

OPINION NO. 1953-224 County Clerk, Washoe County—Cannot Collect Fee for Filing Complaint in Intervention in Absence of Express Statutory Provision.

CARSON CITY, January 6, 1953

HONORABLE JACK STREETER, *District Attorney, Washoe County, Courthouse, Reno, Nevada.*
Attention: Honorable A. D. Jensen, Assistant District Attorney.

DEAR MR. JENSEN: This will acknowledge receipt of your letter of December 30, 1952, in which you request the opinion of this office concurring in or rejecting your opinion dated December 30, 1952 regarding the following question:

What fee, if any, is the County Clerk of Washoe County to charge upon the filing of a complaint in intervention?

OPINION

It is the opinion of this office that your said opinion dated December 30, 1952, is a correct interpretation of the law setting forth the fees to be charged by the Washoe County Clerk as Clerk of the District Court, and we hereby concur in said opinion for the reasons therein given and for the additional reasons following:

In *State vs. Baker and Josephs*, 35 Nev. 300, at page 311, the court, referring to fees charged by the Clerk of the Supreme Court, stated:

As held in *Shed vs. Railroad*, 67 Mo. 687, statutes in reference to costs must be strictly construed, and an officer cannot legally claim fees unless the statute has expressly conferred the right to collect them.

Application of the rule of statutory construction, “*Expressio unias est exclusio alterus*,” and we feel such rule can be properly applied here, would preclude the Clerk in Washoe County from charging a fee for the filing of a complaint in intervention since no fee for such is expressly provided by statute. In this respect we cite and refer you to the Act establishing the fees to be charged by the County Clerk and ex officio Clerk of the First Judicial District Court of the State of Nevada, in and for the County of Ormsby, the same being Chapter 41, 1945 Stats., page 50, and which provides, inter alia, as follows:

For filing a complaint in intervention, five dollars.

We suggest that if a fee for filing a complaint in intervention in Washoe County is desired, the matter should be taken up with the Legislature.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By JOHN W. BARRETT, *Deputy Attorney General.*

OPINION NO. 1953-225 Wild Animals—Display of, as in Violation of Chapter 72, Statutes of 1947.

CARSON CITY, January 7, 1953

MR. FRANK W. GROVES, *Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MR. GROVES: This will acknowledge receipt of your letter of January 5, 1953, in which you request the opinion of this office regarding the display of wild animals in Clark County, Nevada, by a private individual.

STATEMENT

An individual sponsored by the Pittman Women's Club wishes to open a roadside wildlife display in Clark County, Nevada, featuring the following live animals: water buffalo, American buffalo, Asiatic panther and South American llama. It is not intended that said display will be permanently located within the State of Nevada after March of 1953. Proper arrangements for county and municipal licenses have been made.

QUERY

Would such a roadside wildlife display constitute a violation of Chapter 72, Statutes of 1947?

OPINION

Section 1, Chapter 72, 1947 Statutes provides as follows:

It shall be unlawful for any person, firm, partnership, or corporation to maintain any zoo, menagerie, or display of live wild animals, wild birds, or other wild life or non-domesticated species of animals, either native or exotic, or to exhibit as a zoo, menagerie, or display any living wild animals, birds, or other wild life, whether for compensation or otherwise; provided, that this act shall not apply to any regularly organized traveling circus, menagerie, or trained act of wild animals, not permanently located within the State of Nevada.

Section 4 provides:

Any violation of the provision of this Act shall be a misdemeanor.

The language of the statute, as above quoted, is clear and unambiguous, and for that reason is not subject to any interpretation other than that which is clearly expressed therein. And, since we have no facts before us indicating that the subject wildlife display can qualify as a "regularly organized traveling circus, menagerie or trained act of wild animals, not permanently located in the State of Nevada," the statute must be considered as applying in the instant case.

It is the opinion of this office that a display of wild animals as herein discussed would constitute a violation of the provisions of Chapter 172, Statutes of 1947.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-226 Corporations—The Sovereign Council of Free and Accepted Masons, Inc., is not Entitled to File and Receive Certificate of Qualification.

CARSON CITY, January 12, 1953
HONORABLE JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: This will acknowledge receipt of your letter in this office January 7, 1953, submitting a certified copy of articles of incorporation of the Sovereign Council of Independent Free and Accepted Masons, Inc., a California corporation which seeks to do business in the State of Nevada.

QUERY

Is the subject corporation authorized under the statutes of this State to have the articles filed and to engage in its business in this State?

OPINION

Opinion No. 677, dated September 22, 1948, referred to in your inquiry, applies to the present question. In that opinion we held that the statutes on the subject would warrant the Secretary of State in refusing to file the articles of incorporation of the Most Worshipful St. Andrews Grand Lodge of A.F. and A. M. Scottish Rite of California.

Chapter 242, Statutes of 1949, in our opinion does not change the decision at which we arrived in the former opinion and the Secretary of State may refuse a corporation charter authorizing Sovereign Council of Independent Free and Accepted Masons, Inc., to engage in its business in this State.

Chapter 242, Statutes of 1949, provides for the formation of non-profit corporations for the purpose of engaging in activities for the advancement of civic, commercial, industrial and agricultural interests of the State of Nevada.

This Act applies to organizations the activities of which are suitable to be imparted to the public, and does not affect the Section 4460, N.C.L. 1929, quoted in our former opinion, which prohibits any person, society, association, or corporation to assume, adopt or use the name of a benevolent, fraternal or charitable organization incorporated under the laws of this or any other State, or the United States.

The Grand Lodge of the Ancient Order of Free and Accepted Masons was incorporated by a special Act of the Nevada Legislature in 1865. This organization has since such time, and now exercises all the rights, privileges, and possesses the immunities usually had and enjoyed by such corporations, and lodges subordinate thereto.

The courts, generally, have restrained the use of the name, or colorable imitations of such fraternal organizations by others.

Grand Lodge Improved Benevolent, Protective Order of Elks of the World vs. Eureka Lodge Independent Elks, et al., 114 F(2) 46, held that the Grand Lodge of appellant was entitled to enjoin a seceding local lodge from using the word "Elks," and the ritual, emblems, insignia and other paraphernalia of the established lodge.

St. Joseph's Grand Lodge, Ancient, Free and Accepted Masons of State of Oklahoma vs. Most Worshipful St. John's Grand Lodge of Ancient, Free and Accepted Masons of State of Oklahoma, 143 P(2) 119. The court held that facts show an assumption of the use of distinctive portions of the plaintiff organization by the defendant and constituted a violation of the provisions of the statute which are almost identical with Sections 4460-4463, N.C.L. 1929.

The same lodges were involved in an action for injunction, which was sustained in 152 P(2) 379, wherein the court found that the plaintiff lodge was incorporated in 1892, and defendant lodge received its charter from the Secretary of State in 1936. The defendant's lodges were held out to the public as Masonic lodges and the members thereof call themselves Masons. Held, that the facts show an assumption of the use of distinctive portions of the name of the plaintiff organization by the defendant and constituted a violation of the statute forbidding the use of the name of a fraternal organization, organized under that, or any other State or of the United States.

The following statement of the court applies equally to Nevada which has the same statute as that under consideration: "It is clear to us that our Legislature undertook to prevent competition and confusion and the other complexities and perplexities that follow the parallel courses of fraternal or benevolent organizations using the same or substantially similar names of common

usage and holding themselves out to practice, teach, maintain and perpetuate the same generally understood principles relating to these esoteric subjects.”

We conclude that the principle of law and the statutes of this State will warrant the Secretary of State to refuse to file the articles of incorporation in question.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-227 Soil Conservation—Is Transfer of a Portion of One Soil Conservation District to Another Authorized.

CARSON CITY, January 15, 1953

MR. GRANT ANDERSON, *Chairman, State Soil Conservation Committee, Fernley, Nevada*.

DEAR MR. ANDERSON: This will acknowledge receipt of your letter dated, January 6, 1953, requesting the opinion of this office as to whether or not authority exists under the Soil Conservation Districts Law to transfer a portion of one conservation district to another.

STATEMENT

A small group of land occupiers in the Starr Valley Soil Conservation District wish to petition for transfer to the Humboldt River Soil Conservation District.

OPINION

After an exhaustive examination of the Soil Conservation Districts Law, we are unable to find provision which authorizes such a transfer; nor are we able to find an indirect method properly authorized by the Act for such transfer.

We are cognizant of the fact that Section 15 of the Act provides for dissolution of a district and that Section 5 as amended by the 1951 Statutes at page 196 provides for including additional territory within an existing district. However, Section 15 clearly contemplates and provides for dissolution of an entire district. With nothing more it might be proper to infer that if provision is made for dissolution of an entire district, dissolution of a part would thereby also be authorized; thereafter making it possible to include the dissolved portion within another district. Section 15 is, however, explicit as to the procedure to be followed upon termination of a district; i.e., the sale at public auction of property belonging to the district and the transfer of the proceeds to the State Treasury, the application for a certificate of dissolution and its issuance by the Secretary of State. Section 15 is also clear as to the effect of dissolution upon existing ordinances, contracts and the benefits and obligations remaining under those contracts. We do not consider these provisions adaptable to a partial dissolution.

It may be thought that a possible solution would be to dissolve the entire Starr District and again organize it leaving out the territory to be later included in the Humboldt District. Here again the procedure set forth in Section 15 runs counter to such action; nor is it in keeping with the purpose for dissolution as provided by the section.

Examination of the law discloses that the contemplated action is not authorized, and we suggest that the matter be submitted to the Legislature for determination and amendment.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-228 Constitutional Law—Counties. Member of a County Board of Education Acting Also as Secretary to said Board at a Fixed Salary May Also at the Same Time Hold the Position of Deputy Sheriff.

CARSON CITY, January 26, 1953
HONORABLE JOHN F. SEXTON, *District Attorney, Lander County, Battle Mountain, Nevada.*

DEAR MR. SEXTON: This will acknowledge receipt of your letter dated January 15, 1953, requesting the opinion of this office on the following facts and questions:

STATEMENT

A Deputy Sheriff of Lander County, receiving pay for his services therefor, has been elected to the County Board of Education. It is contemplated that this person may also be selected as the secretary to the County Board of Education at a salary of \$25 per month.

QUESTIONS

1. Is it unlawful for one individual to simultaneously occupy the positions and office of County Deputy Sheriff and membership on the County Board of Education?
2. Is it unlawful for one individual to draw two salaries for services performed in two public offices?

OPINION

The answers to both questions are in the negative.

This office is of the opinion that there is no legal objection to the occupancy by one individual of the two positions herein involved.

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

The powers of the government of the state of Nevada shall be divided into three separate departments—the legislative, the executive, and the judicial; and no person charged with the exercise of the powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases herein expressly directed or permitted.

It is to be noted that the functions of the two offices here under discussion fall within the executive department of the government, and there would be no violation of the Constitutional provision in this regard.

We find no provision in our laws making unlawful the drawing of two salaries by one individual for services performed in two public offices.

This office is, however, of the opinion that, unless expressly provided by law, the holding of two public positions simultaneously by one individual is not in keeping with good public policy.

Please find enclosed copies of two previous opinions of this office on this subject.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By WILLIAM N. DUNSEATH, *Deputy Attorney General.*

OPINION NO. 1953-229 Bonds. Nye County Hospital Bonds Constitute Valid and Legal Binding Obligation of Nye County, Nevada.

CARSON CITY, January 26, 1953

HONORABLE GRANT L. ROBISON, *Secretary, State Board of Finance, Carson City, Nevada.*

DEAR MR. ROBISON: We have examined the transcript of the proceedings in the issue of the Nye County Hospital bonds by the County of Nye, State of Nevada, of its general obligation bonds series dated January 15, 1953 in the aggregate principal amount of \$65,000 issued for the purpose of the construction and equipping of a Nye County Hospital, said bonds maturing annually in equal installments of \$3,250 on the 15th day of January in each of the years 1954 to 1973, bearing interest at the rate of 3 per centum per annum, payable semiannually on January 15 and July 15 of each year, and purchased in behalf of the State Permanent School Fund.

We are of the opinion that the proceedings are in accord with the Statutes of Nevada, and that said bonds constitute a valid and legally binding obligation of the County of Nye, State of Nevada.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By GEORGE P. ANNAND, *Deputy Attorney General.*

OPINION NO. 1953-230 Motor Vehicles—Applicant for Operator’s License Refused if Applicant Has Been Judicially Declared Incompetent and not Restored at Time Application is Made.

CARSON CITY, February 5, 1953

HONORABLE ROBERT A. ALLEN, *Chairman, Public Service Commission, Carson City, Nevada.*

DEAR MR. ALLEN: This will acknowledge receipt of your letter in this office February 4, 1953, requesting an opinion on the following question:

STATEMENT

The Drivers License Division of the Public Service Commission has under consideration an application for a driver’s license from a person who has been legally declared an incompetent person by a District Court of this State.

QUERY

Does such a finding of the District Court make it mandatory upon this Commission to find the applicant incompetent to drive a motor vehicle?

OPINION

Section 4442.09, N.C.L. 1943-1949 Supp., provides when no license [is] to be issued. Subsection 5 of this section provides as follows: “To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.”

Section 3536.01, N.C.L. 1931-1941 Supp., provides that the District Courts of the several counties have jurisdiction to hear and determine as to whether a person, previously adjudged to be insane, shall be adjudged to be sane. It appears that the language of Subsection 5 of the above-

mentioned Section 4442.09 is unambiguous, and the Department should not issue a license if the applicant comes within its provisions.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-231 Public Service Commission—No Jurisdiction Over Municipally Owned Water System Incidental to Main Purpose of Municipal Service.

CARSON CITY, February 9, 1953
HONORABLE ROBERT A. ALLEN, *Chairman, Public Service Commission, Carson City, Nevada*.

DEAR MR. ALLEN: This will acknowledge receipt of your letter in this office February 5, 1953, submitting the following statement, with a request for an opinion.

STATEMENT

The water system in Ely, Nevada, was purchased by the city from the Ely Water Company, a private corporation which served both Ely and East Ely with water. Recently the municipal utility raised the rate of service in Ely and also the rate in East Ely.

QUERY

Does the Public Service Commission have jurisdiction over the water supply furnished to the customers in the East Ely area, or do the municipal authorities have jurisdiction over all the plant even though all of it is not within the limits of Ely?

OPINION

We are of the opinion that where a municipal corporation purchases a water system supplying water to the city and adjacent territory outside the boundaries of the city, the continued supplying of water to such territory, being incidental to the main purpose, is a municipal affair, and is not within the jurisdiction of the Public Service Commission.

This office on December 29, 1952, rendered an opinion, numbered 223, in which we held that the city of Ely, a municipal corporation, when it purchased a water system from a corporation furnishing water to the city and adjoining territory, such purchase was impressed with a trust to continue the service to those who had theretofore been served. Municipal utilities do not furnish their product for profit. Their charges for such services are simply to be high enough to produce revenue sufficient to bear all costs of maintenance and operation, to meet interest charges on bonds, and permit the accumulation of a sinking fund sufficient to meet the outstanding bonds at maturity issued on account of such utility. *Springfield Gas Etc. Co. v. City of Springfield*, 126 N.E. 739.

The above case was cited in that of *Jochimsen v. City of Los Angeles*, 292 P. 902, wherein the court held that the Constitution of California giving the Railroad Commission power and jurisdiction to supervise public utilities and fix rates to be charged, does not vest in such commission authority to regulate the rate to be charged by the city of Los Angeles in the sale of water to its inhabitants.

The Supreme Court of Nevada in *Ronnow v. City of Las Vegas*, 57 Nev. 332, held that the definition of the term public utility given in Section 6106, N.C.L. 1929, is confined to the particular classes of public utilities dealt with in the Public Service Commission Act. That the definition is not applicable to the term public utility as used in the statutes granting a charter to

the city of Las Vegas. The charter provision is to the same effect as the powers given cities under the general Act providing for the incorporation of cities. This Act, under Section 28, Section 1128, N.C.L. 1929, Subsection 5, empowers the city to acquire or establish utilities in the manner provided in the Act.

Therefore, we conclude that the Public Service Commission does not have jurisdiction over the supplying of water by the city of Ely Water Department to its customers in East Ely.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-232 County Commissioners—Publishing Bills Allowed as Provided in Section 1977, N.C.L. 1929, is Mandatory and not Discretionary.

CARSON CITY, February 17, 1953
HONORABLE JON R. COLLINS, *District Attorney, Ely, White Pine County, Nevada*.

DEAR MR. COLLINS: This will acknowledge receipt of your letter in this office February 16, 1953, requesting an opinion upon the following inquiry.

STATEMENT

The Board of County Commissioners of White Pine County has, for a number of years, failed to publish bills allowed in accordance with Section 1977, Nevada Compiled Laws 1929.

QUERY

Are the provisions of Section 1977, Nevada Compiled Laws 1929, mandatory or merely directory?

OPINION

Section 1977, Nevada Compiled Laws 1929, has not been amended nor repealed and reads as follows: "The county commissioner of the different counties in this state shall cause to be published in some newspaper, published in their respective counties, the amount of all bills allowed by them, together with the names of the persons to whom such allowances are made and for what such allowances are made; provided, that in counties where there are no papers published the board of county commissioners shall cause to be posted by the clerk of said board, at the door of the courthouse in such county, the allowances provided for in this act."

The second section of the Act, Section 1978, N.C.L. 1929, was amended by Chapter 119, Statutes of 1949. The amendment changed a particular phrase to read: "The amount paid for such publication shall not exceed the statutory rate for publication of legal notices, and the publication shall not extend beyond a single insertion."

The object of the section is to make public, to bring before the public, the claims against the county allowed by the Commissioners. The idea of discretion is excluded by the provision, that in counties where there are no papers published, the commissioners shall cause the same to be posted at the door of the courthouse in the county.

In the case of *State ex rel. Jackson v. Board of Fayette County*, 172 N.E. 154, the court held that where certain act required to be done are of the essence of the thing required to be done by law, those acts are imperative.

The statute in this case plainly provided that notice of the election shall be published, and the court held that the phrase used is mandatory.

Generally in construction of statutes, the word shall is considered as mandatory and it is particularly so considered when the statute is addressed to public officials. *State ex rel. Smith v. Nebraska Liquor Control Commission*, 42 N.W.(2) 299.

The purpose of the statute in question is not merely for the guidance of the Commissioners, but is a right given the public to be informed as to the action of the Board in allowing claims against the county.

Therefore, it is the opinion of this office that the publication of bills allowed by the County Commissioners is imperative and mandatory.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-233 Nevada Industrial Commission. Commission Authorized to Employ on Overtime Basis and Allow Time and One-half Compensation With Approval of the Governor.

CARSON CITY, February 18, 1953
HONORABLE CHARLES H. RUSSELL, *Governor of Nevada, Carson City, Nevada*.

DEAR GOVERNOR RUSSELL: This will acknowledge receipt of your letter dated February 9, 1953, requesting the opinion of this office concerning the authority of the Nevada Industrial Commission to authorize overtime pay for its employees.

STATEMENT

On January 27, 1953, the Nevada Industrial Commission adopted the following rule: "Effective as of 8:00 A. M., Saturday, January 24, 1953, overtime work by employees shall be paid for at 150% of the employees' regular rate of pay. Overtime work must first be authorized by the Chairman or administrative assistant. No pay will be allowed for overtime work unless such work is authorized before it is performed." This rule was adopted by unanimous vote of the Commission.

QUESTION

"Has the Nevada Industrial Commission the authority to authorize overtime payment for stenographic and secretarial personnel under the laws that govern operation of the Nevada Industrial Commission?"

OPINION

It is the opinion of this office that this Nevada Industrial Commission directive is legally authorized if first approved by the Governor.

The Nevada Industrial Insurance Act, N.C.L. 1949 Supp., Section 2680.43, provides in part, as follows:

The commission may employ a secretary, accountants, assistants, examiners, experts, clerks, stenographers, and other assistants, and shall employ a safety inspector, and fix their compensation. Such *employments and compensation shall be first approved by the governor*, and shall be paid out of the state treasury * * *.
(Italics ours.)

Other than the prerequisite approval of the Governor, we find no restriction in the above-quoted section or the Act prohibiting the Commission from employing its personnel on an overtime basis and allowing time and one-half compensation therefor.

It is our opinion that the Nevada Industrial Commission is not a purely State department subject to the provisions of law pertaining to purely State departments. See *State v. McMillan*, 36 Nev. 383. There is therefore, no conflict between the above-quoted Act and the 1951 Statutes, page 519, wherein the salaries of clerical personnel employed in State offices or departments are fixed and declared to be full compensation for all services rendered. For this reason we conclude that the Commission may employ and compensate for overtime service.

However, the Act is clear to the effect that employment and compensation must first be approved by the Governor. This requirement is not altered by reason of the fact that the employment will be overtime employment with time and one-half compensation. This opinion is rendered pursuant to the present status of the law. If the Legislature amends the Industrial Commission Act, then, of course, our opinion would be modified by its Act.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-234 Public Schools—Clark County Educational Districts: In Arriving at Total Bonded Indebtedness, all Outstanding Bonded Indebtedness Within the District Should Be Considered.

