the filing officer a fee for such filing as follows: If a candidate for nomination for United State Senator, two hundred fifty dollars, etc. * * * No filing fee shall be required of a candidate for an office the holder of which receives no compensation." Stats. 1921, p. 321.

The statute referred to and quoted specifically enumerates the offices and the respective filing fees therefor, but the office of Public Administrator is not included. Moreover, the holder of the office of Public Administrator receives no compensation whatever as Public Administrator. The office merely qualifies him to become administrator of certain estates, and for his services as administrator of such estates he is compensated under general law on a parity with other administrators--not as Public Administrator, but as administrator of such estates. He, therefore, is not compensated for holding the office of Public Administrator, and the filing fee in question should not be exacted of him.

Therefore, you should govern yourself in the discharge of your official duty, in accordance with this opinion.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

133. Criminal Law--Strikes--Railroad Forcing Trespasses to Work--Amenable to Law Quoted.

CARSON CITY, July 31, 1922.

HON. FRANK H. INGRAM, Commissioner of Labor.

Dear Sir: We have your letter of the 31st instant, calling for our official opinion on the facts contained in the affidavits submitted therewith. Succinctly stated those facts are: Two men, Joseph Bondi and John O'Dea, arrived in the Sparks yards on July 15, 1922, apparently secreting themselves en route upon one of the freight trains of the Southern Pacific Railroad Company. Upon alighting from said train a special officer of the company approached them and stated that unless they went to work in the shops for said company at Sparks for fifteen days he would throw them in the "can" for sixty days, and that, on account of said threat, and for no other reason, they did go to work in said shops.

Assuming the facts as stated are true, the railroad company, through its officer, violated section 6740 of the Revised Laws of 1912, which provides:

Every person who, with intent to compel another to do or abstain from doing an act which such person has a right to do, or abstain from doing, shall wrongfully and unlawfully attempt to intimidate such person by threats or force, shall be guilty of a misdemeanor.

It may be suggested that Bondi and O'Dea were unlawfully upon the railroad company's property. If this be true, such trespassing by them in nowise affects the situation to permit the company, or its officers, in violating the law. This violation of the law occurred in Washoe County. The evidence and complaint in regard thereto should be submitted to the District Attorney of Washoe County.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

134. Public Service Commission--Interstate and Intrastate Rates--Inquiries Answered--Effect of Injunction.

CARSON CITY, August 2, 1922.

PUBLIC SERVICE COMMISSION, Carson City, Nevada.

Dear Sirs: We have your inquiry of the 21st ultimo, requesting an official opinion as to your jurisdiction in fixing intrastate rates for common carriers. You concretely state the inquiry as follows:

The fourth-class rate from San Francisco to Tonopah and Goldfield has been reduced to \$1.75, whereas the mileage rate upon the same class from Reno to Tonopah, a purely intrastate situation, would figure \$1 per cwt. Instead of establishing such rate, the Southern Pacific Company, in filing the aforesaid San Francisco-Tonopah and Goldfield rate, put in a rate of \$1.35 from Reno to Tonopah and Goldfield. It is now proposed that a rate of \$1.10, or between the two levels aforesaid, will satisfactorily move the business from Reno to Tonopah and Goldfield. Query: Is there any inhibition which will prevent this Commission from going forward in the hearing and establishment of such rate to cover the movement of fourth-class goods from Reno to Tonopah and Goldfield?

The right to fix a purely intrastate rate, which does not affect interstate commerce,

reposes in your Commission under the doctrine laid down in the Wisconsin case and the Texas case, with which you are familiar, recently handed down by the Supreme Court of the United States. These cases, and particularly the former, which is the paramount authority, have much general language upon the subject, recognizing the general rule herein stated, which intimates, if not directly stating, that, before acting independently, or acting at all in the premises, your Commission should first seek relief from the Interstate Commerce Commission, and none of which cites or illustrates instances which could be regarded as covering a purely intrastate rate situation.

To quote from the Wisconsin case:

It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

Therefore, while you have such right, in view of such decision law and the meager judicial development of its subject-matter, it cannot be safely declared what is a purely intrastate rate nor what will be the policy laid down in future judicial expressions concerning the same. It might be said that a shipment initiated in the State for delivery therein is purely a matter calling for a rate in intrastate commerce; but the doctrine announced in the Wisconsin case would seem to be more extended in its application in that there, among other things, the earning capacity and the annual return on the investment of the carriers engaged both in interstate and intrastate commerce are taken into consideration.

What, then, without further authoritative definition, either through the development of decision law or statutory repeal or amendment in the premises, is a purely intrastate rate situation remains for future determination. What may be the policy of the United States Supreme Court in its subsequent decisions under the Transportation Act, may reasonably be gleaned from this language quoted from the Wisconsin case:

It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception. So, too, in practice, when the State Commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the State Commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the State

Commissions power to deal with them and increase them or reduce them in their discretion.

It is apparent that you are left without guidance in the premises by reason of the general expressions of the Wisconsin and Texas cases, and, no matter how guardedly you may attempt to apply the jurisdiction left in your Commission, in specific cases your action may offend against the law in these decisions so generally expressed. If there is to be no judicial relief for the States from the burdens imposed by the Transportation Act, conditions can only be relieved by appropriate amendments thereto or repeal thereof.

However, you are now restrained by the United States District Court from in anywise interfering with the horizontally increased freight rates and passenger fares, pursuant to Ex Parte 74 of the Interstate Commerce Commission. We note that this restraining order might be regarded as obsolete, as since the entry thereof the carriers have repeatedly, through permission of the Interstate Commerce Commission, decreased or otherwise modified such rates and fares. Such action in nowise affects the continuing validity of such restraining order, but such action undoubtedly would be a compelling force on proper proceedings to vacate and set aside such restraining order. We think, therefore, that before you should, even in a remote degree, attempt to fix the rates suggested, application should first be made in the United States District Court to have such restraining order vacated and annulled.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

135. Fish and Game Law--Board of County Commissioners Has Power to Shorten Season for Grouse, etc., under Law.

CARSON CITY, August 12, 1922.

FISH AND GAME COMMISSION, Reno, Nevada.

Dear Sirs: The Board of County Commissioners of Washoe County has the power under the law to shorten the open season for grouse and mountain quail. Necessarily the board must proceed in strict conformity with the law. It is my opinion that it has the power to alter the open season even to the extent of abolishing an open season entirely. There is no provision in the law which gives a Board of County Commissioners authority to fix a bag-limit. Any provision of law in this respect cannot be changed by a Board of County Commissioners.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

136. Municipal Corporations--A Vacancy in Office of Mayor Is Not Appointable by Governor.

CARSON CITY, August 14, 1922.

HON. E. H. WHITACRE, City Clerk, Yerington, Nevada.

Dear Sir: The provision in the Constitution of Nevada, quoted in the petition to the Governor praying for the appointment by him of a Mayor for the city of Yerington, primarily relates to a state office. I think it is very doubtful if it has any application to an officer of a municipal corporation. The charter of the city of Yerington in section 7 provides as follows:

A Mayor pro tem shall be elected by the Council from among its members as soon after its organization as practicable, and in case of the absence of the Mayor or his inability to act, the Mayor pro tem shall preside over the Council in the same manner and with like effect as the Mayor; provided, that the restrictions upon the right of the Mayor to vote shall not apply to the Mayor pro tem while acting as Mayor.

The language in this section is not as complete as it should be. The word "resignation" should have been included therein. Nevertheless, I am of the opinion that when a Mayor resigns he becomes permanently absent in respect to the performance of his duties as Mayor, and that such duties are then to be performed by the Mayor pro tem. If the City Council has not yet chosen such an officer, it is within its power to do so at any time.