CARSON CITY, February 20, 1953
HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. FOLEY: This will acknowledge receipt of your letter in this office February 18, 1953.

You request an opinion as to the construction of Section 6084.216, N.C.L. 1943-1949 Supp., respecting the subject of Clark County Educational Districts Nos. 1, 2, 3 and 12 in computing the 10 percent of the total indebtedness for the purpose of issuing bonds.

QUERY

In computing the 10 percent of the total indebtedness should there be included other indebtedness? For example, would the amount of indebtedness against the real property in the school district for the construction of a hospital or for the formation and financing of a water district be considered in arriving at the 10 percent limitation?

OPINION

Sections 6063-6072, N.C.L. 1929, was a special Act passed in 1919 providing for the division of Clark County into educational districts. These sections were incorporated in Chapter 63, Statutes of Nevada 1947, the same being Chapter 18 of the School Code, which in Section 449 repealed Sections 6063-6072, N.C.L. 1929, the same having been included, as clarified and recodified.

It appears that the board of education and the board of trustees of the districts have all the powers and duties of any board of trustees of a school district in the State.

Section 206, Chapter 28 of the School Code, provides that any school district of the State is authorized to borrow money for the purpose of erecting and furnishing school buildings, maintaining the same, purchasing sites or for refunding floating indebtedness or for any of these purposes.

The limitation of the bonded indebtedness is expressed in the following language:

The total bonded indebtedness of a school district shall at no time exceed ten (10) percent of the total of the last assessed valuation for county purposes of the taxable property situate within that school district.

Total bonded indebtedness of a school district is the substance of the limitation.

As held by the Supreme Court in *Hard vs. Depaoli et al.*, 56 Nev. 19, on page 30, the court said: "While it is required under the provisions of section 2, article 11, of the constitution that the legislature provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, yet such school districts are creatures of legislative acts. By those acts they are brought into existence as political subdivisions of the state, formed for the purpose of aiding in the exercise of that governmental function which relates to the education of children; their functions defined, and such powers as they may exercise conferred upon them. They have no inherent right to vote bonds or negotiate loans; such right must be derived from statute, and in voting such bonds or providing for such loans, the statute must be substantially complied with."

In the case of *Molette v. Board of Education of Van Lear Grade School District*, 86 S.W.(2) 990, the court decided the legality of a bond issue for the school district, under a statute similar to that of Nevada, providing that the indebtedness of a school district was limited to 2 percent of the taxable property therein, to be estimated by the assessment next before the last assessment previous to the incurring of the indebtedness.

The court found the total assessed value of the district to be \$619,019, and on page 995: "The proof shows this district owes no other money, and this issue of \$12,181 is within the constitutional limit * * *."

To hold that the limitation of the bonded indebtedness for school districts as provided in Section 206 of the Nevada School Code should be construed to mean the indebtedness of the district for school purposes only, appears to be so far outside of the language of the statute that to include it within the statute would be to legislate and not to construe legislation. *France v. U.S.*, 164 U.S. 682.

We are therefore of the opinion that the prohibition against a total indebtedness in excess of 10 percent of the assessed value of taxable property within the school districts applies to all outstanding bonded indebtedness of the district.

The Legislature is now in session, and the doubt in respect to the section in question may be submitted to that body for clarification.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-235 Insurance—Solicitor Need Not Be Full-Time Employee of Insurance Agent or Broker.

CARSON CITY, February 20, 1953
HONORABLE PAUL HAMMEL, *Insurance Commissioner, Carson City, Nevada*.

DEAR MR. HAMMEL: This will acknowledge receipt of your letter of January 13, 1953, in which you request the opinion of this office regarding the following question:

Is it necessary that an individual be a full-time employee of an insurance agent or broker as a requisite to issuance of a solicitor's license?

OPINION

The answer to your question is in the negative.

Section 150 of the Nevada Insurance Act, as last amended in Chapter 240, 1949 Statutes 521, at page 525, provides in part as follows:

Procedure for Issuance of Solicitor's License. (1) The commissioner shall issue a solicitor's license only to a natural person who is a resident of this state, and only upon requisition, accompanied by the fee as provided for in section 60, made by his employer who or which shall be a licensed agent or broker, *and then only when such employer certifies that the solicitor is his bona fide employee and is competent and fully qualified and that he will assume responsibility for such solicitor's acts.* (Italics supplied.)

The italic language first appeared in Chapter 147, 1947 Statutes 481, amending Section 3656.150, N.C.L. 1931-1941 Supp., which section had contained the following pertinent language:

* * * and then only when such employer certifies that the solicitor is his bona fide, *full-time* employee * * *. (Italics supplied.)

A comparison of the pertinent language of Section 3656.150, 1931-1941 Supp., and that which now is, and since 1947 has been, in effect, clearly indicates the intention of the Legislature was to eliminate the requirement that an individual to be a full-time employee of an insurance agent or broker in order to obtain a solicitor's license.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By JOHN W. BARRETT, *Deputy Attorney General.*

OPINION NO. 1953-236 State Highway Department. In Contracts for Highway Construction, Specifications, Plans, Supplementary Documents and Special Provisions, are in Coordination, but Special Provisions in Such Contracts Control, When Clearly Written.

CARSON CITY, March 2, 1953
HONORABLE H. D. MILLS, *State Highway Engineer, Carson City, Nevada.*

DEAR MR. MILLS: This opinion is rendered upon your oral request for such, and based upon the following summary statement of facts.

STATEMENT

Young & Smith Construction Co. of Salt Lake City, Utah, completed a road contract under No. 822 on Project No.S538(2), Clark County, Control Section CL-48, and the work was accepted by the Department of Highways, State of Nevada.

Notice of discrepancies in computation was given the Department by the contractor, and a hearing was held before the State Highway Department.

Prior to the bidding the contractor received the proposals, State Highway Department standard specifications, plans and profile of the proposed highway and special provisions which formed a part of the contract and bond executed by the department and the contractor.

Work was started April 18, 1952; was completed October 18, 1952; and was accepted December 11, 1952.

Without going into detail, we are informed that the total amount in yardage of excavation is not questioned and the only controversy to be determined is the payment for excavation involving the ditch or channel between points designated as Stations A 51+60 and A 123+10. The bottom width of channel was 25 feet. The contract and bond show the approximate cubic yard of excavation segregated into two classes; namely, "Roadway Excavation A," "Roadway Excavation B" and the contractor's price for Roadway Excavation A was 38 cents per cubic yard, and for Roadway Excavation B, \$1.38 per cubic yard.

The contract and bond, page 33, contains the following special provision:

14.2 Classification. Roadway excavation between Stations "A" 51+60 and "A" 123+10 shall be classified as Roadway Excavation "B."

QUERY

Does the special provision in the contract under Section 14.2, defining roadway excavation classification, require the State Highway Department to pay the contractor the contract unit of \$1.38 per cubic yard for the channel or ditch construction between Stations "A" 51+60 and "A" 123+10; the only subject matter to be decided.

OPINION

The special provisions, proposals, contract and bond are the integral parts of the executed written contract.

Standard Specifications, 1946 Edition, Section 5.4, reads as follows: "These specifications, the plans, special provisions, and all supplemental documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be cooperative, to describe and provide for a complete work. In case of discrepancy, figured dimensions shall govern over scaled dimensions; plans shall govern over specifications; *special provisions shall govern over both specifications and plans.*"—(Italics supplied.)

Standard Specifications, Section 14.13, subsection (f), second paragraph, quoting that part deemed relevant, reads as follows: "All excavation for ditches and channels having a bottom width of eight feet or more shall be classified as roadway excavation. There shall be no distinction in classification on account of placing ditch or channel excavation either in dikes or within the roadway prism."

Section 14.14 provided that the quantity, measured, shall be at contract unit price per cubic yard.—"Roadway Excavation A," "Roadway Excavation B."

The construction of the channel in question had a bottom width of 25 feet, and was therefore classified without distinction, as roadway excavation.

The special provision in the contract and bond, Section 14.2, page 33 reads: "Roadway excavation between Stations "A" 51+60 and "A" 123+10 shall be classified as "Roadway Excavation B."

This special provision comes within the language underscored in the quoted provisions of Section 5.4 of Standard Specifications. Under schedule of prices in the contract, page 52, the items and unit price show Roadway Excavation "A" 38 cents per cubic yard. Roadway Excavation "B" \$1.38 per cubic yard.

The channel in question by Standard Specifications is classified as roadway excavation.

The special provisions, Section 14.2 of the contract, in plain and unambiguous language places roadway excavation between the designated stations as Roadway Excavation "B."

This brings the work performed between the stations mentioned within the language of the contract defining unit prices at \$1.38 per cubic yard.

The language employed in Section 5.4 of Standard Specifications makes the executed contract entire and not separable into distinct and independent contracts.

The general rule of law in the construction of contracts is that a court will not resort to construction where the intent of the parties is expressed in clear and unambiguous language, but will enforce the contract according to its terms. 13 C.J., page 520, Section 481.

Where parties have put their contracts into writing, the written instrument, if clear, is conclusive as against all preceding oral agreements and understandings. *Banker's Reserve Life Co. v. Yelland* 41 Fed.(2) 684.

When a party makes a contract and reduces it to writing, he must abide by its terms as plainly stated therein. *Chiqueta Mining Co. v. Fairbanks, Morse & Co.* 60 Nev. 142, 104 P.2d 191.

The special provision under 14.2 of the contract submitted with this inquiry, *could* have contained an exception to refer to the summary on plan sheet 2, but this exception cannot now be read into the construction of the plain and unambiguous language contained in the section.

We are therefore of the opinion that the contractor in question is entitled to be paid at the rate of \$1.38 per cubic yard for channel, the same being roadway excavation and specifically classified as Roadway Excavation "B" in the executed contract.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By GEORGE P. ANNAND, *Deputy Attorney General.*

OPINION NO. 1953-237 Medicine—Resident Medical Officers—Certificate of Ability in Basic Sciences not a Prerequisite to Issuance of Permit—Must be Citizen of United States.

CARSON CITY, March 4, 1953

GEORGE H. ROSS, M.D., *Secretary-Treasurer, Nevada State Board of Medical Examiners, 112 Curry Street, Carson City, Nevada.*

DEAR DR. ROSS: This will acknowledge receipt of your letter of February 25, 1953, in which you request the opinion of this office regarding the following questions:

1. Is it a prerequisite to the issuance of a permit to serve as a resident medical officer that an applicant shall have secured a certificate of ability in the basic sciences?
2. Is United States citizenship necessary to the issuance of a permit to serve as a resident medical officer?

OPINION

The answer to Question No. 1 is in the negative.

Chapter 332, 1951 Statutes of Nevada, provides, in Section 2 thereof, as follows:

No person shall be permitted to take an examination for a license to practice the healing art or any branch thereof, or be granted any such license, unless he has presented to the board or officer empowered to issue such a license as the applicant seeks, a certificate of ability in anatomy, physiology, chemistry, bacteriology, and pathology (hereinafter referred to as the basic sciences), issued by the state board of examiners in the basic sciences.

Said Chapter 332, 1951 Statutes, further provides, in part, in Section 17 thereof, as follows:

This act shall not be construed as applying to * * *; nor to persons specifically permitted by law to practice without licenses, who practice each within the limits of the privilege thus granted to him.

The Medical Practice Act of 1949, the same being Chapter 169, 1949 Statutes of Nevada, was amended by Chapter 124, 1951 Statutes, by the addition of Section 21 1/2, which section provides for the issuance of permits to properly qualified applicants to serve as resident medical officers in any hospital in Nevada subject to seven enumerated provisions, none of which require, either specifically or by implication, that such an applicant secure a certificate of ability in the basic sciences as a prerequisite to the issuance of such permit.

It is the opinion of this office that the securing of a certificate of ability in the basic sciences is not a prerequisite to the issuance of a permit to serve as a resident medical officer. The Basic Science Act of 1951, in Section 2 thereof, provides for the issuance of a "license," while Section 21 1/2 of the Medical Practice Act of 1949 provides for the issuance of a "permit," indicating quite clearly that "license" and "permit" are not one and the same. Further, Subsection (7) of Section 21 1/2 of said Medical Practice Act provides that the issuance of such a permit shall in no way obligate the Board to grant any regular license. Section 17 of the Basic Science Act of 1951 exempts from the provisions of said Act persons specifically permitted by law to practice without licenses, providing, that any such person must confine his practice to the privilege granted him. Section 21 1/2 of the Medical Practice Act of 1949, which provides for the issuance of a permit and which rigidly defines the limits within which a permit holder may practice, must be considered as a law specifically permitting practice of medicine without a license.

The answer to Question No. 2 is in the affirmative.

Section 21 1/2 of the Medical Practice Act of 1949, cited by you in your letter requesting this opinion, specifically provides, in part, in Subsection (1) thereof, as follows:

* * *He shall be a citizen of the United States.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-238 Taxation—Resale of Property Acquired by County Under Delinquent Tax Proceedings. Deed to Such Property Executed and Delivered is Prima-Facie Evidence of the Regularity of all Proceedings at Sale.

CARSON CITY, March 12, 1953
HONORABLE L. E. BLAISDELL, *District Attorney, Mineral County, Hawthorne, Nevada*.

DEAR MR. BLAISDELL: This will acknowledge receipt of your letter in this office March 6, 1953, in which you request an opinion as to the validity of a certain deed for the resale of property acquired by the county through tax proceedings.

STATEMENT

The Board of County Commissioners upon petition entered its order for the sale of the particular property. The order did not state the amount of taxes, costs, penalties, and interest chargeable against the property. The assessed valuation of the property was less than \$500. The notice of sale was posted as required and the property was sold in an amount substantially in excess of such taxes, penalties, interest, etc. Thereafter the commissioners approved and confirmed the sale without an affidavit of posting and return of sale having been made and filed

with the clerk. The minutes of the Board, in substance, recited the fact of posting and return of sale.

QUERY

1. Is the deed in question valid, void or voidable?
2. If the commissioners receive a petition to sell property acquired through tax proceedings and they are disposed to reject the petition, may they do so?
3. A sale of such real property having been made pursuant to Section 6462, 1929 N.C.L. 1949 Supp., is it the mandatory duty of the Treasurer to issue the deed? Does any duty rest in the Commissioners to confirm the sale, all preliminary matters being regular and legal?

OPINION

Section 6462, 1929 N.C.L. 1949 Supp., being Section 55 of the Revenue Act, provides in Subsection 1 that the Board of County Commissioners may make an order directing the County Treasurer to sell property acquired through delinquent tax sale in the manner provided by law for the sale of such property having assessed valuation less than \$500, for a total amount not less than the amount of taxes, costs, penalties and interest chargeable against such property, as stated in the order. The following language is quoted from the sub-section:

* * * and upon compliance with such order said officer shall make, execute, and deliver to any purchaser upon payment to him, as trustees as aforesaid, of a consideration not less than that specified in the order, an absolute deed, discharged of any trust of the property mentioned in such order. Before delivering any such deed, it is hereby made the duty of such treasurer to record same at the expense of the purchaser. All such deeds whether heretofore or hereafter issued are primary evidence of the regularity of all proceedings relating to the order of the county commissioners, notice of sale, and sale of said property; but no such deed shall hereafter be executed and delivered by said treasurer until he shall have filed at the expense of the purchaser, with the clerk of the board of county commissioners, proper affidavits of posting and of publication of notice of sale, as the case may be, together with his return of sale, duly verified, showing compliance with the order of the commissioners, which said return shall constitute primary evidence of the facts recited therein. If such deed when regularly issued be not recorded in the office of the county recorder, such deed, and all proceedings relating thereto, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same property, or any portion thereof, when his own conveyance shall be first duly recorded. * * *

To initiate the sale of the property defined in the subsection, the County Commissioners make and order, and enter the same upon their minutes, directing the County Treasurer to sell the described property after giving notice of sale, The notice shall be given in the same manner as is provided by law for the sale of such property having an assessed valuation less than \$500. The law referred to is Section 1 of an Act supplemental to the Revenue Act, or Section 6529, N.C.L. 1929. This section provides the time and manner of posting or publishing of the notice to sell.

Returning to the provisions of Subsection 1 of Section 55 of the Revenue Act, it appears that the sale must be made for a total amount not less than the amount of the taxes, costs, penalties, and interest legally chargeable against such property. The statute then provides, "and upon compliance with such order said officer shall make, execute and deliver to any purchaser upon payment to him, as trustees as aforesaid, of a consideration not less than that specified in the order, as absolute deed, discharged of any trust of the property mentioned in such order."

That the amount of taxes, penalties, etc., was not expressed in the order does not affect the deed, as the statute provides the least amount for which the property must be sold. Upon

compliance with the order of the Commissioners to sell the property, and following the provisions of Section 6529, N.C.L. 1929, the officer is directed upon payment to him of the consideration provided by law to make, execute and deliver to the purchaser an absolute deed. The section further provides, "All such deeds whether heretofore or hereafter issued are primary evidence of the regularity of all proceedings relating to the order of the county commissioners, notice of sale, and sale of such property * * *." Notwithstanding this provision, the statute requires that before delivery of such deed it is made the duty of the treasurer to record the same, and also that before the deed is executed and delivered the treasurer must file with the Clerk of the Commissioners his affidavit of posting or publishing, showing compliance with the order.

These provisions, when read in connection with the other language in the section, appear to be directory and not jurisdictional.

The latter part of the section provides that the Treasurer shall file with the Clerk the affidavits of posting or publishing and return of sale which shall constitute primary evidence of the facts recited therein.

There is no language in these instructions which specifically declare that the validity of the deed is affected, if not followed. There is a provision that if the deed is not first recorded that the same shall be void as against subsequent purchasers in good faith, when his own conveyance shall be first recorded. This is merely a statement of the statute respecting the recording of conveyances and the law as to unrecorded instruments. *Moore v. DeBernardi*, 47 Nev. 46, held it is only subsequent purchasers in good faith against whom unrecorded conveyances are void.

In many, if not most, States laws have been enacted making tax deed prima-facie evidence of title in the purchaser or of the regularity and legality of the preliminary proceedings as well as of the sale. These statutes have been upheld as being within the power of the Legislature and constitutional; and if the legislative intent is plainly expressed, they must be so construed as to give them their due and proper effect; and it has been held that the Legislature may make the deed prima-facie evidence of its recitals, although the facts recited are indispensable jurisdictional facts, but there is authority to the contrary. Such a statutory presumption has been held to apply to a resale deed from the State, 61 C.J., Sec. 1954, Taxation.

We are, therefore, of the opinion that the deed in question is a valid instrument and is primary evidence of the regularity of all proceedings relating to the sale of the property.

In answer to your second question, we are of the opinion that the sale of property provided for under Section 55 of the Revenue Act is a matter within the discretion of the County Commissioners. The section does not require the filing of a petition to the Board to sell such property, but provides that the Board of County Commissioners may make an order directing the County Treasurer to sell particularly described property.

The answer to your third question, in the opinion of this office, is that the duty imposed upon the Treasurer is purely ministerial and the deed should issue without confirmation by the Commissioners. There is no language in the section that requires an approval or a confirmation of such sale by the Commissioners.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-239 State Funds—Assembly Bill No. 61, Chapter 41, Statutes of 1953, Authorizes Investment of State Funds in Bonds Issued Pursuant to Chapter 138, Statutes of 1947, Sanitary Districts.

CARSON CITY, March 19, 1953
HONORABLE GRANT L. ROBISON, *Secretary, State Board of Finance, Carson City, Nevada.*

DEAR MR. ROBISON: This will acknowledge receipt of your letter in this office March 18, 1953, requesting an opinion relative to Assembly Bill No. 61 which amends Chapter 191, Statutes of 1943, which chapter provides for the various types of investments or securities in which the State Board of Finance may invest State funds. Assembly Bill No. 61 has been passed and approved by the Governor.

QUERY

May bonds issued under Chapter 138, Statutes of 1947, the same being an Act to provide for the formation, government, operation, etc., of sewage, water, and garbage disposal districts, be within the classification of bonds and other securities in which funds of the State may be lawfully invested under the amendment as appears in Assembly Bill No. 61?

OPINION

Assembly Bill No. 61, approved by the Governor on March 5, 1953, will be Chapter 41 of the Statutes of Nevada, 1953.

Section 1 of the Act provides that any law of this State to the contrary notwithstanding, the following bonds and other securities, or either or any of them, are and hereby are declared to be proper and lawful investments of any of the funds of this State and its various departments, institutions, and agencies, and of the State Insurance Fund. The section contains exceptions of certain funds and then names certain classes of bonds and securities as lawful investments. The amendment reads as follows: “* * * bonds authorized to be issued pursuant to the provisions of Chapter 138, 1947 Statutes of Nevada, * * *.”

Chapter 138, Statutes of 1947, is an Act to provide for the formation, government, operation, organization, combination, dissolution and altering of boundaries of sewer, water, and garbage disposal districts in any part of the State of Nevada. Section 9 of the Act, Subsection 2, provides that the districts may issue general obligation bonds which shall be secured by the taxing power of the county or district.

Subsection 3 provides for the issue of special assessment bonds, and Subsection 4 provides for the issuance of revenue bonds secured by rental or service charges imposed upon the users of the utility.

Subsection 5 provides that the districts may borrow funds from the State or Federal Government when such funds are available for carrying out the purposes of the Act.

The language in the amendment to the Act designating the various classes of bonds and securities in which State funds may be invested is plain and unanalogous, and there appears to be no room for construction. The Legislature is presumed to have knowledge of the state of the law upon the subject upon which it legislates. *Clover Valley Land & S. Co. v. Lamb*, 43 Nev. 375.

We are, therefore, of the opinion that, under the plain language in the amendment contained in Assembly Bill No. 61, approved March 4, 1953, Chapter 41, Statutes of Nevada 1953, bonds authorized and issued pursuant to the provisions of Chapter 138, Statutes of 1947, would be legal investments for State funds under control of the State Board of Finance.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-240 Counties—County Recorder Not Required to Make Abstracts or Certificates Relating to Documents or Instruments Affecting Personal Property or Crops. Extent of Liability of County Recorder for Errors in Certification.

CARSON CITY, April 2, 1953

HONORABLE GRANT SAWYER, *District Attorney, Elko, Nevada.*

DEAR MR. SAWYER: This will acknowledge receipt of your letter of March 4, 1953, in which you request the opinion of this office regarding the following questions:

1. Does Subsection 2 of Section 4, Chapter 28, 1951 Stats., make it mandatory that the County Recorder make certificates or abstracts relating to documents and instruments affecting personal property or crops upon the demand or request of any party?
2. What is the extent of the liability of the County Recorder in the event of error in certifying to any search in such cases?

OPINION

Answering question No. 1:

Chapter 28, 1951 Stats., amending Section 2939, N.C.L. 1931-1941 Supp., regulates fees and compensation for official and other services and provides, inter alia, as follows:

Section 4. The following fees to the several county recorders (in counties polling over 800 votes) are hereby established: * * * provided that the recorder's fees for the * * * issuing of certificates of searches as provided for by law, * * * shall be as follows, and not otherwise:

(2) For making searches of the records and indexes of his office, and certificates or abstracts thereof relating to documents and instruments affecting personal property or crops, the sum of twenty-five cents per year for which such searches are certified.

Chap. 120, 1923 Stats., as amended by Chap. 119, 1935 Stats., and Chap. 84, 1949 Stats., the same being Sections 2111-2122, N.C.L. 1929, and Section 2122.31, N.C.L. 1931-1941 Supp., relate, among other matters, to the recording of instruments and set out the duties of County Recorders.

Since Chap. 28, 1951 Stats., does not do, and does not purport to do, any more than establish fees to be charged by the several County Recorders, and since Sections 2111-2122, N.C.L. 1929, as amended in 1935 and 1949, impose no duty upon the County Recorders to make searches, certificates and abstracts, it is the opinion of this office that a County Recorder is not, and under existing law cannot be required, to make such searches, certificates and abstracts. If any such searches, certificates and abstracts are made, the County Recorder must, of course, collect the statutory fee.

It is interesting to note in this connection that Sections 1450-1459 N.C.L. 1929, as amended by Chap. 8, 1951 Stats., provide for the appointment of commissioned abstracters and authorize such persons to make searches, compile abstracts and certify the same, thereby providing a service identical to that which may be performed by a County Recorder.

Answering question No. 2, we refer you to Section 2121, N.C.L. 1931-1941 Supp., which provides for liability of the County Recorder for certain wrongful acts and the extent of his liability. Since error in certification of any search such as is hereinabove mentioned is not included among the enumerated wrongful acts for which a Recorder is liable, the principle of *expressio unius est exclusio alterius* must be considered as being applicable, and it is therefore the opinion of this office that a County Recorder is not liable for error in such certifications. However, the law regarding malpractice and malfeasance in office should be kept in mind, and the Recorder should not rely entirely upon his civil nonliability.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

By JOHN W. BARRETT, *Deputy Attorney General*.

**OPINION NO. 1953-241 Public Lands—Surveyor General, as Ex Officio Land Register,
has no Authority to Grant Easements Over State-Owned Land.**

CARSON CITY, April 3, 1953

HONORABLE LOUIS D. FERRARI, *Surveyor General, Carson City, Nevada*.

DEAR MR. FERRARI: This will acknowledge receipt of your letter of March 20, 1953, in which you submit for answer a question relative to issuance of a patent to certain State land.

STATEMENT

On January 23, 1939, the then Surveyor General executed an instrument termed "Agreement For Easement And Right Of Way" which purported to grant to the United States of America an easement and right of way over a parcel of land which was at that time the subject of a contract of sale by the State of Nevada to a named individual, said easement to be used as a stock driveway by the Federal Division of Range Management. Said easement does not appear of record in the office of the Recorder of the county in which the land is situated, and you desire at this time, as Ex Officio Land Register, to issue a patent on the land in question.

QUERY

In view of the facts stated, should the patent that will issue contain a reservation, or an exception, of said stock driveway?

OPINION

By an Act of Congress, dated June 16, 1880, 2,000,000 acres of land were granted to the State of Nevada by the United States in lieu of the sixteenth and thirty-sixth sections theretofore granted to the State of Nevada, said lands to be selected by the State authorities. By said Act of the State of Nevada, acquired title to lands subsequently selected, the land in question being a part of those lands so selected. The said Act of Congress made no reservation of easements or rights of way for any purpose, and contained no provision for the future granting of easements or rights of way to the United States.

An examination of the Nevada law on the subject reveals that there is not now, and was not at the time of execution of the alleged Agreement for Easement and Right of Way, any provision giving the Surveyor General authority to grant easements or rights of way over State land, whether or not such land might be under contract of sale.

In view of the above, it is the considered opinion of this office that the Surveyor General, in executing the said Agreement for Easement and Right of Way, acted without authority to do so, and that the easement purportedly granted to the United States is, and has been, null and void and of no force nor effect whatever, and that you should issue the patent without reference of any kind to said stock driveway.

We are returning herewith your copy of said Agreement for Easement and Right of Way, which accompanied your letter.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-242 Constitutional Law—Assembly Bill No. 159, Increasing the Taxable Payroll Base, not Retroactive.

CARSON CITY, April 6, 1953

MR. JOHN F. CORY, *Executive Director, Employment Security Department, Carson City, Nevada.*

DEAR MR. CORY: Reference is hereby made to your letter of April 3, 1953, requesting the opinion of this office as to whether the amendment to Section 7 of the Unemployment Compensation Act, as incorporated in Assembly Bill 159 and enacted into law by the 1953 Legislature, increasing the taxable payroll base per employee from \$3,000 to \$3,600, is retroactive. We think your inquiry is based upon the proposition that Section 7, before the 1953 amendment, contained language as follows: “* * * becomes payable to such individual by such employer with respect to employment during the calendar year 1947 and during each calendar year thereafter.” The Legislature did not change the year 1947 to the year 1953, or to any other year.

OPINION

It is the cardinal rule of construction of statutes in this State that statutes are not retroactive unless clearly expressed therein by the Legislature and unless it clearly appears that the intention of the Legislature was to make an amendment of a statute retroactive, then the rule is otherwise and the statute is to be construed prospective in nature only.

In the case of *Wildes v. State*, 43 Nev. 388, the Supreme Court, in course of opinion, said as follows:

Retrospective legislation is not favored, and, except when resorted to in the enactment of curative laws, or such remedial acts do not create new rights or take away vested ones, is apt to result in injustice. The reason is well expressed in *Jones v. Stockgrowers' National Bank*, 17 Colo. App. 79, 67 Pac. 177:

“Every citizen,” says the court, “is supposed to know the law, and to govern his conduct, both as to business affairs and otherwise, in accordance with its provisions. It would be a manifest injustice if, after rights had become vested according to existing laws, they could be taken away, in whole or in part, by subsequent legislation.”

From a consideration of the pronounced policy of the law against retrospective legislation, there has been evolved a strict rule of construction in this regard.

“There is always a presumption that statutes are intended to operate prospectively only, and words ought not to have a retrospective operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute. If all of the language of a statute can be satisfied by giving it prospective action only, that construction will be given it.” *United States v. Heth*, 3 Cranch, 399, 2 L.Ed. 479; (citing many cases).

“This rule,” says Paterson, J., in *United States V. Heth*, supra, “ought especially to be adhered to, when such a construction (retrospective operation) will alter the pre-existing situation of parties, or will affect or interfere with their antecedent rights, services, and remuneration, which is so obviously improper that nothing ought to uphold and vindicate the interpretation but the unequivocal and inflexible import of the terms and the manifest intention of the legislature.”

The law as pronounced in *Wildes v. State*, supra, was followed in *Virden v. Smith*, 46 Nev. 208, and the holding in *United States v. Heth*, supra, was again quoted with approval. It is interesting to note that the *Virden* case dealt with payments for disability under the Nevada Industrial Insurance Act and that it was claimed an amendment increasing the payments was retroactive, which brings the case squarely in point with your inquiry and, we think, such case governs the situation here.

It is, therefore, the considered opinion of this office that Assembly Bill No. 159, amending Section 7 of the Unemployment Compensation Act, is not retroactive, nor retrospective, but prospective for the future only after the effective date of the Act, which, according to the bill, would not be until July 1, 1953.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-243 Bank Examiner—Small Loan Act—Application of Nevada Small Loan Act to Unlicensed Persons Engaged in the Business of Lending Money for Profit.

CARSON CITY, April 8, 1953
HONORABLE GRANT L. ROBISON, *Superintendent of Banks, Carson City, Nevada*.

DEAR MR. ROBISON: This will acknowledge receipt of your letter dated March 17, 1953, requesting an opinion of the following questions:

1. If an unlicensed lender violates any of the above-cited sections of the Nevada Small Loan Act, may penalties provided by Subsection (d) of Section 2 be applied in the same manner as they may be applied against a licensed lender?
2. Would any contract upon which the maximum interest rate provided in Section 4323, N.C.L. 1929, had been charged or collected, and in addition thereto had charges added for notary fees, recording fees and an investigation or appraisal fee, be rendered null and void as to both interest and principal? This second question also applies to the penalty provisions of Subsection (d) of Section 2.

OPINION

The answer to question No. 1 is in the affirmative.
Section 2(a) of the Nevada Small Loan Act provides in part as follows:

No person shall engage in the business of lending in amounts of fifteen hundred dollars or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than the interest that the lender would be permitted by law to charge for a loan of money if he were not a licensee under this act, except as provided in and authorized by this act, and without first having obtained a license from the commissioner.

Section 2(d) of said Act provides as follows:

Any person and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any provision of subsection (a) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars and not

less than one hundred dollars, or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court. Any contract of loan in the making or collection of which any act shall have been done which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

This office is of the opinion that Section 2(a) is designed and intended to include both the licensed and the unlicensed lender who is engaged in the business of lending in amounts of \$1,500 or less as computed by the Act. By the use of the wording in Section 2(a), "No person shall engage in the business of lending in amounts of fifteen hundred dollars or less," it seems clear that all lenders, in the business of lending in such amounts, are included within the provision. Moreover, this construction is further supported by Section 8 of the Act in the matter of who shall be subject to investigation. It is there provided that any licensee or any other person engaged in the business described in Subsection 2(a) of this Act shall be subject to investigation.

Section 4323, N.C.L. 1929, provides in part as follows:

Parties may agree, for the payment of any rate of interest on money due, or to become due, on any contract, not exceeding, however, the rate of twelve percent (12%) per annum. * * * Any agreement for a greater rate of interest than herein specified, shall be null and void and of no effect as to such excessive rate of interest.

Insofar as unlicensed persons engaged in the business of lending in the amounts of \$1,500 or less are concerned, Section 4323, N.C.L. 1929, is altered by the penalty provision of the Nevada Small Loan Act, Section 2(d), wherein not only the remedy of the borrower is strengthened but penal provisions are added.

The answer to question No. 2 is in the negative.

In our opinion, except as to licensed lenders, Section 2(a) of the Nevada Small Loan Act does not alter the amount which was chargeable by the lender prior to said Act. Under Section 4323, N.C.L. 1929, usurious charges were illegal, and they remain so under the Nevada Small Loan Act. The unlicensed lender engaged in the business of lending is, however, under the latter Act, subject to more stringent penalties for violation of the usury law, and to investigation.

Concerning usury laws, it seems to be well settled that a lender may legitimately require a borrower to pay the actual and reasonable expense of examining and appraising the security which he offers for the loan, investigating and perfecting title, and preparing, acknowledging, and recording papers connected with the loan. The lender cannot, however, hide excessive interest under pretended charges for expense in drawing papers, examining security, and the like. See 55 Am.Jur., page 335, Section 17.

But see *London Realty Co. v. Riordon* 100 N.E. 800.

It should be further pointed out that Section 2(a) of the Nevada Small Loan Act. has application only to contracts for loans in amounts of \$1,500 or less. Moreover, it has no application to those not engaged in the business of lending money.

We are, therefore, of the opinion that unlicensed persons engaged in the business of lending and persons not engaged in the business of lending may contract for a loan and require the borrower to pay, in addition to the legal rate of interest, costs for notary fee, recording fee and appraisal fee.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-244 Constitutional Law—Counties—Validity of Chapter 187, 1951 Statutes, Appertaining to Office Hours of Certain Clark County Officials.

CARSON CITY, April 9, 1953

HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. FOLEY: This office is in receipt of your letter dated April 3, 1953, requesting the opinion of this office as to whether Clark County officers are bound to follow Chapter 187, 1951 Statutes, page 279.

STATEMENT

Chapter 187, 1951 Statutes, provides that certain county officers of Clark County shall keep their offices open for the transaction of business during the hours prescribed by Section 2045, N.C.L. 1929, and in addition thereto shall also keep them open during the noon hour on all days save Saturday, Sunday and nonjudicial days. Chapter 187, 1951 Statutes, by its terms, applies only to Clark County. Section 2045, N.C.L. 1929, is a statute of general application, applying to all counties uniformly.

QUERY

1. Is chapter 187, 1951 Statutes, constitutional?
2. Are the Clark County officers bound to follow Chapter 187, 1951 Statutes?

OPINION

It is the opinion of this office that Chapter 187, 1951 Statutes, is clearly in conflict with Article IV, Sections 20 and 21 of the Nevada Constitution, and is, therefore, unconstitutional.

Section 20 provides that the Legislature shall not pass local or special laws in certain enumerated cases. The matter of regulation of office hours of county officers is not included in this enumeration unless it can be determined that such regulation is included within the restriction against regulating county business. However, Section 21 provides as follows:

In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.

We think it is manifest that, not only is a law regulating the office hours of county officers susceptible of general application, but such a law has been in general and uniform operation throughout the State since 1907.

We are cognizant of the fact that special legislation of this type may properly be enacted under circumstances wherein a locality because of a different or particular characteristic requires its separate classification. See *Singleton v. Eureka County*, 22 Nev. 91. In the instant matter we are not informed of facts which would lead to a conclusion that Clark County in this regard bears characteristics warranting such separate classification. For this reason, therefore, we conclude that the deviation from the Constitutional mandate is not justified.

Answering question No. 2, we take it that it is well settled that a statute is presumed valid until otherwise determined by the courts whose special province it is to determine the constitutionality of legislation.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By WILLIAM N. DUNSEATH, *Deputy Attorney General.*

OPINION NO. 1953-245 Counties—Liquor Board Created by Section 3690, N.C.L. 1941 Supp., Possesses Exclusive Power to Administer the Retail Liquor License Provisions in Unincorporated Towns.

CARSON CITY, April 14, 1953

HONORABLE ROGER D. FOLEY, *District Attorney, Las Vegas, Nevada.*

DEAR MR. FOLEY: Receipt is hereby acknowledged of your letter of March 18, 1953, requesting the opinion of this office with respect to the powers and duties of the Board of County Commissioners and the County Liquor Board provided in Section 3690, 1929 N.C.L. 1941 Supp., in the matter of issuing, revoking and refusing licenses for the sale of intoxicating liquors in unincorporated towns governed by the Boards of County Commissioners pursuant to the provisions of the Town Government Act of 1881, the same being Sections 1231-1247, N.C.L. 1929, and as amended. Your specific inquiry is:

1. Does the Clark County Liquor Licensing Board have power to prohibit the sale of liquor in the unincorporated towns of Mesquite and Overton?
2. Can the Board of County Commissioners, acting as the governing boards of the unincorporated towns of Mesquite and Overton prohibit the sale of liquor?

You advise that the towns in question many years ago petitioned to come under the Town Government Act of 1881 and have been governed thereunder ever since so formed.

OPINION

At the threshold of this opinion we desire to point out that long ago the Supreme Court in *State v. Shearer*, 23 Nev. 76, held that all the powers and jurisdiction exercised and all the duties performed by Boards of County Commissioners under the Town Government Act of 1881 were exercised and performed by such Boards as Boards of County Commissioners and not as boards of trustees or aldermen of towns or cities. In brief, the Legislature had simply provided additional duties for Boards of County Commissioners to be performed in and for such towns.

Section 1 of the Town Government Act, being Section 1231, N.C.L. 1929, provides the licensing and regulatory powers of the Board of County Commissioners with respect to places of business and amusement, including saloons, bar rooms, etc.—including tippling houses and dram shops, which latter the Commissioners are empowered to suppress. Sub. par. 9 of Section 1231. Subparagraph 9 has not been amended or changed since the amendment thereof in 1919. See 1919 Stats. 410. Said Section 1231 was amended at 1951 Statutes 455—but subparagraph 9 was not therein changed, in fact such subparagraph is substantially in the same condition as it was in 1903. See 1 Rev. Laws 1912, Sec. 877. In this connection, i.e., the amendment of statutes or sections thereof the rule is well stated in *In re Waters Estate*, 60 Nev., at page 179.

Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment. So where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act, such portions of the existing law as are retained, either literally or substantially, are regarded as a continuation of the existing law, and not as a new enactment. 59 C.J. 1097.

See also *Worthington v. District Court*, 37 Nev., p. 223.

In so far as the Town Government Act is concerned it cannot well be doubted that Boards of County Commissioners have been empowered to license, regulate and suppress the sale of intoxicating liquor within such unincorporated towns, and were such Act the only statute

governing the matter no question could well be raised as to their powers and jurisdiction. However, in 1917 the Legislature enacted an Act entitled, "An Act to regulate the sale of intoxicating liquors outside of the corporate limits of any incorporated city or town; creating a liquor board in the several counties of this state; prescribing the duties and declaring the powers of such board."

This Act provided for a liquor board composed of the Board of County Commissioners, the District Attorney, and the Sheriff and to all intents and purposes vested the power and jurisdiction in such liquor board to grant, revoke or refuse liquor licenses anywhere in the county, save and except in any incorporated city or town within the county wherein liquor licenses were to be regulated only by the incorporated city or town government. Inter alia it was also provided in the 1917 Act that the liquor board was given the power and the duty to enact ordinances regulating the sale of intoxicating liquors within their respective counties outside of incorporated cities and towns. The Act of 1917 remained in full force and effect until the adoption of the Initiative Prohibition Measure by the vote of the people of Nevada, November 5, 1918. See 1919 Statutes, page 1. The initiative measure made the 1917 Statutes ineffective if in fact it did not repeal it. In any event the 1917 Act remained ineffective until the repeal of the Eighteenth Amendment to the Constitution of the United States in 1933. The Nevada Legislature in 1933, anticipating the repeal of the Eighteenth Amendment, reenacted the 1917 Act in and by Chapter 184, page 269, 1933 Statutes, the same now being Section 3690, N.C.L. 1931-1941 Supplement. This section has not been expressly repealed since its enactment by any amendment of the Town Government Act, nor any other Act dealing with the instant question. Also, we think it is clear that the Legislature intended that the county liquor board created by Section 3681, N.C.L. 1929, and as recreated by Section 3690, N.C.L. 1931-1941 Supplement, should have the exclusive powers and the duty of licensing and regulating the sale of intoxicating liquor anywhere within its county with exception of the sale thereof in incorporated cities and towns. We are impelled to this conclusion for the following reasons.

First, that Sections 3681 and 3690 were enacted pursuant to the police power of the State for the purpose of regulating the sale of intoxicating liquor anywhere within the county, except in incorporated cities and towns, by a board set up expressly for that purpose and which board, we think, was purposely enlarged by the addition of county officers conversant with the liquor traffic, i.e., the District Attorney and the Sheriff, and that by excepting from the provisions of such sections incorporated cities and towns only that all other areas of the county, including the unincorporated towns, were brought within the purview thereof.

It is well settled law in this State that each department of the State Government, legislative, executive and judicial, is supreme within its respective sphere, and that the power to make the law necessarily carries with it the right to judge of its expediency and justice; the people, and through them the Legislature, have supreme power in all matters of government, where not restricted by constitutional limitations, and in this connection, we submit, there is no constitutional provision limiting the power of the Legislatures from creating the county liquor board in question here so long as the statute is of uniform operation throughout the State. Sections 3681 and 3690 were and are general Acts of uniform operation in all of the counties.