Yours very truly,

L. B. FOWLER, Attorney-General.

137. Elections--Mail Voting--Certain Acts Do Not Conflict--Neither of Them Repealed.

CARSON CITY, August 30, 1922.

HON. FRANK W. INGRAM, Labor Commissioner.

Dear Sir: We have your letter of August 29, requesting our official opinion as to whether or not chapter 90, Statutes of 1921, referring to voting by postal ballot, repeals by implication, or otherwise, chapter 231, Statutes of 1917, permitting employees engaged in moving trains, etc., to vote at a place other than their precinct. We see nothing in these Acts which conflict, and, therefore, we are of the opinion that the former does not repeal, by implication or otherwise, the latter.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

138. Elections--Ballot--Instructions to Voters--Law Defined--Whether to Vote for One or Two for Nonpartisan Nomination.

CARSON CITY, August 30, 1922.

HON. FRANK E. BROCKLISS, District Attorney, Minden, Nevada.

Dear Sir: You have propounded the following inquiry:

Should voters on the primary election ballot be instructed to vote for one or two candidates for nomination for Justice of the Supreme Court or District Judge?

My answer is that they should be instructed to vote for one. Laws must be reasonably construed and interpreted. Absurdities are to be avoided. It was certainly not the intent of the Legislature that the same nonpartisan voters may vote to nominate a candidate for one office and then vote to nominate another person for the same office, one of whom is destined to be defeated at the general election. The purpose of a primary election is to give voters an opportunity to nominate persons for whom they can vote at the general election and is not for the purpose of allowing voters to nominate certain persons for whom they can vote and to nominate others for whom they cannot possibly vote. The logic of the situation herein presented demands that we consider the voters when voting at a nonpartisan primary election as belonging to groups--Group No. 1, Group No. 2, Group No. 3, etc. The respective groups vote to nominate one person for the offices mentioned, for the reason that only one office is to be filled and voters can only vote for one person for either of said offices at the general election. No group is allowed to vote for an actual choice, and then to vote for some person that said group thinks may be easily defeated by the person who is their actual choice. If the candidate of one group receives the highest vote, then said candidate becomes a nominee to be voted on at the general election. In order to give the voters an opportunity to choose between two candidates at the general election the law makes the person receiving next to the highest vote at a nonpartisan primary election a nominee. It is not reasonable to contend that the legislative intent was to allow the same voters to nominate two candidates for one office, and then be in a position where they would, in order to elect their actual choice, have to strive to defeat one of the persons they themselves had nominated. Such a dishonest and unfair method was certainly not contemplated by the Legislature. The manifest unfairness of the same voters voting to nominate two candidates for one place and then, after nominating them, to be in a position where they can support only one of them is apparent. Such injustice should be avoided if possible. To allow a voter to vote to nominate some person for whom he cannot possibly vote at the general election, is repulsive to honesty and fairness. Laws

should be construed and interpreted to promote honesty and fairness rather than to be construed in a way that will lead to corrupt methods. Farcical indeed, would become a primary election under a law which would permit voters to nominate one candidate with the intent of endeavoring to elect him, and another candidate with the deliberate intention of defeating him. In the case of nominations by party the voters of the respective parties vote to nominate candidates equal to the offices to be filled. In such a case the voters vote for the same number of candidates for a given office at the primary election that they are allowed to vote for at the general election. In such a case voters do not vote to nominate persons whom, if successful in the primary election, they cannot support at the general election. It is, therefore, my opinion that a reasonable construction and interpretation of the primary election law leads to but one conclusion, and that is that voters who vote for nonpartisan nominees are allowed to vote for but one candidate for one nonpartisan office to be filled.

Yours very truly,

L. B. FOWLER, Attorney-General.

139. Elections--In Canvassing Vote, Board of County Commissioners May Not Open Envelopes Containing Ballots--Tally-Sheets Are Controlling.

CARSON CITY, September 7, 1922.

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

Dear Sir: Answering your inquiry as to whether or not the Board of County Commissioners, in canvassing the votes cast at the recent primary have the right to open the envelopes containing the ballots and count the same, you are advised that the board may not do so.

The canvass of the votes must be confined to the tally-sheets; the envelopes may be opened only by a court of competent jurisdiction in a proper proceeding.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

140. Emergency Loan--Transmitted Papers Deficient in Certain Respects.

CARSON CITY, September 8, 1922.

HON. GILBERT C. ROSS, Secretary of State Board of Finance.

Dear Sir: The papers forwarded to you by the Board of School Trustees of Kiernan School District of the county of Lincoln, State of Nevada, relative to an emergency loan, have been examined by me. I find the following objections in connection therewith:

1. I am of the opinion that the subject is one for a bond issue rather than an emergency loan.

2. The resolution of necessity is not among the papers.

3. The published notice is insufficient, in that it does not recite the nature of the emergency. The words "general expenses of said district" could not possibly convey any information in regard to the particular purpose for which the money is desired and to which it is to be applied.

4. The resolution following the notice fails to detail why and in what manner the school-building facilities of the district are insufficient and inadequate to properly accommodate the increased number of children of school age in said school district.

Yours very truly,

L. B. FOWLER, Attorney-General.

141. Highways, Department of--The Term "Concrete" Defined.

CARSON CITY, September 12, 1922.

HON. GEO. W. BORDEN, State Highway Engineer.

Dear Sir: We have your letter of even date calling for our official opinion as to the meaning of the term "concrete" as applied to highway pavements.

The inquiry issues from the proposed paving of a certain portion of the city of Sparks; it seems that the ordinance of the city providing for a bond issue for the paving uses the term "concrete pavement," and the legal notice to the bidders calls for bids in the alternative, namely, a "cement concrete pavement" or an "asphaltic concrete pavement." The question is: May either of these alternative proposals be included in the general term "concrete pavement."

The term "concrete," as popularly understood, is defined to be "a mixture of sand, gravel, pebbles or stone clippings with cement used for sidewalks, roadways, etc."

The later and more technical definition, which is broader in its scope, may include any binder in lieu of cement, such as tar or tar products. However, when the ordinance provided for a concrete pavement, it is apparent that the term "concrete" therein used was taken in its popular

sense, and therefore the binder to be used under the ordinance should be cement.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

142. Criminal Law--Strikes--Calling of Names Such as "Scab," etc., in Presence of Strike-Breaker Not Justified in Law.

CARSON CITY, September 12, 1922.

MR. A. B. RIGGLE, Secretary, Sparks Federation of Railway Employees No. 13, Sparks, Nevada.

Dear Sir: From a legal standpoint, any person is entitled to move about unmolested. Any interference with any person by another in this respect is in violation of the law. The law does not justify the act of a striker in calling a strike-breaker, in his presence and directed to him, a "rat" or a "scab." If strikers are gathered together, and, among themselves or in public discussion, refer to strike-breakers as "rats" or "scabs," they would not be guilty of any violation of the law. They would be using terms that are applicable to strike-breakers under the definitions given in your letter, which are taken from Webster's International Dictionary.

Yours very truly,

L. B. FOWLER, Attorney-General.

143. Elections--Registration of Voters--An Elector May Register Only by Appearing in Person before Proper Officer.

CARSON CITY, September 16, 1922.

HON. J. W. LEGATE, County Clerk, Carson City, Nevada.

Dear Sir: A careful examination of the registration law of this State has led me to the conclusion that a person can only register by actually appearing in person before the County Clerk of the county in which he resides, or before a qualified deputy registrar within the county where he resides. The Legislature has not provided any method whereby absentees may be registered.

Yours very truly,

L. B. FOWLER, Attorney-General.

144. Elections--Nonpartisan Candidates May Incur Ordinary Campaign Expenses, Although Office Has No Salary--Corrupt Practice Act Applies Particularly to Political Parties and Nonpartisan Offices Receiving No Salary.

CARSON CITY, September 21, 1922.

MR. FRED J. SIEBERT, Reno, Nevada.