The foregoing analysis of the law is supported by the following cases, among many others of the same tenor. *Gibson v. Mason*, 5 Nev. 283; *Hess v. Pegg*, 7 Nev. 23; *State v. Arrington*, 18 Nev. 412; *Wallace v. City of Reno*, 27 Nev. 71; *Ex Parte Boyce*, 27 Nev. 299; *Moore v. Humboldt County*, 48 Nev. 397; *In re McKay's Estate*, 43 Nev. 114. It was well said in *Itcaina v. Marble*, 56 Nev., at page 435:

If the object to be accomplished is conducive to the public interest, the legislature may exercise a large liberty of choice in the means employed to enforce an exertion of its police powers. *Lawton v. Steele*, 152 U.S. 133, 14 S.Ct. 499, 38 L.Ed. 385.

In 1915 Statutes, page 237, the Legislature enacted an Act to provide revenue for the State of Nevada, the same being found at Sections 6664-6701, N.C.L. 1929. Section 6667 provided a

rural liquor license requiring any person outside of an incorporated city or town to obtain such license. Section 6668 created the Boards of County Commissioners county liquor licensing boards in substantially the same language as Section 3690 as issue herein. The question arose as to whether such Act related to unincorporated towns. The then Attorney General, in Opinion No. 79, dated August 10, 1917, held squarely that such Act related to and governed the issuance of liquor licenses in unincorporated towns.

In *State v. Douglas*, 46 Nev. 121, the court had before it an Act of the Legislature then being Chapter 120, 1921 Statutes, where the Legislature created county license boards to regulate and license billiard halls, etc., in their respective counties and in the unincorporated towns therein. In this Act the District Attorney and Sheriff were added to the board in the same manner as in Section 3690. The constitutionality was attacked upon the ground that the body of the Act was broader than its title which only referred to unincorporated cities and towns. The court sustained the constitutionality of the Act in so far as it related to unincorporated cities and towns. The town in question in the case was Tonopah, then governed by the Board of County Commissioners pursuant to the Town Government Act. *Nye County v. Schmidt*, 39 Nev. 456. Thus it appears that we have an expression of our Supreme Court on the applicability of a statute providing a county license board composed of the members of the Board of Commissioners, the District Attorney and the Sheriff notwithstanding the provisions of the Town Government Act.

Again we advert to the fact that Subparagraph 9 of Section 1 of the Town Government Act has not been amended or changed in any substantial particular since at least 1903, and yet the Legislature in 1917 and again in 1933 created county liquor licensing boards of five members and unquestionably, we think, granted such boards full and adequate jurisdiction to license and regulate the liquor traffic in every instance save in incorporated cities and towns. In so doing the Legislature in each instance is presumed to have knowledge of the state of the law upon the subject upon which it legislates. *Clover Valley Land & S. Co. v. Lamb*, 43 Nev. 375.

We are not unaware that one of the canons of statutory construction is that repeals by implication are not favored. However, we submit that such rule is subject to exceptions. The rule as to implied repeals had its inception in *Thorpe v. Schooling*, 7 Nev. 15, and quoted by the court in *Carson City v. County Commissioners*, 47 Nev. at page 422, as follows:

True, repeals by implication are not favored; and if it be not perfectly manifest, either by irreconcilable repugnancy, or by some other means equally indicating the legislative intention to abrogate a former law, both must be maintained. The intention, if perfectly clear, however, must control, however it may be expressed or manifested.

We think that the Legislature having the Constitutional power to create and empower the county liquor licensing boards, as provided in and by Sections 3681 and 3690, and granting such boards jurisdiction to license and regulate the liquor traffic in all areas outside of incorporated cities and towns, clearly manifested its intention that such liquor licensing boards were to license and regulate the intoxicating liquor traffic in all unincorporated towns and cities, including those governed by the Town Government Act, within their respective counties.

Entertaining the foregoing views it is the considered opinion of this office that the county liquor licensing board of Clark County has the exclusive jurisdiction to license and regulate the sale of intoxicating liquor in the unincorporated towns of Mesquite and Overton.

Answering query No. 1: It is the opinion of this office that the county liquor licensing board may prohibit the sale of liquor in an unincorporated city or town governed under the provisions of the Town Government Act and refuse a license therefor, provided, that in the judgment of the board it finds and determines that the sale and disposition of liquor in such cities or towns may tend to create or constitute a public nuisance, or cause a disorderly house or houses to be maintained. If the board so finds and determines and desires to prohibit the sale of liquors in such towns or other places in the county, we think the unqualified duty of the board in such cases, at least, is to prohibit the sale of liquor by ordinances duly enacted by the board. Such is the intent and requirement of the provisions of Section 3690.

Query No. 2 is answered in the negative.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-246 Industrial Insurance—Determination of Eligibility in a Particular Case involving Employee of Nevada State Hospital.

CARSON CITY, April 16, 1953

SIDNEY J. TILLIM, M.D., *Superintendent, Nevada State Hospital, P.O. Box 2460, Reno, Nevada.*

DEAR DR. TILLIM: This will acknowledge receipt of your letter of April 8, 1953, in which you request the opinion of this office regarding an industrial insurance claim which has arisen at the Nevada State Hospital.

STATEMENT

One Ernest G. Bradley, regularly employed as an attendant at the Nevada State Hospital, having failed to report for work at the prescribed time on April 2, 1953, was notified by the nursing supervisor, in her office, on April 3, 1953, that his employment was being terminated because of his failure to report the previous day. As he was leaving the supervisor's office, after notice of discharge, and before his terminal pay check was ready, he was attacked by a patient who suddenly, without known cause, became violent, and before the patient could be effectively restrained, Mr. Bradley was injured so severely as to require hospitalization and medical treatment. Mr. Bradley was not on duty and performing his usual work at the time he was injured, but would have been so occupied had he not been summoned to the supervisor's office. Said employee, like the majority of the Nevada State Hospital employees, received subsistence and was furnished with living quarters on the Hospital grounds as part of his pay, and was residing there at the time of his discharge as aforesaid. While attendants at the Nevada State Hospital are assigned regular working hours, all are on call for emergency service during their off-duty hours, such being one of the reasons for the furnishing of living quarters as part of their pay. Form 21, Employer's Report of Accident to Employee, was completed and filed immediately with the Nevada Industrial Commission by the superintendent of the Hospital. In filling out the blanks in Form 21, the superintendent answered "No" to the question, "Was workman injured in the course of employment?" and answered "None" to the question "Was he doing his regular work?" but as a part of his report, included a letter explaining the unusual circumstances surrounding the injury sustained by Mr. Bradley. Thereafter, the Industrial Commission denied liability on the ground that the injury occurred outside of regular working hours and because injuries must arise out of, and in the course of, employment in order to be a liability of the commission.

QUERY

While your request for our opinion is based upon the above-related factual situation, the two questions you have asked are general in nature and comprehend more than is justified by the facts presented, since the cases which may, and do, arise in the field of workmen's compensation are many and varied and must of necessity be treated individually. For that reason, we have propounded a question designed to cover the instant case, and will confine our answer to the question following:

In view of the above-related facts, is the employee in question entitled to receive benefits under the provisions of the Nevada Industrial Insurance Act?

OPINION

The answer to the above-stated question is in the affirmative.

There can be no question but that, under the provisions of the Nevada Industrial Insurance Act, employees of the Nevada State Hospital are covered by industrial insurance which the State, as employer, is required to furnish, and which coverage relates to injuries by accident arising out of and in the course of employment.

The Nevada Industrial Insurance Act. Chapter 168, 1947 Statutes, provides, inter alia, as follows:

SEC. 18. The term "accident" as used in this act shall be construed to mean an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury.

SEC. 19. The terms "injury" and "personal injury" shall be construed to mean a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result, and resulting from external force, including injuries to artificial members.

The language used in said Sections 18 and 19 is clear and unambiguous, and for that reason, not subject to interpretation. It seems clear, without detailed discussion, that the incident in question and resulting injuries must be considered as coming within the definitions of "accident" and "injury" or "personal injury" as aforesaid. The actions of a seemingly docile insane person suddenly and unexpectedly becoming violent and attacking and severely injuring another person certainly must be construed as an accident within the meaning of the Act, and there can be no doubt but that the person attacked was injured as a result.

The crux of the problem is whether or not Mr. Bradley was an employee at the time he was injured and whether his injuries arose out of and in the course of his employment. Due to the singularly peculiar circumstances involved, we have been unable to find any case directly in point, and must therefore rely for our authority upon cases, the general law and construction of the statutes which turn upon one or more of the points found in the instant matter.

At the time Mr. Bradley was attacked and injured, he was in the process of leaving the office of the nursing supervisor, who had summoned him to her office during the time he would normally have been working, and where he had just been notified that his employment was being terminated. He had not yet received his terminal pay, and was still, as least technically, occupying living quarters on the Hospital grounds.

In the case of *W.B. Davis & Son v. Ruple*, 130 So. 772, in which one of the points involved concerned the applicability of the compensation statute after discharge of the plaintiff employee, the court said, at page 774:

Plaintiff must be held to have a reasonable time to leave the premises following such discharge before it may be said that the relationship of master and servant is so completely severed as to render inapplicable the compensation statute. Such is the effect of the following authorities. (Citing authorities.)

We feel that the above-cited case is sound authority to support the proposition that the relation of employer and employee existed at the time Mr. Bradley was injured in spite of the fact that he had just been notified of his discharge, and that sufficient incidents of his employment existed as to make applicable the provisions of the Industrial Insurance Act. And such would be our opinion had the incident occurred during his off-duty hours, since, due to the peculiar nature of his duties as a Hospital attendant, he was subject to call at any time for emergency service.

Vol. 71 C.J., *Workmen's Compensation*, Sec. 396, at page 644-645, provides, in part, as follows:

The expressions “arising out of” and “in the course of” the employment are not synonymous; but the words “arising out of” are construed to refer to the origin or cause of the injury, and the words “in the course of” to refer to the time, place and circumstances under which it occurred. An injury which occurs in the course of employment will ordinarily, but not necessarily, arise out of it, while an injury arising out of an employment almost necessarily occurs in the course of it. It is difficult, if not impossible, to compose a formula within which all facts calling for an application of it may be embraced; hence, in determining whether the accident arose out of, and in the course of, the employment, each case must be decided with reference to its own attendant circumstances; and it has indeed been stated rather broadly but by eminent authority that argument by analogy is valueless.

Applying the above to the factual situation presented in the instant case, we are of the opinion that the injuries sustained by Mr. Bradley arose out of, and in the course of, his employment at the Nevada State Hospital.

We suggest that you file an amended Employer’s Report of Accident to Employee in conformance with this opinion.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-247 State Office Building—Senate Bill No. 59 of the 1953 Legislature Provides for the Construction of a State Office Building in Las Vegas, Nevada, and no Other Place.

CARSON CITY, April 16, 1953

STATE PLANNING BOARD, *Carson City, Nevada*.
Attention: Mr. A. M. Mackenzie, Secretary.

DEAR MR. MACKENZIE: This will acknowledge receipt of your letter of April 15, 1953, requesting the opinion of this office upon the following question:

Will you provide a written opinion on the following legislation approved by 1953 Legislature: Senate Bill No. 59—Construction of State Office Building in Las Vegas.

Question—Section 1 of Act provides for construction of new office building for Las Vegas, Nevada. Is it necessary that this building be constructed in Las Vegas proper, or could it be constructed in Henderson or some other place in Southern Nevada.

OPINION

It is the opinion of this office that the proposed new State Office Building as provided for in Senate Bill No. 59 can be erected in no other place excepting the city of Las Vegas. The title of the Act is specific in providing for the construction of a State Office Building in Las Vegas, Nevada. The intention of the Legislature as expressed in Section 1 of said bill is clear when it used the term “for Las Vegas, Nevada.”

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-248 Sheriffs—Not Mandatory That Sheriffs Serve Civil Process Issuing out of Justices Courts.

CARSON CITY, April 17, 1953

HONORABLE A. LORING PRIMEAUX, *District Attorney, Churchill County, Fallon, Nevada.*

DEAR MR. PRIMEAUX: This will acknowledge receipt of your letter of April 15, 1953, requesting the opinion of this office pertaining to the duties of Sheriffs. You propound the following question:

Is the Sheriff required to serve civil process issuing out of the Justice Court?

OPINION

It is the opinion of this office that a Sheriff may serve civil process issuing out of a Justice Court, but it is not the mandatory duty that he serve such civil process for the reason that it is made the mandatory duty of Constables to serve all mesne and final process issued by Justices of the Peace of the respective townships. Section 2192, N.C.L. 1929. This section contains the following language: "Each constable shall be a peace officer in his township, and shall serve all mesne and final process issued by a justice of the peace." The only exception provided in Section 2192 is that if the Sheriff or his deputy shall make an arrest of any person or persons charged with a criminal offense, then the Sheriff or his deputy shall have the privilege, and it shall be his duty to serve all process, whether mesne or final, and attend the court executing the order thereof, in the prosecution of the person or persons so arrested, whether in a Justice or District Court.

It is the opinion of this office that Sheriffs are not mandatorily required to serve civil process issuing out of Justices Courts, but may do so as an accommodation. On the other hand, it is the mandatory duty of each Constable to serve all civil process issued out of Justices Courts.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-249 Nevada Highway Patrol—Patrolmen Appointed by the Public Service Commission of Nevada are Required to Take the Official Oath of Office.

CARSON CITY, April 20, 1953

HONORABLE ROBERT A. ALLEN, *Chairman, Public Service Commission of Nevada, Carson City, Nevada.*

DEAR MR. ALLEN: This will acknowledge receipt of your letter in this office April 17, 1953, in which you request an opinion upon the following question.

STATEMENT

The last Legislature authorized the enlargement of the Highway Patrol from a 29 man basis to a 41 man basis.

QUERY

Is it necessary each patrolman in the Nevada Highway Patrol appointed by the Public Service Commission take the official oath as required by Article XV, Section 2 of the Constitution of Nevada?

OPINION

Section 9 of the Act relating to the administration of the State Highway Revenue-Producing Act, being Section 4435.54, N.C.L. 1943-1949 Supp., relates to employees, bonds and collection of funds. Among the provisions of this section, is found the following: “* * * The commission shall require all patrolmen and personnel collecting and receiving license fees and money pursuant to the act administered by them to furnish good and sufficient bonds for the faithful performance of their duties, * * *.”

Article XV, Section 2 of the Constitution, provides that members of the Legislature, and all officers, executive, judicial and ministerial shall before they enter upon the duties of their respective offices, take and subscribe to the following oath. Then follows the form of oath.

Section 4786, N.C.L. 1929, quoting that part deemed relevant, provides: “Members of the legislature, and all officers, executive, judicial and ministerial, shall, before entering upon the duties of their respective offices, provide the official bond required by law, when such bond shall be required, and take and subscribe to the official oath.”

Section 5 of the Act relating to the administration of the State Highway Revenue-Producing Act, provides that members of the patrol shall be versed in the laws respecting the powers of police officers as to traffic laws and other offenses committed along the highways of the State, and as to such violations and offenses they shall have the powers of police officers.

The statute prescribes the duties of the patrolmen, fixes salaries and requires a bond.

We are therefore of the opinion that all patrolmen appointed to the Nevada Highway Patrol are required to take the official oath as provided by the Constitution and statute.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-250 County Officers Not Entitled to Retain Commissions for the Collection of Sheep Inspection Fund Tax and Stock Inspection Fund Tax.

CARSON CITY, April 24, 1953

HONORABLE PETER MERIALDO, *State Controller, Carson City, Nevada*.

DEAR MR. MERIALDO: Receipt is hereby acknowledged of your letter of April 23, 1953, requesting the opinion of this office as follows:

Section 2062 of the 1929 Nevada Compiled Laws, relative to Commissions on Certain Tax Collections, provides among other provisions, that “On the gross amount of collections from personal property tax, six per cent; second, on the gross amount of collections from poll tax, ten per cent; third, on the gross amount of collections from the tax on the proceeds of mines, three per cent.”

Would the commissions as provided in the above section, be allowed to be charged on the collection of the Stock Inspection Fund Tax (Sec. 3829, 1931-1941 Supplement) or on the collection of the Sheep Inspection Fund Tax (Sec. 3874, 1943-1949 Supplement)?

OPINION

With respect to the Sheep Inspection Fund tax mentioned in your inquiry, I beg to advise that the identical question was submitted to this office in 1931, wherein the inquiry was, have County Treasurers or tax receivers the authority to charge or retain commissions for collecting and forwarding the Special Sheep Inspection Fund taxes collected under the provisions of Sections 4 and 5 of Chapter 82, Statutes of 1919? The Act of 1919 is now Sections 3871-3902, N.C.L. 1929, and an examination of the statute discloses it has not been changed with respect to the collection of the tax since its enactment in 1919. In Opinion No. 41, dated July 14, 1931, this office held that County Treasurers and tax receivers cannot charge or retain a commission for collecting the tax provided for in the Board of Sheep Commissioners Act wherein the Sheep Inspection Fund tax was provided for. This holding was based upon the proposition that there was no provision in such law for the retention of a commission for the collection of the tax. We here reaffirm that opinion.

With respect to the collection of the Stock Inspection Fund tax pursuant to Section 3829, 1929 N.C.L. 1941 Supp., we beg to advise that we find no provision in such Act for the retention of a commission for the collection thereof by the County Treasurer or tax receiver or any other officer. It is our opinion that the stock inspection law falls in the same category with the Sheep Inspection Law and is governed by the same rule.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-251 Employment Security Department. Regarding the Relationship Between the State and the Federal Government in the Matter of State Employment Security Department. Extent of State Budgetary and Fiscal Control Over Said Department.

CARSON CITY, April 27, 1953

MR. JOHN F. CORY, *Executive Director, Employment Security Department, Carson City, Nevada.*

DEAR MR. CORY: This will acknowledge receipt of your letter of April 2, 1953, concerning your request for an opinion of the following matters.

STATEMENT

Because of the somewhat complicated relationship between the Federal Government and the State relative to the administration of the Employment Security Department, the director desires to clarify his position in that relationship. The director makes it clear that there has been no withdrawal or threat of withdrawal of Federal aid whatsoever, but merely desires a clarification of certain matters as shown by the following questions.

QUERY

1. As rules and regulations are used in the Wagner-Peyser Act, is it the intent of Congress that the rules and regulations should simply add definition to the standards of efficiency prescribed by the Bureau of Employment Security, or are those rules and regulations intended to be of direct instructional nature and intended to direct the detailed operation of a State agency that would be in a subordinate position to the Federal Government?

2. Is the regulation of the Secretary of Labor requiring classification of certain material for security purposes and its disclosure only on a basis of instruction issued by the Secretary of Labor proper and within the purview of the regulatory power granted the Secretary by the Wagner-Peyser Act; is it proper for the State agency to agree to accept such a regulation

promulgated primarily on a basis of the President of the United States issuing an executive order pertaining to the classification of information?

3. In the general matter of grant-in-aid agencies, as the term is usually used, is it proper that any State agency or officer of a State agency accept in the name of the State any direct instruction issued by a part of the Federal Government, namely one of its Bureaus; is it proper that the Federal Government in the dispensing of grants-in-aid funds and appropriations hold that the recipient State blindly following the rules and regulations and instructions of the Federal Bureau as a condition to the tendering of granted funds, or is it proper that the Federal agency granting the funds limit its administrative authority to the establishment in general or standards of efficiency to which a State should hold in its becoming eligible for granted funds?

4. Are grant-in-aid agencies, including the Employment Security Department, required to submit their budget and planned spending programs to:

(a) The Budget Director of the State for approval, not only on work projects contemplated, but all money required, prior to submitting such budget to the Federal Government?

(b) To the State Legislature for its examination and action?

5. When funds are granted for allotment through a Federal Bureau to a State grant-in-aid agency and these funds are deposited to the credit of that agency's account with the State Treasurer, are these funds then subject to all of the fiscal and budgetary controls and legislative requirements imposed by State law on all other State agencies?

OPINION

As we interpret your first question, it contemplates a determination of the extent of control which can be exercised by the United States Employment Service, a bureau of the United States Department of Labor, over the State of Nevada in this State's performance of its employment service program wherein Nevada is a participant and a recipient of Federal monetary aid under the Act of June 6, 1933, 48 Stats. 113, as amended. (The Wagner-Peyser Act.)

The State of Nevada by the 1951 Stats., Chapter 59, Section 8(a), accepted the provisions of the Wagner-Peyser Act, and in so doing placed itself, for so long as it is a participant under that Act, in the position of compliance with the provisions and requirements of that Act and its amendments.

It is, therefore, the Wagner-Peyser Act which delineates the extent of compliance to which the State of Nevada must extend itself in order to remain a participating member, and prescribes the power of control to be exerted by the Federal Bureau.

Perhaps the most descriptive word in the Wagner-Peyser Act determinative of the State's position on this question is the word "cooperate" as used in Section 4 of the Act which provides as follows:

In order to obtain the benefit of appropriations apportioned under section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act.

What is the meaning of the word "cooperate" as used in Section 4?

There have been since the inception of the Wagner-Peyser Act certain requirements prescribed by the Act which the State had to meet in order to become and to maintain itself as a participant under the Act. These requirements such as submitting a detailed plan of operation, making reports, enacting legislation accepting the Act, spending funds in accordance with the plan are clear. But in its cooperation is the State agency required mandatorily, as a condition precedent to good standing, to accept and follow the minimum standards of efficiency and rules

and regulations prescribed by the Federal Bureau and the Secretary of Labor, or may the State in recognition of its own local problems follow or not in its discretion?