Dear Sir: We have your letter of the 13th instant, calling for our official opinion as to the interpretation of section 4 of the Corrupt Practice Act as applying to nonpartisan candidates where there is no salary attached to the office. One of the elements provided for in the section is absent in the case of nonpartisan candidates--namely, a compensation or a salary for the office--and, hence, it would be an unreasonable construction to declare that a nonpartisan candidate is prohibited by this section from paying or incurring ordinary expenses of his campaign. We are inclined rather to the view that the section noted, and the Corrupt Practice Act generally, is applicable to candidates of political parties for office and to nonpartisan candidates for office providing a salary or compensation, since it is this which would be the incentive for the expenditure of moneys in a campaign. Where there are two or more interpretations to be placed upon a statute, that interpretation which is the most reasonable, fair and just is to be adopted, and absurd interpretations under the rules of law should be discarded.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

145. Fish and Game--Chinese Pheasants Reared in Captivity in Foreign State May Be Sold in Dining-Cars in State of Nevada.

CARSON CITY, September 21, 1922.

MR. F. W. GENTSCH, Superintendent Dining-Car and Hotel Department Union Pacific System, Ogden, Utah.

Dear Sir: We have your letter of September 19 calling for our official opinion as to whether or not our fish and game law prohibits the sale, in dining-cars operating through the State of Nevada, of Chinese pheasants raised in captivity in the State of Oregon.

We are of the opinion that our law does not contain the prohibition, either expressly or by implication, as the facts submitted by you show that these pheasants are raised in captivity

beyond the State, and it is the intention of the law to protect fish and game of a wild nature of this State. However, should the question directly arise with you, the burden of proof might be upon you to show the facts stated in your letter.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

146. Elections--Filing of Declaration of Candidacy by Socialist Has No Legal Value, since Socialist Party Became Defunct in State Election of 1920.

CARSON CITY, September 25, 1922.

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

Dear Sir: Answering your wire of this date, inquiring if a candidate for Constable filing his declaration as a Socialist is entitled to have his name certified as a nominee on the ballot at the general election, you are respectfully advised in the negative. Filing of such declaration by a Socialist is of no legal value and, therefore, certification of a nomination for Constable should not be made, particularly for the reason that the Socialist Party in the general election of 1920 did not poll the requisite percentage of votes to enable it to be now recognized as a distinct party under the election laws of this State.

Yours very truly,

L. B. FOWLER, Attorney-General.

147. Elections--On a Recount of a Primary Election in a Judicial Proceeding, the Decree Therein Is Self-Executing and May Not Be Stayed Pending New Trial or Appeal.

CARSON CITY, October 13, 1922.

HON. J. W. DAVEY, County Clerk, Winnemucca, Nevada.

Dear Sir: We have your letter, calling for our official opinion concerning the subject-matter hereof and have given the same due consideration.

We are advised that you are in doubt as to the printing of the official ballot for the ensuing general election, for the reason a contest was instituted in the District Court there by H. Warren for a decree that he was duly nominated as the Democratic candidate for District Attorney over H. G. Wilson, to whom the certificate of nomination was issued after the official

canvass by the County Commissioners. Mr. Warren obtained such decree and, pursuant thereto, a certificate of nomination was duly issued to him. Thereafter certain proceedings, which are now pending, were had and taken by and on behalf of Mr. Wilson for a new trial, which proceedings eventually may lead to an appeal. The question arises: Does this pending motion for a new trial together with the appeal thereon, if taken, stay proceedings against you from causing the official ballot to be printed with the name of H. Warren, as the Democratic candidate for District Attorney of Humboldt County thereon? Preliminarily, the cases cited by Mr. Wilson, through you, have been considered; they do not apply.

The decree in question is self-executing and, in fact, it has already been executed by the issuance of the certificate of nomination, even if this were necessary. Self-executing judgments, as a general rule, may not be stayed in the main action or through supersedeas or otherwise on new trial or appeal. See 20 C. J. 266, par. 384, and cases there cited.

In the instant case, if due consummation of the procedure laid down in the election laws of this State is delayed or otherwise interfered with, then public right secured by statute for a general election on a day certain throughout the State may be nullified, and this at the instance of a candidate at the primary election, who may or may not have been nominated. Assuming, which we do not hold, that it is a question whether or not Mr. Wilson has a right to the suggested stay of proceedings, it is an accepted principle that where two rights conflict, the superior right is paramount in its operations and the inferior right must fall.

Accordingly, you will pursue the election laws in the preparation and printing of the ballots for the general election, giving full faith and credit to such decree, together with the certificate of nomination issued to Mr. H. Warren pursuant thereto, unless a court of competent jurisdiction should stay your hand, in which case, as well your office as this department is relieved of responsibility in the premises.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, Deputy Attorney-General.

148. Revenue--Public Funds--Fines Collected for Violation of County Ordinance
Payable into County Treasury.

CARSON CITY, October 19, 1921.

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

Dear Sir: A fine collected pursuant to a prosecution for the violation of a county ordinance belongs to the county and should therefore be paid into the county treasury. That part of section 3 of article 11, which provides that "all fines collected under the penal laws of the State * * * shall become, and the same are hereby solemnly pledged for educational purposes,

and shall not be transferred to any other fund for other uses,” only applies to fines collected from the enforcement of statutory laws directly enacted by the Legislature. State of Nevada v. Rosenstock, 11 Nev. 128.

Yours very truly,

L. B. FOWLER, Attorney-General.

149. Revenue--Nevada Tax Commission--State Bank Purchasing Property under Escrow--Contestant Not Entitled to Have Assessment of Such Property Stricken, since Title Has Not Passed.

CARSON CITY, November 2, 1922.

NEVADA TAX COMMISSION, Carson City, Nevada.

Dear Sirs: We have your letter of the 1st instant, calling for our official opinion on the law applicable to the facts herein contained.

It appears that the Carson Valley Bank has entered into an agreement with one Rita Hamlin for the purchase of the bank building occupied by it in Carson City. The deed to said property is held in escrow pending the perfection of the title thereto. The question is presented by the Carson Valley Bank as to whether or not it is entitled to a deduction of \$4,000, the assessed value of the bank premises, from its assessment appearing on the tax-rolls, under the law relating to the method of assessment of state banks.

From the facts stated the Carson Valley Bank does not own the premises covered by the assessment, although it has an inchoate right to perfect title thereto. Title to real property does not vest until the delivery of the instrument of conveyance. Such delivery has not been had of the deed provided for in the agreement, and, while the failure of such delivery in the future may be remote, nevertheless the delivery according to the agreement is subject to the due fulfilment of the escrow. Accordingly, the legal title to the premises in question reposes in said Rita Hamlin, and the Carson Valley Bank is not entitled to the suggested reduction.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

150. Public Schools--State Orphans Home Not Part of Public-School System--Teacher There Not Entitled to Benefits of Public-School Teachers' Retirement Act.

CARSON CITY, November 2, 1922.

PUBLIC-SCHOOL TEACHERS' RETIREMENT SALARY FUND BOARD, Carson City, Nevada.

Dear Sirs: We have your favor of October 30, calling for official opinion on the law applicable to the facts herein contained.

The State Orphans Home at the time school was taught there was not a part of the public-school system contemplated in the laws governing public schools, therefore a teacher in the State Orphans Home would not come under the provisions of the Public-School Teachers' Retirement Act, approved March 15, 1915, as amended. No credit should be given to her for the time teaching there.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

151. Elections--Candidate Defeated by Three Votes Not Entitled to Recount before Canvassing Board--Recount May Be Had Only in Judicial Proceedings--Costs.

CARSON CITY, November 20, 1922.

R. J. REID, ESQ., Eureka, Nevada.

Dear Sir: We have your letter of November 18, calling for our official opinion on the facts herein stated.