We think the following sheds light on the meaning of the word “cooperate” as used in this Act.

Subsection (b) of Section 5 of the Wagner-Peyser Act provides in part as follows:

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State which * * * is found to be in compliance with the Act of June 6, 1933 (48 Stats. 113), as amended, such amounts as the Secretary determines to be necessary for the proper and efficient administration of its public employment offices.

This section prior to amendment on September 8, 1950, required the State to match funds and provided a formula for apportionment. However, by the 1950 amendment, Chapter 933, Section 2, 64 Stats. 822, this requirement was eliminated and as a condition to grant of funds to cover the costs of administration the State was required to have a proper Unemployment Compensation Law and be in compliance with Section 303 of the Social Security Act and also declared the specific requirement that the State be in compliance with the Wagner-Peyser Act. See also: Senate Report No. 2270, August 14, 1950, and House Report No. 2295, August 25, 1950.

Although it is clear that the State from the inception of the Wagner-Peyser Act has been required to comply with the Act, this specific declaration of the requirement, we think, makes not only the specific requirements to be met by the State mandatory but eliminates whatever doubt there may have been concerning the meaning of the word “cooperate” and adds to that word the provision that the State shall cooperate by complying mandatorily with every provision of the Act.

One of the provisions of this Act, being Section 12, provides as follows:

The Secretary of Labor is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

We take it, therefore, that if the Secretary promulgates rules and regulations in accordance with Section 12 which affect the State in the operation of its agency that the State must observe the authority of Section 12 and comply therewith if the rules and regulations so promulgated are within the framework of the standards set up by Congress to which the Secretary must adhere. Moreover, this is further supported by the clear inference in Section 9 of the Act which provides in part as follows:

It shall be the duty of the Secretary to ascertain whether the system of public employment offices maintained in each State is conducted in accordance with the rules and regulations and the standards of efficiency prescribed by the Secretary in accordance with the provisions of this Act.

This brings us to the determination of the extent of power of the Federal Bureau and the Secretary of Labor.

Section 3(a) of the Wagner-Peyser Act provides the primary duties of the Bureau and the framework within which the Secretary must remain in his rule-making power. This section provides as follows:

It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, to maintain a public employment service for the District of Columbia, and, in the manner hereinafter provided, to assist in establishing and maintaining

systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States.

The various duties prescribed for the bureau in Section 3(a) are provisions which the Secretary of Labor is authorized to carry out by effecting rules and regulations. For example, the bureau is obliged to assist in increasing the usefulness of public employment offices throughout the country by developing and prescribing minimum standards of efficiency. To that end it is the opinion of this office that the Secretary of Labor is authorized to make rules in such detail as in his discretion he deems necessary to develop the minimum standards of efficiency. Moreover, in as much as the constitutional validity of the delegation of powers under the Wagner-Peyser Act is not in question, we think that it is within the discretion of the Federal Bureau to determine what constitutes a minimum standard of efficiency. This proposition is further supported by the fact that under Section 5(b) of the Act the Secretary is to certify payment in amounts which he deems necessary for the proper and efficient administration of the State's public employment offices.

We do not wish to be understood that the Bureau or Secretary can abuse that discretion or promulgate rules which are clearly wrong. Their actions must at all times be reasonably necessary to effect the purposes of their duties. Otherwise, they are not acting within the scope of the powers granted or delegated to them by Congress. See 42 Am.Jur., page 358, Section 53; also 54 Am.Jur., page 557, Section 41.

Answering question No. 2, we take it that it is well settled that the president of the United States under the powers vested in him by the Constitution may make various executive orders which are carried out by the executive department heads. Such executive orders satisfy Constitutional requirements if the order is based upon and show the circumstances authorized by Congress to which the order refers. We think that the executive order relating to the classification of material for security purposes taken in light of the expression of Congress in the Federal Espionage Act, 18 U.S.C., Section 793, is quite proper.

Moreover, in view of the fact that the Employment Service agency of the State may very well come into possession of information the improper disclosure of which may jeopardize our National security, we think that regulations imposed through the Wagner-Peyser Act upon the State agencies in this regard are not only proper but should be welcomed.

Answering question No. 3: We have perhaps answered this question in the answer to question No. 1. However, it may be well to add that the Federal bureaus in making rules and regulations do so only as authorized by Congress. The Act of Congress, under whose authority the bureau acts, is determinative of the extent of the authority of the bureau. If the bureau acts within its authority, and Congress has imposed as a condition to grant-in-aid that the rules and regulations of the bureau be followed, the State having accepted the provisions of the Act is thereby bound by the condition.

The State of Nevada is a participating member of the Federal Union, and the people of this State pay their proportionate share of the taxes which go to support the grants-in-aid to Nevada for its social welfare programs. Congress is our chosen body to provide our Federal laws of which Nevada is a represented member as is each of the other States. Desired changes in our Federal laws, if deemed necessary, would be made on the Congressional level.

Answer to question No. 4: The State Budget Act, 1949 Stats., Chapter 299, Section 11, provides in part as follows:

On or before October first of the even numbered years, all departments, institutions, and other agencies of the state government, and all agencies receiving state funds or fees or other moneys under the authority of the state, including those operating on funds designed for specific purposes by the Constitution or otherwise, shall prepare, on blanks furnished them by the director of the budget, and submit to said director estimates of their expenditure requirements, together with all anticipated income from fees and all other sources, for each fiscal year of the biennium compared with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year.

The requirements of the State Budget Act are for the purpose not only of obtaining the information from which expenditure requirements of the State agencies are to be determined, but also to provide information from which the Legislature and Governor may determine future policy in the control and operation of the State Government.

It is true that in the case of the Unemployment Compensation Administration Fund, this fund is composed at the present time of money appropriated to the State by the Federal Government, and in as much as the Federal Government exerts control over the expenditure of this fund, particularly in so far as that part used in the administration of the Employment Service, approval by the State Budget Director of the planned spending program concerning this fund would be unnecessary. Nevertheless, the Legislature has required by the State Budget Act that the State agencies submit their expenditure requirements and the objects therefor and their anticipated income from all sources. We are, therefore, of the opinion that such agencies are required to so comply if for no other reason than to furnish an informative report. See also 1953 Stats., Chapter 287, Section 37.

Answer to question No. 5: We think that the State agencies receiving Federal funds are subject to the fiscal and budgetary controls and general legislative requirements which do not conflict with requirements set by the Federal Government, and except in those instances in which the particular statute may specifically set forth to what extent control shall be exerted and requirement met.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-252 County Hospitals—Board of Hospital Trustees Constitutes the Governing Board of Domiciliary Unit Within the County Hospital Organized and Existing Under Sections 2225-22242, N.C.L. 1929, as amended.

CARSON CITY, May 5, 1953

HONORABLE ROGER D. FOLEY, *District Attorney, Las Vegas, Nevada*.
Attention: Mr. George M. Dickerson, Deputy District Attorney.

DEAR MR. FOLEY: Receipt is hereby acknowledged of your request for the opinion of this office under date of April 25, 1953, received in this office April 29.

You advise that the county of Clark maintains a Southern Nevada Memorial Hospital domiciliary unit for the indigent sick. The question propounded is will the Board of County Commissioners or the Board of Hospital Trustees have supervision of disciplinary problems of indigents confined in said unit. You cite the following Nevada Statutes as having a bearing on the question, to-wit: Sec. 5137, N.C.L. 1929, Sec. 2243, N.C.L. 1931-1941 Supplement, and Sec. 1942, N.C.L. 1931-1941 Supplement.

You further advise that the Southern Nevada Memorial Hospital is a county hospital organized under Sec. 2225-22242, N.C.L. 1929, as amended. You also advise that the hospital is also operated under Sec. 2243 of the 1931-1941 Supplement.

OPINION

An examination of the statutory law relating to the question discloses that in our opinion the domiciliary unit for the indigent sick while being contained in the Southern Nevada Memorial Hospital still constitutes in effect a county home for the indigent sick as provided in Sec. 2243, 1931-1941 Supplement. This section provides that the supervision, management, government, and control of a county home for indigent sick shall be vested in the Board of Hospital Trustees and thereafter operated by such Board. This being the status of the statutory law it is the opinion of this office that it is not only the power but the duty of the Board of Hospital Trustees to supervise disciplinary problems of the indigents confined in the domiciliary unit of the Southern Nevada Memorial Hospital.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-253 Insurance—Title Insurance Companies Not Limited in Investment in Materials or Plant to 50 Percent of Paid-up, Unimpaired Capital.

CARSON CITY, May 5, 1953
HONORABLE PAUL A. HAMMEL, *Insurance Commissioner, State of Nevada, Carson City, Nevada.*

DEAR MR. HAMMEL: This will acknowledge receipt of your letter of April 16, 1953, in which you request the opinion of this office with regard to the following question:

Does Section 4 of the Title Insurance Act, the same being Section 3639, N.C.L. 1929, merely permit a domestic title insurance company to value its title plant at an amount, estimated by it, less than the actual cost thereof, or does it also impose on such valuation a maximum limit not in excess of the actual cost thereof, nor in excess of 50 percent of its subscribed capital stock?

OPINION

Sections 3636, 3637, and 3644, N.C.L. 1929, as amended by Chap. 162, 1951 Stats., provide, in substance, that every company (domestic company for purposes of this opinion) desiring to do, or doing, a title insurance business in the State of Nevada must comply with the requirements following:

Section 3636: Must, before transacting such business, secure a certificate of authority from the Insurance Commissioner.

Section 3637: Shall, before issuing any guarantee or policy of title insurance, have a paid-up, unimpaired cash capital equal to \$100,000, of which \$50,000 shall be deposited with the State Treasurer as a guarantee fund for the security and protection of the holders of, or beneficiaries under such guarantees or policies of insurance.

Section 3644: Shall annually apply to the Insurance Commissioner for a certificate of authority to transact a title insurance business, and shall submit with

said application a sworn statement showing the assets and liabilities of such company.

Section 3639, N.C.L. 1929, provides as follows:

Any such corporation organized under the laws of this state and having a capital stock paid in, in cash, of more than fifty thousand dollars, after depositing said guarantee fund as above provided, may invest an amount not exceeding fifty percent of its subscribed capital stock in the preparation and purchase of materials or plant necessary to enable it to engage in such title insurance business; and such materials or plant shall be deemed an asset, valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporation, or at such less value as may be estimated by such corporation in any such statement or proceedings.

While we feel that the language used in Section 3639 is clear and unambiguous, and for that reason not subject to interpretation, we also feel that in order to answer your question, some clarifying explanation of said section is necessary and proper.

As we see it, a domestic company desiring to transact a title insurance business in this State must first secure a certificate of authority from the Insurance Commissioner and, having a paid-up, unimpaired cash capital equal to \$100,000, must deposit with the State Treasurer the sum of \$50,000, or its equivalent as provided in the statute, as a guarantee fund for the security and protection of the holders of, or beneficiaries under, its guarantee or policies of insurance. Having so complied with the provisions of Sections 3636 and 3637, as amended, the company is then permitted, under Section 3639, to invest an amount not exceeding 50 percent of its subscribed capital stock in the preparation and purchase of materials or plant necessary to enable it to engage in such title insurance business. We feel this means that such a company may invest 50 percent of its paid-up capital, i.e., \$50,000 where the paid-up capital equals \$100,000, in plant and materials necessary in order to commence business. In other words, the company is permitted to expend a maximum sum of \$50,000 of its paid-up, unimpaired capital as its initial investment in plant and materials. Such does not, however, place a maximum limitation of future investment of other funds in plant and materials, it being fundamental that in the ordinary course of business a successful business enterprise will expand and grow, necessitating larger investment in its plant and materials. Of course, if the paid-up capital of a company were more than \$100,000, the amount it could invest initially in plant and materials would be proportionately higher than the above.

After having commenced business, the company must, under Section 3644, as amended, render annual statements to the Insurance Commissioner showing its assets and liabilities, and under Section 3639, such materials or plant shall be deemed an asset, valued at the actual cost thereof, or at such less value as may be estimated by the company, and, of course, so reported in the annual statement.

It is the opinion of this office that a title insurance company may value its plant at an amount, estimated by it, less than the actual cost of the initial investment, if such be the case, and that Section 3639 does place a maximum limitation on the initial investment not exceeding 50 percent of the paid-up, unimpaired capital. Section 3639 does not, however, place a limitation on the amount that may be subsequently invested in plant or materials from funds other than capital.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-254 Employer And Employee—Female Employees Not Required to Work Beyond 8 Hours Per Day or 48 Hours Per Week.

CARSON CITY, May 6, 1953

HONORABLE D. W. EVERETT, *Labor Commissioner, State of Nevada, Carson City, Nevada.*

DEAR MR. EVERETT: This will acknowledge receipt of your letter of April 23, 1953, received in this office April 24, 1953, in which you make the following inquiry:

Assembly Bill No. 160, approved by the Legislature and signed by the Governor, being an Act to amend an Act entitled, "An Act regulating the hours of service, providing for a day of rest and recreation, and fixing the minimum compensation therefor of females employed in private employment in this state," approved March 29, 1937, as amended, amends Section 2825.42, 1929 N.C.L., 1949 Supp., to read: "It shall be unlawful for any person, firm, association or corporation, or any agent, servant, employee, or officer of any such firm, association, or corporation employing females in any kind of work, labor or service in this state, except as hereinafter provided to employ, cause to be employed, or permit to be employed any female for a longer period of time than eight hours in any *thirteen-hour period*, * * *."

This office would appreciate an opinion from you as to the effect of this amendment. Can it be interpreted to mean that a woman may work 8 hours, receive 5 hours of rest, and return to work for an additional 8-hour period; providing, that she does not work more than 48 hours a week?

OPINION

Section 1 of Assembly Bill No. 160, i.e., Chapter 194, Statutes of 1953, amending Section 2825.41, 1929 N.C.L. 1949 Supp., contains the following provision, "The policy of this state is hereby declared to be that eight (8) hours in one *thirteen (13) hour* period and not more than forty-eight (48) hours in one calendar week, and not more than six (6) days in any one calendar week is the *maximum* number of hours and days female workers shall be employed in private employment, with certain exceptions"—as provided in Section 2 of said bill amending Section 2825.42, 1929 N.C.L. 1949 Supp. (Italics ours.)

The foregoing provision establishes the policy of the State. It is clear that no departure is to be had from such declared policy, save and except upon the arising of emergencies as provided in Section 2. Such section as amended provides as follows:

Section 2. It shall be unlawful for any person, firm, association, or any agent, servant, employee, or officer of any such firm, association, or corporation employing females in any kind of work, labor, or service in this state, except as hereinafter provided, to employ, cause to be employed, or permit to be employed any female for a longer period of time than eight hours in any thirteen-hour period, or more than forty-eight hours in any calendar week or more than six days in any calendar week; provided that in the event of the illness of the employer or other employees, or a temporary increase of the business of the employer which could not by reasonable diligence be foreseen, to the extent that a greater number of female employees would be required than normally if the regularly employed females were relieved from duty at the expiration of the eight-hour period, and no additional persons are then and there available or can be obtained with reasonable certainty who are capable of performing the duties required of the regularly employed females of any such employer, the regularly employed females may then be required and permitted to work and labor an additional period of time in a twenty-four-hour period, but not to exceed twelve hours in said period, and in no

event shall such females be required or permitted to be employed more than fifty-six hours in any one week of seven days; provided further that as to all hours the female shall be required or permitted to work, labor, or serve over and above eight hours in any thirteen-hour period, or forty-eight hours in any one week, such females shall be paid time and one half for each said additional hour; computed on their regular wage rates.

In 1938 the then Labor Commissioner, James Fitzgerald, submitted practically the same inquiry to this office, concerning Section 2 of the Female Employees Act as it then stood, being substantially in the same language as the section above quoted. In Opinion No. 267, dated August 26, 1938, a copy of which should be in your files and which opinion is reported in the Report of the Attorney General, 1938-1940, this office fully considered the question and held that it was unlawful for any employer to cause or permit female workers to be employed more than 8 hours in any one day of 24 hours, or more than 48 hours in any one week, except in the emergency cases provided for in Section 2 of the Act. In course of the opinion after quoting the pertinent portion of Section 2, we said:

The quoted language, we think, is clear. In order for an employer to cause or permit his female employees to work more than 8 hours in any one day or 24-hour period, or more than 48 hours in any one week, the circumstances must be such as to bring the employer within the terms of the proviso, i.e., there must exist at the time such female workers are required or permitted to work over the statutory period, either illness of the employer or other employees, or a temporary increase in the business of the employer that could not, in the exercise of reasonable diligence on the part of the employer, have been foreseen, and no additional persons are then and there available or who can be obtained with reasonable certainty capable of performing the work required. If these conditions do not exist then the causing or permitting of female workers to work more than 8 hours in any one day or 48 hours in any one week is a most manifest evasion of the law.

The 1953 amendment of Section 2 strikes out the 24-hour period within which the employee could be required to work a full 8 hours and inserts in lieu thereof 13 hours within which such employee can only be required to work an 8-hour shift within a 24-hour period, save and except, when service is required of the employee in the emergencies provided for in the proviso incorporated in the section. It is further provided in said section that if an employee is required to work more than 8 hours within a 13-hour period, or more than 48 hours in one week and absolutely limited to not more than 56 hours in one week of 7 days in emergencies, that then overtime shall be paid at the rate of time and one half for each hour of overtime over 8 hours within the 13 hour period, or for each hour worked over 48 hours within the said 56-hour period.

It is the considered opinion of this office that no female employee can be required to work more than 8 hours within a 13-hour period in any one day of 24 hours, nor more than 48 hours in a week of 6 days, save and except, in the cases of emergency provided for in said Section 2.

Your inquiry is answered in the negative.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-255 State Planning Board—Under Statutes, the Expenses for travel and Subsistence of State Planning Board and Secretary Must Be Paid out of Appropriation by Legislature for Support of Planning Board.

CARSON CITY, May 8, 1953

HONORABLE I. J. SANDORF, *Chairman, State Planning Board, Carson City, Nevada.*
Attention: Mr. A. M. MacKenzie, Secretary.

DEAR MR. SANDORF: This will acknowledge receipt of your letter of May 2, 1953, received in this office May 5, in which you request an opinion upon the following subject:

STATEMENT

Senate Bill No. 59, Chapter 206, Statutes of Nevada 1953, provided for the construction of a State Office Building in Las Vegas, Nevada. The purchase of the site and construction of the building is under the control of the State Planning Board.

QUERY

Can the expenses for travel and subsistence of members of the State Planning Board and secretary be paid out of the funds provided for the State Office Building in Las Vegas, when necessary for the Board to discuss arrangements for site, and to interview proposed occupant State agencies relative to space and other requirements?

OPINION

Section 3 of the Act creating the State Planning Board, Section 6975.03, N.C.L. 1931-1941 Supp., provides as follows: "All members of the board shall serve as such without compensation; provided, however, that each shall be entitled to and receive payment of his actual and necessary expenses incurred in the performance of official duties and/or in attending meetings of the board. Such expenses shall be paid from the moneys appropriated for the use of the board."

Section 6943, N.C.L. 1943-1949 Supp., makes provision for necessary traveling expenses and per diem allowance of any District Judge, State Officer, Commissioner, or representative of the State, or other State employee of any office, department, board, commission, bureau, agency, or any institution operating by authority of law.

The statute fixes the amounts that may be allowed by the State Board of Examiners.

Senate Bill No. 236, Chapter 294, Statutes of Nevada 1953, makes appropriations for support of various State departments.

Section 27 provides \$20,816 for support of the State Planning Board.

Section 65 provides that the funds appropriated shall be expended in accordance with the allotment, transfer, work program and budget provisions of the State Budget Act and creating the Budget Director.

Senate Bill 59 provides for the construction of the State Office Building in Las Vegas. Section 6 provides as follows: "All bills for the purchase of site, employment of architects, supervisors, inspectors and for the erection, heating, ventilating, electrical, water and sewer connections of said building and equipment and furnishing thereof shall be paid out of the fund herein provided for upon bills approved by the State Planning Board and audited and approved by the Board of Examiners of the State of Nevada, as other claims are paid."

A well recognized rule of statutory construction and one based upon the very soundest of reasoning; for it is fair to assume that, when the Legislature enumerates certain instances in which an act or thing may be done, or when certain privileges may be enjoyed, it names all that it contemplates; otherwise, what is the necessity of specifying any?

This was the ruling of the court as to statutory construction in *Ex Parte Arascada*, 44 Nev. 30, on page 35.

We are, therefore, of the opinion that the expenses for travel and subsistence of members of the State Planning Board and secretary must be paid out of the appropriation made by the Legislature for the support of the Planning Board.

Respectfully submitted,

W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-256 Petroleum Products—State Sealer—Interpretation of Chapter 204, Stats. 1953, Pertaining to the Regulation of Sale and Distribution of Petroleum Products.

CARSON CITY, May 15, 1953

MR. WAYNE B. ADAMS, *State Sealer, University of Nevada, Public Service Division, Fifth and Sierra Streets, Reno, Nevada*.