You desire to know whether or not you have a right to a recount of the votes cast in your county for County Commissioner, since you are apparently defeated by three votes. You are not entitled to such recount, under the law. The Board of County Commissioners, acting as a canvassing board, may only look to the tally-sheets to ascertain which candidate has the highest number of votes, except in the case of a tie for any office. However, the law provides that, if sufficient grounds appear, you would be entitled to institute a contest in the District Court, the costs of which and the fee of your attorney, should you retain one, must be paid by yourself.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

152. Revenue--Nevada Tax Commission--Assessment of Patented Mining Claims May be Ordered Stricken from the Rolls Though Marked Delinquent at Any Time upon Proper Showing.

CARSON CITY, December 4, 1922.

NEVADA TAX COMMISSION, Carson City, Nevada.

Dear Sirs: We have your favor of this date, requesting our official opinion as to whether or not the assessment of patented mining claims may be ordered stricken from the rolls after delinquency of taxes thereon upon a proper showing, through affidavit or otherwise, that the constitutional amount of work has been done. The statute would tend to limit the time before the expiration of the year which the Constitution allows. No statute may curtail the scope of a constitutional provision, and therefore, if the work upon a patented claim is done at any time within the year, upon proper showing the assessment should be stricken.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

153. State Engineer--Artesian Wells--Under Subsisting Law State Engineer Has Jurisdiction over Artesian Wells--Procedure Defined.

CARSON CITY, December 12, 1922.

HON. ROBERT A. ALLEN, State Engineer.

Dear Sir: We have your inquiry calling for our official opinion concerning the following proposition:

Has the State Engineer, under the subsisting water laws, jurisdiction to hear and determine cases arising out of the flow from artesian wells, and to what extent, if any, may he exercise this jurisdiction?

It is declared by statute, among other things, that--

All underground waters, save and except percolating water the course and boundaries of which are incapable of determination, are hereby declared to be subject to appropriation under the laws of the State relating to the appropriation and use of water.

It is apparent, therefore, that such jurisdiction reposes in the State, to be exercised by the competent official whose duty it is to administer the water laws of this State.

Accordingly, in exercising this jurisdiction the State Engineer should proceed in accordance with the scheme defined for the appropriation and application of water to beneficial use as in other cases. Therefore an applicant has the right to file for an appropriation of water to a beneficial use issuing from artesian wells, and his application and priority concerning the same will depend upon the same rights and duties as now prescribed in cases governing the appropriation and application of waters from other sources. His application would be subject to protest and to hearing, as provided by statute.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

154. Revenue--Bullion Tax--Deductions for Mill Reconstruction and Cleaning of Debris Not Allowable under the Law.

CARSON CITY, December 13, 1922.

HON. GEO. A. COLE, State Controller.

Dear Sir: We have your favor, transmitting the letter of the Recorder and Auditor of White Pine County relating to the assessment list of the net proceeds of mines in White Pine County for the quarter ending September 30, 1922, made by the Nevada Consolidated Copper Company.

The inquiry is made whether or not the items, \$319,830.57, for mill reconstruction, and \$127,890.13, for the cleaning of debris, are proper deductions.

These items are not proper deductions. Section 3687, Revised Laws of 1912, enumerates what deductions are legal, and no implied interpretation of this section would permit the deductions in question. Moreover, it appears from the resolution adopted by the Nevada Tax Commission after legal opinion that "no charge whatever for depreciation or the redemption of any investment in mine ground, development done prior to the quarter for which the report is made, or plant construction, or taxes, federal, state or local, shall be allowed." The statute is definite, and this resolution is in accordance therewith. The deductions noted should be disallowed.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

155. Public Funds--Where Statute Provides for Participation by the State in Salaries of Certain County Officials, and in Other Expenses, the State Does Not Participate in Such Expenses unless Same Are Specified by Law.

CARSON CITY, December 14, 1922.

HON. F. E. WADSWORTH, District Attorney, Pioche, Nevada.