DEAR MR. ADAMS: This will acknowledge receipt of your letter dated May 11, 1953, requesting the opinion of this office relative to the interpretation of Chapter 204, 1953 Statutes of Nevada.

QUESTION

1. Is a major oil company engaged in selling petroleum products, as defined by this Act, at wholesale and who owns more than one wholesale distributing plant in Nevada operated by distributors on a commission or salary basis, required to obtain a license for each plant, or will one license issued to such company suffice?

2. Could a service station which does not operate through a wholesale distributing plant but receive direct bulk shipments be construed as a "wholesale distributing plant" as defined in Section 1(a) of the Act, providing that some wholesale business is conducted by them? Or would they be subject to Section 10 of the Act?

OPINION

Answering question No. 1, we are of the opinion that a license must be obtained for each wholesale distributing plant in the State.

We are of the opinion that the Legislature in enacting this law intended to place a check on and provide for the inspection of the quality of the products at a level which will be most likely to produce the most results, that of the wholesaler's level wherein the largest concentration of bulk can be found. The \$25 license fee is exacted for the purpose of helping to defray the inspection cost at such wholesale distributing plants. We think, therefore, that it is the intent of the Legislature to require the license and fee for each such plant even though one company carrying on one business operates more than one plant.

Answering question No. 2, we are of the opinion that such a service station if engaged in some selling of petroleum products at wholesale is a wholesale distributing plant within the meaning of the Act and would not, therefore, be subject to the provisions of Section 10 of the Act.

Section 1, Subsection (1) provides as follows: "A 'wholesale distributing plant' as used in this Act means any plant or establishment located in Nevada where petroleum products are sold or offered for sale wholly or partly at wholesale."

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-257 Fish and Game—Section 50a of Fish and Game Laws as Amended in 1953, Construed as to Issuance of Licenses to Nonresident Owners of Land Within Nevada.

CARSON CITY, May 18, 1953

MR. FRANK W. GROVES, *Director, Fish and Game Commission, Box 678, Reno, Nevada.*

DEAR MR. GROVES: This will acknowledge receipt of your letter in this office May 12, 1953.

You request an opinion upon the construction of Chapter 359, Statutes of 1953 (Senate Bill No. 215), and submit four questions which we have reduced to their essential elements as follows:

1. Who under this chapter would be considered a bona fide property owner of land; would the term embrace members of a corporation, association or partnership?
2. Would the owner of land be subject to quotas established for the issuance of nonresident hunting licenses when such quotas have been established in a county or district comprising his land?
3. Does the statute violate the Constitutional prohibition against class legislation?
4. Would it be possible to issue a nonresident property owner a license which would be valid for all hunting not limited by a quota, and valid for hunting all other species for which a quota has been set under existing law, only upon the lands owned and described by the applicant?

OPINION

Section 50a of the Fish and Game Act of Chapter 146, Statutes of Nevada 1949, provides that hunting by nonresidents of this State for upland game or waterfowl may be limited or forbidden in the circumstances and in the manner provided in the section. The circumstances are set out in six paragraphs.

Paragraph (c), the seventh paragraph, was added by Senate Bill No. 215, Chapter 359, Statutes of 1953, and reads as follows: "Nothing in this section shall be construed as a limitation upon the issuance of a hunting license to any nonresident of this State, or to the immediate members of such nonresident's family, who is a bona fide property owner of land within this state, for the right to hunt upon that land which he has title to; provided, that not less than 75 percent of all land belonging to the property owner in the State of Nevada and upon which he proposes to hunt is open to the public for hunting. Such nonresident may hunt deer, upland game birds, waterfowl and any other game birds or animals during the same periods and subject to the same limitations as may be allowed or imposed upon residents of Nevada in connection with such hunting; provided, that said persons have first complied with all the other requirements of the State of Nevada regulating hunting; and further provided, that such licenses to be issued to nonresident land owners shall be issued by either the state fish and game commission or its agents only upon proof of the applicant's title to certain lands within this State. Such license or permit shall be issued only upon payment of the regular nonresident fee and shall be valid for use only on the land owned and described."

The first question is who would be considered a bona fide property owner of land? In law the word "owner" has no technical meaning. The words of a statute, if of common use, are to be taken in their natural, plain, obvious, and ordinary signification and import. *County of Ormsby v. State of Nevada*, 6 Nev. 283.

The word owner has no technical meaning but its definition will contract and expand according to the subject matter to which it is applied, and as used in the statutes it is given the widest variety of construction, usually guided in some manner by the object sought to be accomplished. *City of Phoenix v. State ex rel. Harless*, 137 P.2d 783.

Technical words and phrases having peculiar and appropriate meaning in law shall be understood according to their technical import. This rule, however, has its exceptions where words are used to express convertible terms in a statute, and where a court, seeking to carry out

the will of the legislative body, applies to the terms the meaning that will give the most unrestricted scope to the enactment. *In Re Estate of Lewis*, 39 Nev. 445.

Under a statute making it unlawful for any person to hunt on lands of another without permission of the owner of the land, it was held that the term owner is he who has title to the land as distinguished from mere possessory right to the premises. *Barkely v. State*, 47 So. 75.

Section 50a of the Nevada Act, as amended, uses the terms nonresident or the immediate members of such nonresident's family, who is a bona fide property owner of land within the State, and also uses the words "he" and "person."

Section 9022, N.C.L. 1929, defines words and terms. Masculine gender includes the feminine and neuter; person includes a company, partnership, association or corporation as well as a natural person.

The owner of property must be a natural person, a corporation, or quasi person or entity, such as a partnership. The law recognizes no other owners of property. *Hawthorne v. State*, 158 S.E. 66.

The purpose of the amendment of Section 50a, *supra*, is to enable resident sportsmen to hunt upon lands of nonresident owners who under the law could prohibit hunting on their lands; and to reciprocate, the State grants the nonresident owner a privilege not before granted, if the owner permits the public the right to hunt upon not less than 75 percent of all land within the State belonging to such property owner. The privilege is granted to the nonresident owner, or to the immediate members of his family.

We are therefore of the opinion that the term owner should be given an unrestricted meaning in order to carry out the purpose of the Act, and that a shareholder in a corporation, association or partnership would come within the term of a bona fide property owner of land within this State.

Answering the second question, we are of the opinion that when a nonresident qualifies as an owner of land in this State and such land is open to public hunting as provided in Paragraph (c) of Section 50(a), the issuance of such license would not be restricted by a quota established in a district or the county where his land was situated if he hunted only, on his own land. The provision that nothing in this section shall be construed as a limitation upon the issuance of a hunting license to any nonresident contemplated in the amendment grants this additional privilege.

Question 3 is answered in the negative. In the sphere of its operation, if the statute affects all persons similarly situated it is not within the prohibition of the Fourteenth Amendment to the United States Constitution. *Barbier v. Connolly*, 113 U.S. 27.

Question 4 is answered in the affirmative. Paragraph (c) provides that the license shall be issued upon the payment of the regular nonresident hunting license fee, and that such nonresident may hunt deer, upland game birds, waterfowl and other game birds and animals during the same periods and subject to the same limitations as may be imposed upon residents of Nevada and also shall have first complied with all other requirements of law of the State regulating hunting. This implies that he shall come within the limitations and requirements relating to hunting by residents and nonresidents, except that quota limitations and denial of hunting rights to nonresidents shall not apply to such persons where hunting only on his own land of which 75 percent is open to regulated public hunting.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-258 Public Schools—Effect of Amendment to Primary Election Law, Adding Residence Qualification on Election of School Boards and Trustees.

CARSON CITY, May 21, 1953

MR. GLENN A. DUNCAN, *State Superintendent of Public Instruction, Department of Education, Carson City, Nevada.*

DEAR MR. DUNCAN: This will acknowledge receipt of your letter in this office May 19, 1953, in which you submit the following inquiry:

QUERY

What effect, if any, will Senate Bill No. 221, Chapter 368, Statutes of Nevada, 1953 have upon the election of Trustees of Union School Districts, County Boards of Education, and School Trustees generally?

OPINION

After an examination of the statutes involved, we are of the opinion that members of the County Boards of Education and members of the Boards of Education for Union School Districts elected at a general election come within the provision of the amendment to Section 5 of the Primary Election Law requiring a declaration of candidacy, or acceptance of nomination containing a requisite condition of a domicile in the State of Nevada for five years next preceding the date of the affidavit.

Trustees of ordinary school districts and Trustees of Joint School Districts, Consolidated Districts and District High Schools, elected at school elections under the provisions of the School Code are not affected by the amendment.

Section 5 of the Act regulating nominations for public office in Nevada, the primary law, was amended by Assembly Bill No. 198, Chapter 130, approved March 18, 1953. This amendment made no change in the form of declaration or acceptance of nomination.

Section 5 of the same Act was also amended by Senate Bill No. 221, Chapter 368, approved March 31, 1953.

The form of nomination paper was amended to contain the following language: “* * * that I have been domiciled in the State of Nevada for five years next preceding the date of this affidavit * * *”

The two amendments of Section 5 relate to the same subject, qualifications of candidates, and are in conflict.

As held by the Supreme Court on *School Trustees v. Bray*, 60 Nev. 345: “It is only where there is an irreconcilable conflict, and all other means of ascertaining the legislative intent have been exhausted, that the later provision will control an earlier one.”

“Insofar as there is any irreconcilable conflict between the two sections, the section which last became a law controls the provisions of the earlier enactment.” *State v. Esser*, 35 Nev. 429.

There is such a conflict in the two amendments, and Chapter 368, approved March 31, 1953 controls. General Elections and School Elections.

Section 2389, N.C.L. 1931-1941 Supp., Section 30 of the General Election Law, defines the term election. In addition to certain definitions, it contains the following language: “* * * but in the case of any school district election it shall only be necessary to comply with the provisions of chapter 6 of an act entitled ‘An act concerning public schools, and repealing certain act relating thereto,’ approved March 20, 1911.”

Chapter 6 of the Act of 1911 specifically provided the procedure for conducting school elections.

Chapter 63, Statutes of 1947, codified the school laws of the State and reenacted in Chapter 31 of the School Code the provisions of Section 6 of the 1911 Act defining the procedure for the election of school trustees, and repealed the Act of March 20, 1911.

Where one Act of the Legislature specifically adopts the provisions of another Act upon the same general subject, the effect is to incorporate the adopted Act, making it effective for the designated purpose, and that the adopted Act has been repealed is immaterial. *Maclean v. Brodigan*, 41 Nev. 468.

The exception in the General Election Law will apply to the election of school trustees provided in Chapter 31 of the School Code.

Under a School Code of the State of Arizona similar to that of Nevada, providing for election of school trustees, the court in *Findley v. Sorenson*, 276 P.843, held that the General Election Laws of the State were meant to apply to elections for State, county and precinct officers and other matters of political import to the State and named supervisions thereof, and not to school elections. This being confirmed by the fact that the school laws expressly provide for a special election of trustees and the determination of other questions of interest to the particular school district involved, differing radically from that provided in the general chapter on elections.

The foregoing rule will apply to school officers elected at regular school elections.

Chapter 7, Section 47 of the School Code (Section 6084.57, N.C.L. 1943-1949), provides that the trustees of Joint School Districts shall be under the immediate control of the Board of School Trustees in whose district the school is held.

Chapter 9, Section 56; Section 6084.66, N.C.L. 1943-1949 Supp., relating to trustees of consolidated schools, provides for a school election in the districts to elect trustees.

Chapter 10, another type of consolidated districts, provides in Section 64, Section 6084.74, N.C.L. 1943-1949 Supp., for the election of trustees at a school election.

Chapters 19 and 20—District high schools, Sections 122 and 130, respectively, provide for the government by the already existing Board of School Trustees.

County Boards of Education and Union School Districts. Chapter 12, Section 77, Section 6084.87, N.C.L. 1943-1949 Supp., Union School Districts, provides that the members of the Board of Education of such districts shall be elected at the general election, providing the terms of office, and that they shall enter upon their duties on the first Monday in January following such election.

Chapter 22 provides for County High Schools, and Section 143, Section 6084.153, provides that the members of the Board of Education shall be elected at the general election. The terms of office are specified and their duties shall begin on the first Monday in January following their election.

Therefore, members of the County Board of Education, and members of the Board of Education of Union School Districts, under the plain language of the statute, are elected at the general election, and come within the provisions of the amendment of Section 5 in Chapter 368, Statutes of 1953, amending the primary law. Trustees of other school districts who are elected under the school district elections are only required to comply with the provision of Chapter 31 of the School Code governing the election of school trustees.

Respectfully submitted,

W. T. MATHEWS, *Attorney General*.

By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-259 Banks and Banking—Certification to a Corporation to do a Banking Business Must be Certification to Transact a General Banking Business.

CARSON CITY, May 21, 1953

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

DEAR MR. ROBISON: This will acknowledge receipt of your letter of May 8, 1953, requesting the opinion of this office on the following question:

QUERY

Under the provisions of Sections 6 and 14 of the Nevada Banking Laws may the Superintendent of Banks license a banking corporation for the sole purpose of

doing a savings bank business and deny the banking corporation the right to operate a commercial banking business?

OPINION

The answer to your question is in the negative.

It should be pointed out at the outset that a banking corporation is wholly a creature of statute, doing business by legislative permission, and the right to carry on a banking business through the agency of a corporation is a franchise which is dependant on a grant of corporate powers by the State. 9 C.J.S., "Banks and Banking," Section 4, p. 32. Again, a banking corporation or association formed under a General Banking Act possesses authority to carry on the business of banking only in the manner and with the powers specified in such Act. 9 C.J.S., "Banks and Banking," Section 157, p. 335.

In answering this question we deem it necessary to review somewhat the history of the Banking Laws of Nevada.

One of the first laws of this State relating to banking corporations is found in Chapter 93, Stats. 1869, p. 148. This Act permitted incorporation for the purpose of carrying on a stock savings bank business and seems not to have made provision for the incorporation of a commercial banking business. Section 1 of this Act provides in part as follows:

Corporations for the purpose of aggregating the funds and savings of the members thereof, and others, and preserving and safely investing the same for their common benefit, may be formed according to the provisions of this act.

Following this we find an attempt to enact a general Banking Law by Chapter 191, Stats. 1909, p. 251, which provided that only corporations organized under the laws of the State were permitted to carry on a banking business. Section 3 of this Act provides in part as follows:

The term "commercial bank" shall be construed to mean any such banking institution as shall, in addition to the exercise of other powers, follow the practice of repaying deposits upon checks, draft, or money order, and of making commercial loans chiefly; the term "savings bank" shall be construed to mean any such banking institution as shall, in addition to the exercise of other powers, follow the practice of repaying deposits *only* upon the presentation of pass-books, and whose loans are chiefly made on real estate security." (Italics ours.)

Section 16 of this 1909 Act provides that every corporation before engaging in the banking business is to transmit to the State Banking Board a detailed statement including, "fifth, the nature of the proposed banking business, whether commercial or savings."

Section 17 of the 1909 Act provides in part as follows:

The State Banking Board, if, upon investigation, it shall be satisfied that all lawful requirements have been complied with, shall, upon the payment of certain fees as hereinafter provided, issue a license to such corporation.

We take it that this 1909 Act likewise contemplated the organization of banking corporations which could carry on a savings bank business only, as distinguished from a commercial banking business and that, if qualified, would be licensed by the State Banking Board.

Following the Act of 1909 comes Chapter 150, 1911 Stats., p. 291. Herein we find provision for the incorporation of banking businesses while at the same time recognizing that individuals can engage in such business without corporate organization. Moreover, this Act included stringent regulations for the control of all banks whether incorporated or not.

This Act of 1911 set down certain requirements that must be met before engagement in the banking business as a corporation as also did the 1909 Act. However, it differed in some

respects, one of which is, we think, important to our question. It provided at the outset particular sections pertaining solely to corporate organization and to prerequisites to be met before engaging in business. One of these sections applied to the licensing or certification by the bank examiner.

Section 3 of the 1911 Act provides in part as follows:

And if the bank examiner is satisfied that such bank has been organized as prescribed by law, and that its capital is fully paid in cash, and that it has in all respects complied with the law, he *shall* issue to such bank, under his hand and seal, a certificate showing that it has been organized and its capital fully paid up as required by law, and is authorized to transact a *general* banking business, upon payment of the license prescribed by this act. (Italics ours.)

It is to be noted that this Section 3 requires the Bank Examiner to certify such corporation to transact a general banking business, and makes no provision for certification for a savings bank only. We consider this requirement mandatory upon the Bank Examiner; for in the following Section 4 it is provided that a banking corporation organized under the provisions of this Act shall be permitted to receive money on deposit, to buy and sell exchange, gold, silver, coin, bullion, noncurrent money and bonds, to loan money on chattel and personal security or on real estate secured by mortgage. This indicates that such corporations shall be authorized or certified to do a general banking business as contradistinguished from a limited business of a savings bank only. Section 6 of this Act provides with reference to savings banks that chattel mortgages shall not be deemed collateral security and savings banks are prohibited from investing their funds in them.

The portions of Section 3, 4 and 6 above referred to of the 1911 Act are identical with our present Banking Law which is chapter 190, Stats. 1933, p. 292, as amended, with the exception that Section 3 gives to the Bank Examiner more discretionary power in determining whether or not the certificate shall be granted for a general banking business.

How then are Sections 6 and 14 of our present Banking Law to be reconciled?

Section 6 of our present Banking Law provides in part as follows:

Any banking corporation organized under the provisions of this act shall have power to carry on a savings bank business as prescribed and limited in this act.

In the light of the mandatory requirement of Section 3 to the effect that banking corporations shall be certified to do a general banking business, we interpret the above-quoted portion of Section 6 to mean that a banking corporation certified to do a general banking business shall also be empowered to do a savings bank business solely, if it so wishes.

Another portion of this same Section 6 provides:

When the savings bank business is conducted as a part of a general banking business, and the assets of the corporation are not segregated as between departments, then the ratio of savings deposits * * * to the total deposit, shall determine the portion of the bank funds which shall be invested subject to saving bank restrictions of this act.

We take this to mean that a corporation certified to do a general banking business may at the same time carry on both a commercial and savings bank business with the two types departmentalized; this being the present usual practice. We do not take this to imply, because the distinction is drawn in the same section between a corporation doing solely a savings bank business and one which combines the two departments, that a banking corporation can be certified to do a savings bank business solely. We think rather that, in conformance with Section 3, the corporation must be certified to do a general banking business and, when so certified, it can then carry on a savings bank business solely if it so wishes.

Section 14 of our present Act, as amended, contains the following proviso:

* * * all banks doing a savings bank or trust company business, but which do not transact a commercial banking business, shall be required to keep on hand * * *

Now, as hereinbefore stated, the Act of 1909 required that only corporations organized under the State laws could engage in the business of banking. So much of this Act related to this requirement was declared unconstitutional by the Supreme Court of Nevada in *Marymont v. Banking Board*, 33 Nev. 333. The court said, in that case, that the business of banking is a lawful business, which it is the inherent right of every citizen to engage in, but that banking may be regulated in the public interest.

As a consequence of that ruling we find that in the 1911 Act and in our present Act that such business may be incorporated and such corporation certified to do business by the Bank Examiner; while at the same time in Section 47 providing for the licensing of all banks whether incorporated or not. These Acts provide not only for incorporation but for stringent regulation of all banks. Moreover, in this connection, it is to be noted that very generally throughout these Acts when reference is made to a regulation applying to all banks, whether corporate or not, the terminology is such as to cover all banks. Witness, then, Section 14 as above-quoted.

In our opinion, therefore, this proviso in Section 14 is not to be construed to indicate or infer that a banking corporation so organized can be certified by the Bank Examiner to carry on a limited banking business, or that of a savings bank business only; rather it is designed for the purpose of regulating all banks including such corporations as are certified to do a general banking business but which may be carrying on solely a savings bank business. Again, insofar as the certification to carry on a corporate business is concerned we must look to the particular Section 3 of the Act.

We are cognizant of the fact that if a corporation is certified to do a general banking business, and which, if so certified can carry on the sole business of a savings bank, the implication arises that the Bank Examiner can certify the corporation for the limited practice of a savings bank. In light of the prior Acts permitting the licensing of corporations for a savings bank business solely and the subsequent change in this regard in the 1911 and 1933 law, as amended, in the clear and unambiguous wording of Section 3, we do not feel at liberty to read such an implication into the law.

We do not wish to be understood that the Bank Examiner cannot grant a limited license to an unincorporated business to carry on solely a savings bank business.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-260 Insurance—Endowment Care Cemeteries Established Prior to Passage and Approval of Chapter 138, 1953 Statutes, not Required to Deposit Additional Sum of \$25,000 as Provided in Section 9 Thereof.

CARSON CITY, June 4, 1953
HONORABLE PAUL A. HAMMEL, *Insurance Commissioner, State of Nevada, Carson City, Nevada.*

DEAR MR. HAMMEL: This will acknowledge receipt of your letter of June 1, 1953, in which you request the opinion of this office regarding the following question:

Is a cemetery corporation which was operating as an endowment care cemetery prior to the passage and approval of Chapter 138, 1953 Statutes of Nevada, required to deposit in its endowment care fund the additional sum of \$25,000 as provided in Section 9 of said statute?

OPINION

The answer to your question is in the negative.
Section 8 of Chapter 138, 1953 Statutes, provides as follows:

SEC. 8. An endowment care cemetery is one which shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of :

- (a) \$1 a square foot for each grave.
- (b) A sum equal to 15 percent of the sale price of each niche.
- (c) A sum equal to 15 percent of the sale price of each crypt.

Section 9 of Chapter 138, 1953 Statutes, provides as follows:

Sec. 9. In addition to the requirements of section 8 any endowment care cemetery hereafter established shall also have deposited in its endowment care fund the additional sum of \$25,000 before disposing of any plot or making any sale thereof.

It is the opinion of this office that, while the provisions of Section 8 clearly apply to all endowment care cemeteries, whether established before or after the passage of said statute, the use of the language "any endowment care cemetery hereafter established" in Section 9 limits the requirement of an additional deposit of \$25,000 to endowment care cemeteries established after the passage of Chapter 138, and that the Legislature expressed no intention whatsoever that the provisions of Section 9 should apply to endowment care cemeteries established prior to March 19, 1953, the effective date of said Act. We feel that the language used by the Legislature is entirely clear and unambiguous, and for that reason not subject to interpretation.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-261 Public Schools—Apportionment of State Funds to New School District Formed After Withdrawal From Consolidated School District.

CARSON CITY, June 5, 1953
MR. DWIGHT F. DILTS, *Retirement Clerk and Statistician, Department of Education, Carson City, Nevada*.

DEAR MR. DILTS: This will acknowledge receipt of your letter in this office June 1, 1953, in which you request an opinion upon the following statement.

STATEMENT

The Tem Piute School District is withdrawing from Consolidated School District No. 1 in Lincoln County, of which it was a component part, and will establish a new district under the provisions of Section 66 of the School Code, as amended by Chapter 65, Statutes of 1953. The certified petition, as required by the section, has been submitted and shows 44 resident pupils.

The Board of Trustees of Consolidated District No. 1 has requested that the Consolidated District receive the State apportionments during the 1953-1954 school year based on the attendance of 34 pupils in the Tem Piute District during the last preceding school year.

QUERY

Under the foregoing conditions, may the Consolidated District receive during any school year apportionments for pupils resident in a subdistrict during the previous year when the subdistrict has been withdrawn from the Consolidated District under the provisions of Chapter 65, Statutes of Nevada 1953?

OPINION

We are of the opinion that the question must be answered in the negative.

The withdrawal of a component district from a Consolidated School District, under Chapter 65, Statutes of 1953, results in the creation of a new district.

The apportionments under the School Code would be made to the newly established district school on the basis of the number of resident pupils of school age listed on the verified petition for the establishment of the independent district.

Chapter 11, Sections 66-73, of the School Code provides for the dissolution of Consolidated Districts. Section 66 was amended by Chapter 65, Statutes of Nevada 1953, to provide for the withdrawal for an organized Consolidated District an area or district under certain conditions. The withdrawal is initiated by the filing of a certified petition with the Board of County Commissioners setting forth the required conditions. Upon approval by the County Board and the recommendation of the Deputy Superintendent of Public Instruction for the Educational Supervision District involved, the County Board shall order the withdrawal of the area from the Consolidated District and order the creation of a new district in the same manner provided in Section 34 of the School Code for the creation of a new district from unorganized territory.

The new district when created comes within the provisions of Chapter 25 of the School Code and the apportionment is made as though the district was created under Section 34. The district as independent from the consolidation, not having been in operation for one year, the basis of apportionment is the number of pupils resident in the district as shown by the certified petition. The apportionment could not be made to the Consolidated District for the pupils are no longer under the jurisdiction of the Consolidated District.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-262 Motor Vehicles—Justice Courts—Municipal Courts—Justice Courts Must Comply With Penal Provisions of Chapters 164 and 247, Statutes 1953—Operation of Motor Vehicles—Municipal Courts Have no Jurisdiction.

CARSON CITY, June 8, 1953
HONORABLE ROBERT A. ALLEN, *Chairman, Public Service Commission of Nevada, Carson City, Nevada*.

DEAR MR. ALLEN: This will acknowledge receipt of your letter of June 2, 1953, requesting the opinion of this office on the following statement of facts and questions:

STATEMENT

“The last session of the Legislature enacted Senate Bill No. 113 and Senate Bill No. 149, both of which provide not less than a certain fixed amount as a fine. These Acts have been called to the attention of the District Judges, Justices of the Peace, Municipal Judges, Sheriffs, Police

Chiefs, and Patrolmen and copies furnished to them. We have noted recently in a Justice Court a fine of \$5 was exacted. In another Justice Court release with a reprimand was the extent of the court's action, while in a Municipal Court we are told that the court did not have to abide by the Acts as written."

QUERY

"1. Is it mandatory for the Justices of the Peace to fix the minimum fine as provided by law for that particular infraction?"

"2. Are Municipal Courts, Recorder Courts and Justice Courts bound by the provisions of the two Acts in question, that is, Senate Bill No. 113 and Senate Bill No. 149?"

OPINION

In answering question No. 1, this office is of the opinion that it is mandatory upon the Justices of the Peace, when assessing a fine under these statutes, to assess not less than the minimum nor more than the maximum amount of fine prescribed.

The Acts in question use the wording "* * * shall be fined in a sum not less than (x)."

We take it that there is no question but what this provision was intended to be mandatory. Certainly if the Legislature had intended that the court have unlimited discretion in this regard, there would have been no point in declaring a minimum sum to be assessed.

The more fundamental question involved here is whether the court is bound by the mandatory provision.

The law on this point is set out in 16 Corpus Juris, p. 1361, Section 3206, as follows:

It is a general rule where the punishment for an offense is fixed by statute, that imposed in the sentence must conform thereto.

Again in Section 3209:

The court or jury in assessing the fine or conviction of an offense punishable by fine must conform to the statute prescribing the punishment for the offense, and as a general rule any departure therefrom makes the sentence illegal. Thus if a statute fixes the maximum and the minimum of a fine, but leaves it to the discretion of the court to fix the precise sum, the imposition of a fine less than the minimum is not less illegal than one in excess of the maximum.

(See also the cases cited therein.)

Therefore, if a person is found to be in *violation* of the provisions of these statutes, the Justice of the Peace is not properly conducting his office if the person found guilty is released upon a \$5 fine, or a reprimand, or any other punishment short of the minimum prescribed in the statute.

In answering question No. 2, we are of the opinion that the Justice Courts in exercising their functions are bound to follow the provisions of these statutes.

However, we reach a different conclusion with respect to Municipal Courts. You state that "in a Municipal Court we are told that the court did not have to abide by the Act." It is not a matter of "not having to abide by the Act." Municipal Courts simply do not have the power to enforce or commit upon such an Act or upon State criminal laws.

We think that this point is largely determined in *Meagher v. The County of Storey*, 5 Nev. 244. The court in that case held an Act of the Legislature unconstitutional which provided that Recorder's Courts (Municipal Courts) shall have general powers of a committing magistrate in criminal cases. The court cited the Nevada Constitution (Art. VI, Sec. 1) as follows:

The Legislature may also establish courts for municipal purposes only in incorporated cities and towns.

The court thereupon continued as follows:

“For municipal purposes only” clearly restricts the jurisdiction to be exercised by them, when created, to such matters as relate to the affairs of the incorporated cities or towns.

Municipal purposes as here used can have no other signification. But section 38 of the law referred to unmistakably gives to the several Recorders of the State all the authority of a committing magistrate; the jurisdiction and right to examine and hold to answer all offenders upon charges for the violation of the general criminal laws of the State—a jurisdiction entirely beyond that which the Constitution authorizes the Legislature to confer upon them.

We would suggest that, if a person is to be fined or committed under the State law in question, the fine or commitment is to be imposed by the Justice Court and not the Municipal Court. In such case the arresting officer should cite the person into or take the person before the Justice of the Peace.

We feel that in order to answer your question as fully as possible we must make reference to whether or not the Municipal Courts are bound to comply with Subsection (b) of Section 8 of Senate Bill No. 113, Chapter 164, Statutes 1953, which provides as follows:

Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall, within five days, forward to the department a record of the conviction of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the operator’s or chauffeur’s license of the person so convicted.

We are inclined to view that the Municipal Courts must comply with the above-quoted provision to the extent of forwarding the records of conviction to the department.

It is our thought that this provision is in no respect an attempt to confer upon or to require that the Municipal Courts assume jurisdiction under these laws, but is rather a requirement laid upon the cities to be performed by the City Court which has no connection with the regular court function.

It is our thought that the Legislature is privileged to make such a requirement. As stated in *City of Reno v. Stoddard*, 40 Nev. 537: “Cities are mere instrumentalities of the state, for the convenient administration of government.” We feel that the requirement that the Municipal Court send its records of conviction for violation of ordinances regulating the operation of motor vehicles is one of “the governmental functions imposed upon the municipality as a local agency of limited and prescribed jurisdiction, to be employed in administering the affairs of the state, and promoting the public welfare generally.” See 43 C.J., p. 182, “Municipal Corporations,” Section 179.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-263 Surveyor General—Oil Royalties. Chapter 172, 1921 Statutes of Nevada, of no Force nor Effect.

CARSON CITY, June 18, 1953
HONORABLE LOUIS D. FERRARI, *Surveyor General, Carson City, Nevada*.

DEAR MR. FERRARI: This will acknowledge receipt of your letter of March 5, 1953, in which you request the opinion of this office with respect to Chapter 172, 1921 Statutes of Nevada, the same being Sections 5545-5547, N.C.L. 1929, in two particulars, as follows:

1. Does said Act cover land patents issued prior to March 22, 1921, insofar as oil royalties paid to the State of Nevada are concerned?
2. If a private corporation, or individual, leased a tract of State contract land, or patented land, which produced oil, and the lease was drawn up on a percentage of one-eighth royalty to be paid to the lessor by the lessee deduct the one-eighth paid to the lessor in computing the net proceeds?

OPINION

Section 5545, N.C.L. 1929, being Section 1 of Chapter 172, 1921 Statutes, provides as follows:

Every person, corporation, or association, his, her, or its heirs, assigns or lawful successors, who has a subsisting contract with the State of Nevada for the purchase of any lands of the State of Nevada or who may hereafter contract with the State of Nevada for the purchase of any of its public lands, and every patentee of lands purchased from the State of Nevada, shall, subject to the royalty provision hereinafter reserved, be deemed and held to have the right to the exclusive possession of the lands described in such contract, including all gas, coal, oil and oil shales that may exist in such lands; and every person, corporation, or association, his, her, or its heirs, assigns, or lawful successors, who has heretofore received or shall hereafter receive or be entitled to receive any patent or deed from this state granting to him, her or it any such lands, shall, subject to the royalty provision hereinafter reserved, be deemed to have the fee-simple title to the lands described in such patent or deed, including all gas, coal, oil and oil shales which may exist therein; *provided, however*, that any such contract holder or patentee shall pay to the State of Nevada for the fund which was the original beneficiary of such lands a royalty of five (5%) percent of the net proceeds of all gas, coal, or oil mined or extracted therefrom.

The selection and sale of lands granted by the United States to the State of Nevada are governed by the provisions of Chap. LXXXV, 1885 Stats. of Nevada, and Acts amendatory thereof and supplementary thereto.

Chapter CIII, 1887 Stats., being Sections 4154 and 4155, N.C.L. 1929, and entitled, "An Act to encourage mining," is an Act supplementary to the Act of 1885, and provides as follows:

Section 4154. The several grants made by the United States to the State of Nevada reserved the mineral lands. Sales of such lands made by the state were made subject to such reservation. Any citizen of the United States, or person having declared his intention to become such, may enter upon any mineral lands in this state, notwithstanding the state's selection, and explore for gold, silver, copper, lead, cinnabar, or other valuable mineral, and upon the discovery of such valuable mineral may work and mine the same in pursuance of the local rules and regulations of the miners and the laws of the United States; provided, that after a person who has purchased land from the state has made valuable improvements thereon, such improvements shall not be taken or injured without full compensation. But such improvement may be condemned for the uses and purposes of mining in like manner as private property is by law condemned and taken for public use. Mining for gold, silver, copper, lead, cinnabar, and other valuable mineral, is the paramount interest of this state, and is hereby declared to be a public use.

Section 4155. Every contract, patent or deed hereafter made by this state or the authorized agents thereof, shall contain a provision expressly reserving all mines of gold, silver, copper, lead, cinnabar and other valuable minerals that may exist in such land, and the state, for itself and its grantees, hereby disclaims any interest in mineral lands heretofore or hereafter selected by the state on account of any grant from the United States. All persons desiring titles to mines upon lands which have been selected by the state must obtain such title from the United States under the laws of Congress, notwithstanding such selection. As amended, Stats. 1897, 36.

In compliance with Section 4155, the State patents issued prior to 1921 included the following: “* * * provided, that all mines of gold, silver, copper, lead, cinnabar, and other valuable minerals, that may exist in said lands, are hereby expressly reserved.” After the passage of the Act of 1921, the state patents included, in addition to the above-quoted words, the following: “* * * except gas, coal, oil and oil shales (Chap. 172, Stats. 1921).”

It will be noted that Section 5545, N.C.L. 1929, very definitely includes in the oil royalty provision all persons to whom patents were issued prior to the passage of the Act. At first glance, and reading said statute alone, such provision would seem to answer your first question, and there could be no objection on the part of any such patentee, since the Act purports to give to such patentees the exclusive possession of all gas, coal, oil and oil shales, a right previously reserved under the reservation of “other valuable minerals,” and then provide for the 5 percent royalty. In other words, the State granted a right not previously enjoyed and qualified such right with the royalty provision. We have stated, in effect, that gas, coal, oil and oil shales are valuable minerals, because the Legislature obviously considered them to be such, and for the further reason that the general rule on the subject, as stated in C.J., Mines and Minerals, Sections 7 and 12, is to the effect that, in the broader sense of the word, gas coal, oil and oil shales are considered to be, and treated as, minerals. Decisions of the United States Department of the Interior Relating to Public Lands, which have been held to have the same force and effect as court decisions, have also held gas, coal, oil and oil shales to be minerals. However, when Sections 4154 and 4155, being Sections 1 and 2 of the Act of 1887, are read in conjunction with said Section 5545, as they must be, it will be seen that the State of Nevada could not grant away the mineral rights in such lands, it having been stated and recognized in Section 4154 that the several grants made by the United States to the State of Nevada reserved the mineral lands and provided further that sales of such lands by the United States, and in Section 4155, the State, for itself and its grantees, having disclaimed any interest in mineral lands “heretofore or hereafter” selected by the State on account of any grant from the United States. Since the State did not own the mineral rights, including gas, coal, oil and oil shales, in such lands, it obviously could not grant such to patentees and contract holders, nor could it validly provide for a royalty on the net proceeds of all gas, coal or oil mined or extracted therefrom.

It is considered opinion of this office that the Act of 1921, being Chapter 172, 1921 Statutes, Sections 5545-5547, N.C.L. 1929, is a nullity and of no force nor effect, for the reason that the State of Nevada has not, and has never had, the title to the mineral lands included in those lands granted to it by the United States for selection and sale. Having held that the Act of 1921 is a nullity and of no force nor effect, it is not necessary to directly answer your questions.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-264 Public Employees Retirement—Members of State Legislature not Eligible.

CARSON CITY, June 22, 1953

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

DEAR MR. BUCK: This will acknowledge receipt of your letter in this office, June 17, 1953. You refer to Attorney General's Opinion No. 74, dated June 26, 1951, which held that members of Boards of County Commissioners were not eligible under the statute to become members of the Public Employees Retirement System, and present the following inquiry.

QUERY

May members of the State Legislature be regarded as eligible to become or remain members of the Public Employees Retirement System?

OPINION

We are of the opinion that members of the State Legislature are not eligible to become members of the Public Employees Retirement System.

Section 8, Subsection 6, of the Act establishing a system of retirement for certain officers and employees, Chapter 183, Statutes of 1951, provides that a person holding an elective office, if otherwise eligible, may become a member of the system. Subsection 4 of the same section provides that no employee whose position normally requires less than 1,200 hours of service per year may become or remain a member of the system.

Article IV, Section 29, of the Constitution, provides that no regular session of the Legislature shall exceed 60 days, nor any special session exceed 20 days.

The powers and duties of the Legislature are exercised and performed as a body during the session of the Legislature, and such position normally requires less than 1,200 hours of service during a year.

Attorney General's Opinion No. 74, *supra*, will apply in an equal degree to members of the State Legislature.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By GEORGE P. ANNAND, *Deputy Attorney General.*

**OPINION NO. 1953-265 Bonds—Paradise School District, Clark County, Nevada.
General Obligation Bonds Approved.**

CARSON CITY, June 23, 1953

HONORABLE GRANT ROBISON, *Secretary, State Board of Finance, Carson City, Nevada.*

DEAR MR. ROBISON: Pursuant to your request we have examined the transcript of the proceedings of the Board of Trustees of Paradise School District, Clark County, Nevada, in the issue by said school district of its general obligation building bonds in the aggregate principal amount of \$345,000, bearing date June 15, 1953, maturing serially in regular numerical order \$5,000 on the 15th day of June 1956 and \$20,000 on the 15th day of June in the years 1957 to 1973 inclusive, bearing interest at 3 percent per annum payable semi-annually on the 15th day of June and December each year, commencing on the 15th day of June 1954.

We are of the opinion that the proceedings as shown by the transcript are in conformity with the statutes of Nevada, and upon confirmation of the sale the bonds will constitute a valid and legally binding obligation of the Paradise School District, Clark County, Nevada.

The advertisement recites that the legal opinion of Messrs. Pershing, Bosworth, Dick & Dawson, bonding attorneys, will be furnished without charge.

This opinion should be furnished the State as required by private purchasers of the bonds.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-266 Nevada Industrial Commission—Balances Remaining in Legislative Appropriations for State Offices in 1951-1953 Biennium Cannot Be Used to Pay Delinquent Industrial Insurance Premiums.

CARSON CITY, June 24, 1953

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*.
Attention: William E. Kearns, Administrative Assistant.

GENTLEMEN: Reference is hereby made to your letter of June 12, 1953, wherein you request the opinion of this office as follows:

Is it possible for the various State Departments, having a balance in their accounts as of June 30, 1953, to pay all or such part of these balances as may be due to the Nevada Industrial Commission for indebtedness incurred in the nonpayment of premiums for industrial insurance coverage provided during past years?

There are outstanding accounts totaling approximately \$38,000 and any payment, or payments, on the individual or collective accounts from surpluses remaining with these various departments of the State would be of material assistance to the Nevada Industrial Commission.

We are enclosing, herewith, a recap of delinquent premiums owed by the various State Departments.

It appears from the material annexed to your letter that during the past years, and particularly in the biennium beginning 1947 and ending June 30, 1951, various departments of the State Government are therein listed as being delinquent in the payment of the Nevada industrial insurance premiums during such period of time upon the officers and personnel of such departments. It was thought that at the end of the present biennium such delinquent departments having funds on hand which would revert that recourse could be had to such funds in order to make up all or a portion of the delinquencies claimed.

OPINION

From the inception of the Nevada Industrial Insurance Act in 1913 up to July 1, 1951, the insurance premiums were paid from appropriations made by the Legislature for such purpose, such appropriations being usually incorporated in the General Appropriation Act of each session of the Legislature and the State Controller, from such appropriations, paid the insurance premiums due. The law was materially changed in 1951 and beginning with July 1 of that year each individual office and department of the State Government was, and is, required to make payment of the insurance premiums due on the individual office or department personnel from the appropriations made for each said office or department. It is apparent from the data submitted with your letter of inquiry that the delinquencies all occurred prior to July 1, 1951, with the exception of one or two so-called delinquencies.

This office has made a check of the appropriations made by the Legislature down through the years and set aside for the industrial insurance premiums under the then existing law. It appears from the appropriation Acts in the respective bienniums that the first appropriation was made in 1917 to the extent of \$3,500; 1919, \$5,000; 1921, \$5,000; 1923, \$5,000; 1925, \$4,000; 1927, \$6,000; apparently no appropriations were made in the years 1929 and 1931; 1933, \$3,000; no appropriation 1935 and 1937; 1939, \$14,000; 1941, \$14,000; 1943, \$15,000; 1945, \$15,000; 1947, \$15,000. In 1949, the Legislature made the last direct appropriation for the payment of insurance premiums in the amount of \$17,500.

The record seems to be clear that it was the intent of the Legislature up to the year 1951 to provide appropriations, which, in its judgment, were sufficient to pay the insurance premiums on the State Officers and State Personnel and, of course, following the rule of the reversion of funds, at the end of the biennium, if any funds were left in the insurance premiums appropriation, naturally they would revert, with a consequent taking over in the new biennium of the appropriation made for that period.