Dear Sir: We have your letter calling for a comparative construction of sections 1701 and 3749 of the Revised Laws of 1912, concerning legal allowances made by the State to the several counties for services rendered under the Revenue Act by certain county officers.

In the latter section we find the expression "fully itemized vouchers shall be made, allowed and certified to in duplicate by the Board of County Commissioners, for all claims for salaries *and other expenses* for which the State is wholly or in part liable," etc.

The question is raised whether or not, under the term "other expenses" is the State liable for expenses incurred by the Assessor while absent on official duty and in assessing property, and for the expenses incurred by the Auditor in extending the valuations on the assessment roll.

This term "and other expenses" may be viewed in two aspects, either of which must militate against granting the relief suggested in your inquiry. It may be taken to be a fugitive expression appearing in the statute, and if, it being without limitation, as it is, the expenses referred to by you may be allowed, then the expenses for every item connected in any conceivable way with the discharge of the duties of these county officials must also be allowed, such as the books and supplies necessary in the discharge of such duties. This is not a reasonable construction and must be discarded.

Again, it may be taken to mean, and it is the view we adopt, "and other expenses" as are or may be provided for by law, which makes the statute intelligible, confines such expenses within limitations, and does not subject them to an interpretation influenced by the bias or caprice of any official, state or county.

We fail to see wherein the statute fixing the compensation of county officers of Lincoln County, Stats. 1920-21, p. 198, in anywise affects the situation. County officers are provided, primarily, for the execution of county business, and, secondarily, for the execution of such duties as may be delegated to them by legislative authority, and when the Legislature has enacted its statute authorizing the State to participate in the salaries of certain county officers for certain services, and there is thrown in the statute by inadvertence, or otherwise, the expression "and other expenses" without limitation, such expression can have no force unless such expenses are or may be elsewhere authorized by law.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, Deputy Attorney-General.

156. Elections--Canvass of Vote--In Case of Recount on a Tie Vote, before Board of County Commissioners, the Certificate and Minutes of Recount Are Controlling.

CARSON CITY, December 18, 1922.

HON. GEORGE BRODIGAN, Secretary of State.

Dear Sir: There has been transmitted to this department (1) the abstract of statement of the vote of Elko County at the general election held November 7, 1922, for nonpartisan state and district offices, and (2) a certified copy of the minutes of the Board of County Commissioners of November 16 and 18, 1922, wherein it appears that, upon demand of the nonpartisan candidates for the office of District Judge of the Fourth Judicial District who appeared to have received a tie vote at the general election, a recount of the ballots was had.

The abstract of statement of the vote shows that these two candidates received, respectively, 1,487 votes each, and the subsequent recount shows that one of them received 1,479 votes and the other 1,472 votes; the certificate of election for the office of District Judge was thereupon ordered to be issued accordingly. The question is: Shall the Supreme Court, acting as a board of canvassers, recognize the abstract of statement or the minutes of the Board of County Commissioners hereinabove referred to?

We are of the opinion that the minutes of the Board of County Commissioners relating to the recount had pursuant to the provisions of law, being of a later date than the date of election covered by the abstract of statement of votes, must be followed, as this later instrument is the last record authorized by law in the case of a tie vote for a public office.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, Deputy Attorney-General.

157. Bonds, Official--Bonds Required by Law, Premium Payable Out of Public Treasury--If Official Exacts Bond from Deputy, Premium Not Payable Out of Public Treasury.

CARSON CITY, December 30, 1922.

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

Dear Sir: The Act of the Legislature of March 24, 1917, entitled "An Act to provide surety bonds for state, district, county, city and township officers at public expense," permits the payment of the premiums for any said bonds out of the public treasury, provided that it is a bond which is required by law. If a person holding a public office exacts a bond from a deputy for his own protection and without any express provision of the law requiring said bond, then the premium for any surety bond furnished for such a purpose cannot be paid from public funds.

Yours very truly,

L. B. FOWLER, Attorney-General.