This office, of course, cannot account for the apparent delinquencies prior to July 1, 1951. However, we think the Legislature, in making the appropriations it did make, signified its intention that such appropriations were to be deemed sufficient for the payment of such premiums during the biennium and if such appropriations were insufficient, it was beyond the power of any State Officer, particularly the Controller, to draw and issue warrants upon the General Fund in the Treasury, in view of the fact that the appropriations made by law had become exhausted and under the Constitutional provision that no money shall be drawn from the Treasury but in consequence of appropriations made by law. (Sec. 19, Art. IV, Const. of Nevada.) The result was that if there were no funds with which to pay the premiums, then it could not be done, and, unless the Legislature thereafter provided a deficiency appropriation there was no way in which these delinquencies could have been paid, and particularly is this true in view of Sections 7049-7055, N.C.L. 1929, whereby the Legislature had prohibited any State Officer or Department or employee in creating a deficiency.

It is, therefore, the opinion of this office that your inquiry must be answered in the negative, for the reason that any funds remaining in the appropriations made in 1951 for the respective offices and departments could not, in our opinion, be used for the payment of deficiencies growing out of transactions prior to July, 1951.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-267 Insurance Commissioner—Deposit of Publication Costs in Banks not Authorized by Insurance Law.

CARSON CITY, June 24, 1953

MR. ARTHUR N. SUVERKRUP, *Budget Director and Ex Officio Clerk, Board of Examiners, Carson City, Nevada.*

DEAR MR. SUVERKRUP: Referring to the question raised at the Board of Examiners' meeting on June 22, 1953, and relative to the claim for the printing of bank checks for the Insurance Commissioner for use in paying the publication costs of the publishing of annual statements of the insurance companies required by law to be published in some newspaper in Nevada, together with the matter of banking of funds paid the Insurance Commissioner by insurance companies for the payment of publication costs.

STATEMENT

This office is advised that perhaps some years ago the practice was established whereby the Insurance Commissioner received the publication costs from the various insurance companies and arranged for the publication of the annual statements in the newspapers, which, of course, must be paid by the insurance companies. But the Insurance Commissioner, no doubt out of courtesy, accepted the money for publication costs, banking it separate and apart from other funds of the Commissioner required to be placed in the State Treasury, and, upon the publication of the annual statements being had, simply paid the publication costs by check. This office had and has no quarrel with such procedure as adopted by the prior Insurance Commissioner and no doubt it was courteous treatment by the Insurance Commissioner, and we attribute to the former Insurance Commissioner and to the present Insurance Commissioner no fault whatever with such practice. This is the first time that the question has been submitted to this office.

OPINION

An examination of the insurance laws discloses, in Section 41 thereof, that the Insurance Commissioner shall annually, in the month of December, furnish to each of the companies authorized to do business in this State and required to publish an annual statement in some newspaper in this State two or more blank forms adapted for such statement by the Commissioner, in order that each company may publish such statement as required by the General Corporation Law. No provision is incorporated in this section of the Insurance Law whereby the Commissioner shall receive any fee or make charges for the furnishing of such forms.

Section 1 of an Act requiring foreign corporations doing business in the State of Nevada to publish annual statements, such section being Section 1844, N.C.L. 1929, as amended at 1949 Statutes, page 86, requires that all foreign corporations doing business in the State of Nevada shall, not later than the month of March in each year, publish a statement of their last year's business in some newspaper selected by such corporation published in the State of Nevada. Such section also provides the number of times such annual statement shall be published. This requirement of the law is the section meant by the Legislature in the enactment of Section 41 of the Insurance Act, so that it is incumbent upon all foreign insurance companies to publish such annual statement in order to continue to do business in this State.

While Section 41 of the Insurance Law requires the Commissioner to furnish the blank forms adapted for such annual statement, still, as stated before, there is no provision whereby the Commissioner is to make any charges for the furnishing of such forms. However, Section 138 of the Insurance Law as it was originally enacted and as amended at 1951 Statutes 512, requires the Insurance Commissioner to deposit all the money collected for licenses, penalties or other money paid by the insurance companies or solicitors to the State to enable them to transact business in the State of Nevada, into the General Fund of the State Treasury. This provision being placed in the Insurance Law, we think that if the Insurance Commissioner accepts money to pay the publication costs of the annual statements that the same should be placed in the State Treasury. On the other hand, while the Insurance Commissioner is required to furnish the forms for annual statements, he is not required to select a newspaper nor to carry out the intent of the Act by selecting a newspaper and seeing to it that the publication is had.

Entertaining the views hereinbefore expressed, we suggest that the Insurance Commissioner, receiving money for publication costs, should place the same in the State Treasury and withdraw it on claims presented to the State Board of Examiners.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-268 Personnel Act—Sick Leaves, Computation of Time Where No Prior Service Shown.

CARSON CITY, June 25, 1953

SIDNEY J. TILLIM, M.D., *Superintendent, Nevada State Hospital, P.O. Box 2460, Reno, Nevada.*

DEAR DR. TILLIM: Receipt is hereby acknowledged of your letter of June 16, 1953, requesting the opinion of this office as follows:

An employee, in tenure of only 3 1/2 months, suddenly took ill while on the job, and was subsequently found to have a gastric ulcer for which he was hospitalized and a major operation performed. He will be losing about three weeks' work before he is ready to return to employment.

The question is: Has this employee entitlement for full annual sick leave or is his entitlement limited to one and one-quarter days per month for the time of employment?

OPINION

Section 43 of the Personnel Act, the same being Chapter 351, page 645, Statutes of 1953, provides:

All employees in the public service, whether in the classified or unclassified service, shall be entitled to sick and disability leave with pay of not less than one and one-quarter working days for each full calendar month of service and may be cumulative from year to year not to exceed ninety working days. Any employee, whether in the classified or unclassified service, shall be credited with, and be eligible for, sick and disability leave for service rendered prior to the passage and approval of this Act in the same ratio, and subject to the same limitations, set forth herein and such accrued sick and disability leave shall be credited upon approval and passage of this Act.

The employee in question had a tenure of service for the State of only three and one-half months prior to becoming ill. No service of such employee prior to the passage and approval of the Act is shown that could be used to augment the period of sick leave to any extent over and beyond that provided in the statute and actually earned thereunder by the employee.

It is the opinion of this office that the employee's entitlement is limited to one and one-quarter days per month computed upon the period of time employed in the service of the State Hospital.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-269 State Department of Personnel—Nevada Industrial Commission Comes Within Provisions of Act.

CARSON CITY, June 26, 1953

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada.*
Attention: Mr. William E. Kearns, Administrative Assistant.

GENTLEMEN: This will acknowledge receipt of your letter in this office June 15, 1953, in which you request an opinion from this office upon the following questions:

QUERY

1. Do the provisions of Senate Bill No. 2, apply to the personnel of the Nevada Industrial Commission?
2. Do the provisions of Senate Bill No. 50, apply to the personnel of the Nevada Industrial Commission?

OPINION

We are of the opinion that the provisions of Senate Bill No. 2, Chapter 351, Statutes of Nevada 1953, apply to all personnel of the Nevada Industrial Commission who are not comprehended by Section 18 of the Act, defining unclassified service.

Answering the second question, we are of the opinion that Senate Bill No. 50, Chapter 273, Statutes of Nevada 1953, applies only to personnel of the Nevada Industrial Commission not included in the classified service, but holding positions in the unclassified service as defined in Section 1 of the Act.

Senate Bill No. 2 is Chapter 351, Statutes of Nevada 1953, which is an Act creating a State Department of Personnel.

Section 1 of the Act declares that the purpose of the Act is to provide all citizens a fair and equal opportunity for public service, to establish conditions of service which will attract officers and employees of character and ability, to establish uniform job and salary classifications, and to increase the efficiency and economy of governmental departments and agencies by the improvement of methods of personnel administration.

Section 2 defines the meaning of certain words used in the Act.

Subsection 4 defines the words public service as follows: "Public service means positions providing service for any office department, board, commission, bureau, agency, or institution operating by authority of the constitution or law, and supported in whole or in part by any public funds, whether said public funds are funds received from the federal government of the United States or any branch or agency thereof, or from private or other sources."

If the nature of the funds that support the department is the criterion or standard of determining public service it comprehends a wide scope.

The definition is not clearly expressed. Where a definition clause is clear it should control the meaning of the words used in the remainder of the Act, for that is the legislative intent. Where the definition is not clear then the court should use all intrinsic and extrinsic aids to determine the legislative intent. Sutherland Statutory Construction, 2d Ed. Vol. 2, Section 3002.

Section 18 of the Act in plain and unambiguous language defines the positions held by State officers and employees who are in the unclassified service, and reads as follows:

The unclassified service of the State of Nevada shall comprise positions held by state officers or employees as follows:

- (1) Persons chosen by election or appointment to fill an elective office.
- (2) Members of boards and commissions, and heads of departments, agencies, and institutions required by law to be appointed.
- (3) At the discretion of the elective officer or head of each department, agency, or institution, one deputy and one chief assistant in such department, agency, or institution.
- (4) All employees in the office of the governor and all persons required by law to be appointed by the governor or heads of departments or agencies appointed by the governor or by boards.
- (5) Officers and employees of the Nevada legislature.
- (6) Officers and members of the teaching staff and the agricultural extension division and experiment station staff of the University of Nevada, or any other state institution of learning, and student employees of such institutions; provided, however, that custodial, clerical, or maintenance employees of such institutions shall be in the classified service. It shall be the duty of the board of regents to assist

the director in carrying out the provisions of this Act applicable to the University of Nevada.

(7) Officers and members of the Nevada national guard, as such.

(8) Persons engaged in public work for the State but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority.

(9) Persons temporarily employed or designated by the legislature or by a legislative committee to make or conduct a special inquiry, investigation, examination or installation.

(10) Patient and inmate-help in the state charitable, penal, mental and correctional institutions.

(11) Part-time professional personnel who are paid for any form of medical, nursing, or other professional service, and who are not engaged in the performance of administrative duties.

Eleven classes of persons are specifically mentioned in the section, but the Nevada Industrial Commission as an agency or department is not included.

It is the presumption when one person or thing is expressly mentioned in a statute, that all other persons and things are to be excluded. *Virginia & T.R. Co. v. Elliott*, 5 Nev. 358.

Section 19 defines the classified service as all positions in the public service now existing or hereafter created which are not included in the unclassified service, and then adds the same language relative to funds as found in the broad scope of the definition of public service.

The Nevada Industrial Commission is supported in part by public funds from the State and its subdivisions under the compulsory provisions for insurance.

In the case of *Nevada Industrial Commission v. Washoe Co.*, 41 Nev. 437, to test the constitutionality of the Industrial Insurance Act, on page 447 the court expressed the public nature of the service in the following language: "But we think there is another and very excellent theory upon which the law may be held constitutional, namely, that the money required to be paid under the act by the counties of the state goes for a public purpose which is a legitimate charge upon the people and the state and the subdivisions thereof."

The Act divides officers and employees in two classes, classified service and unclassified service.

It is plain that the Nevada Industrial Commission, as an agency or department is not included in the unclassified service as defined.

It appears therefore that the term "public service" should be construed to accord with the declared purpose of the Act, and the personnel of the Commission not specifically included in Section 18 come within the classified service.

The answer to your second question is found under Chapter 273, Statutes of 1953 (Senate Bill No. 50). This Act provides for annual leave, sick leave and leave of absence for elective officers, heads of departments and other employees of the State who are not included in the classified service.

Section 1 sets out the unclassified positions.

The Act therefore, in our opinion, will apply only to the personnel coming within the classification contained in the Act, that is, the unclassified service. It is also to be noted, however, that Section 18 of Chapter 351 contains the same provisions listing the persons falling within the unclassified category as contained in Section 1 of Chapter 273, so that in any event it is immaterial at this time to draw any distinction between the two Acts with respect to the personnel included therein.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

**OPINION NO. 1953-270 Bonds—Carson City, Ormsby County, Improvement District
Bonds Valid and Binding Legal Obligation.**

CARSON CITY, June 29, 1953

HONORABLE GRANT ROBISON, *Secretary, State Board of Finance, Carson City, Nevada.*

DEAR MR. ROBISON: We have examined the transcript of the proceedings in the Carson City, Ormsby County, State of Nevada, 1953 Improvement District, negotiable coupon bonds in the aggregate amount of \$68,839.61, series of June 15, 1953, consisting of 68 bonds: No. 1 bond in the principal amount of \$1,839.61, and 67 bonds each in the principal sum of \$1,000, bearing interest at the rate of 3 percent per annum, payable on the 15th day of June of each year. Bonds Nos. 1 to 5, inclusive, payable June 15, 1954, and seven of each bonds in the sum of \$1,000 each payable each year through June 15, 1963.

We are of the opinion that the proceedings are in accord with the Statutes of Nevada, the charter of said city, and the ordinances regularly adopted, and that such bonds constitute a valid and binding legal obligation of the city of Carson City, Ormsby County, Nevada, for investment of certain State funds as provided in Chapter 191, Statutes of 1943, as amended by Chapter 339, Statutes of 1953.

Respectfully submitted,

W. T. MATHEWS, *Attorney General.*

By GEORGE P. ANNAND, *Deputy Attorney General.*

**OPINION NO. 1953-271 Bonds—Churchill County Public Hospital Bonds Valid and
Binding Legal Obligation.**

CARSON CITY, June 30, 1953

HONORABLE GRANT L. ROBISON, *Secretary, State Board of Finance, Carson City, Nevada.*

DEAR MR. ROBISON: We have this date examined the transcript of the proceedings providing for the issuance of Churchill County Public Hospital Bonds in the aggregate amount of \$100,000, consisting of an issue of 100 bonds in the principal sum of \$1,000 each, bearing interest at the rate of 3 percent per annum, payable semiannually on the first day of June and December in each year.

It is the opinion of this office that the transcript of proceedings shows that each and every step leading up to the issuance of said bonds was and is legal and in proper sequence, and that the same are in strict accordance with the statutes and laws and ordinances in such case made and provided. We also find that the Legislature of Nevada, in the enactment of Chapter 116, Statutes of Nevada 1953, has ratified and approved all the proceedings hereinabove mentioned and provided for the issuance of the said Churchill County Public Hospital Bonds.

We also find that Pershing, Bosworth, Dick and Dawson are required by the Board of County Commissioners of said Churchill County to furnish its approving opinion and certificate concerning said bond issue. This opinion of Pershing, Bosworth, Dick and Dawson, together with its certificate, should be furnished to the State Board of Finance.

Respectfully submitted,

W. T. MATHEWS, *Attorney General.*

**OPINION NO. 1953-272 County Hospitals—County Commissioners Required to
Appoint Hospital Trustees Pursuant to Chapter 120, Statutes of 1953.**

CARSON CITY, July 1, 1953

HONORABLE JON. R. COLLINS, *District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. COLLINS: Reference is hereby made to your letter of June 27, 1953, requesting the opinion of this office as to whether Chapter 120, page 126, Statutes of Nevada 1953, providing for the appointment of hospital trustees by the Boards of County Commissioners in all cases where county hospitals have been heretofore erected under or by virtue of any Act of the Legislature other than an Act to enable counties to establish and maintain public hospitals, etc., known as the County Hospital Act, is mandatory and that the Boards of County Commissioners, in any such case, are now required to appoint a board of hospital trustees to administer the hospital according to the terms of such County Hospital Act. It is noted that you have advised your Board of County Commissioners that they should now appoint such board of trustees. This office concurs in your opinion for the following reasons.

OPINION

An analogous case was submitted to this office for opinion in 1949 and our opinion thereon is found as Opinion No. 725, page 142, Report of Attorney General, July 1, 1948-June 30, 1950, a copy of which report should be in your office. In this opinion this office discussed the County Hospital Act quite exhaustively and traced it from 1923 down to the date of the opinion. It appears in such opinion that the Board of County Commissioners of Mineral County had pursued practically the same course as your Board of County Commissioners until the year 1935 when it appointed a board of trustees without the sanction of an election or the creation of a tax for the establishment of a county public hospital. This office held that such procedure would not create a county public hospital having the legal status of such a hospital under the County Hospital Act for the reason that the conditions precedent, as required by the Act, had not been complied with.

We understand from your request that the Board of County Commissioners of White Pine County did not follow, nor, for that matter, have the inhabitants of the county followed, the procedure outlined in the County Hospital Act for the establishment or taking over of the present county hospital at any time since its construction. Since the repeal of the 1923 Act and up to the enactment of the 1953 amendment the conditions precedent to be complied with did not admit of the appointment of boards of hospital trustees without first the filing of a petition with the Board of County Commissioners and an election being held thereon so that, as a matter of law, the taking over of the county hospital in White Pine County by a board of trustees could not well have been complied with excepting as provided in the Hospital Act.

Apparently the Legislature has taken cognizance of such a situation and enacted the 1953 amendment by adding a new section to the County Hospital Act and providing therein for the appointment of a board of hospital trustees by the Board of County Commissioners, irrespective of the conditions precedent set forth in the County Hospital Act, and now the law not only permits, but, we think, in rather mandatory terms, in such situations makes it the duty of the County Commissioners to now appoint boards of trustees for county public hospitals, so that hereafter such hospitals will be uniformly governed throughout the State by the County Hospital Act.

We think the language contained in the 1953 amendment, "the board of county commissioners is hereby authorized and empowered to forthwith appoint a board of trustees for such county hospital," clearly indicates the intent of the Legislature that such county hospitals should in the future be placed under the administration of a board of hospital trustees, as provided in the Hospital Act, and for that reason this office concurs in your opinion.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-273 County Officers—Amount of Living Expenses While Away From County Seat Limited to the Amount Stated in Chapter 74, Statutes of 1953.

CARSON CITY, July 1, 1953

HONORABLE JON R. COLLINS, *District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. COLLINS: This will acknowledge receipt of your letter of June 27, 1953, advising that the 1953 Legislature enacted Chapter 29, Statutes of 1953, wherein the salaries and traveling expenses of the respective county officers of White Pine County were fixed and that in such chapter the officers were allowed their actual traveling expenses as follows, "to consist of actual cost of his transportation and living expenses while absent from the county seat in performance of his official duties." Such language was made applicable to each of the county officers mentioned in the Act.

You further advise that the 1953 Legislature enacted Chapter 74, Statutes of 1953, amending Section 2207, N.C.L. 1929, as amended by Chapter 34, Statutes of 1939, with respect to the travel allowance of county officers, wherein the following language appears: "When any county or township officer or any employee of the county shall be entitled to receive his necessary traveling expenses for the transaction of public business, such expenses shall include his actual living expenses, not to exceed eight dollars per day."

You inquire which of the aforementioned Acts control as to the payment of living expenses of the county officers of White Pine County while away from their offices on official business.

OPINION

It is the opinion of this office that the provision of said Chapter 74, limiting the amount of actual living expenses to eight dollars per day, controls over the provision provided in Chapter 29.

Chapter 29 is an Act relating to White Pine County only and provides for the salaries of its offices and includes therein the allowance for actual traveling expenses, together with living expenses, while absent from the county seat. Chapter 74, however, is an amendment to a general law entitled, "An act authorizing and empowering the several boards of county commissioners within the State of Nevada to fix the amount of expense money for traveling and subsistence per day of county and township officers, representatives, and employees while traveling on official business," approved February 3, 1928, and being Section 2207, N.C.L. 1929, as amended by Chapter 34, Statutes of 1939. There is no conflict between the provisions of Chapter 29 and Chapter 74 in any respect, save and except, Chapter 74 places a limitation upon the amount that may be allowed for the actual living expenses and that limitation is eight dollars per day. This office is of the opinion that Chapter 74 controls, as above stated, for the reason that it is of general and uniform operation throughout the State and enacted, in our opinion, in conformity with Section 21, Article IV, Constitution of Nevada, providing that in all cases, where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-274 Grand Jury—Inquisitorial Powers Thereof.

CARSON CITY, July 6, 1953

HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. FOLEY: Receipt is hereby acknowledged of your letter of June 25, 1953, and also supplemental material relating thereto of June 30, requesting the opinion of this office as to the power of the Grand Jury to inquire into the activities of the Colorado River Commission.

Upon the request of this office it was furnished a copy of a letter addressed to the foreman of the Clark County Grand Jury reading as follows:

This letter is a formal request that the undersigned be afforded the opportunity of appearing before the Grand Jury to present documentary and other evidence to support your consideration of an investigation of the sale of the "Residual Assets" of Basic Magnesium project to Basic Management, Inc., by the Colorado River Commission of the State of Nevada.

In the opinion of the undersigned, the aforementioned transaction—and subsequent transactions by Basic Management, Inc., which were the outgrowth of the original transaction—violated the best interests of the people of Henderson and Clark County. I am a resident of the State of Nevada, and have been for eleven (11) years; a registered voter; and a taxpayer in the County of Clark.

I believe it is imperative that the present Grand Jury investigate this matter in its entirety, to the end that the apparent inequities which prevailed in the making of it may be corrected, and I sincerely urge your serious and favorable consideration of this request.

Your inquiry is directed to the question of whether under the law the Grand Jury is vested with such inquisitorial powers as will empower it to enter upon an investigation of the business and affairs of the Colorado River Commission.

OPINION

The primary duty of a Grand Jury is to investigate and deal with crime and criminal matters occurring within its own county and unless specially authorized by statute it has no power to act in civil matters.

In the absence of special statutory authorization, grand juries cannot act in civil matters. A grand jury is only part of the government machinery for the detection and punishment of crime, and it cannot extend its inquisition beyond that pale and into matters not in their nature criminal. 24 Am.Jur. 858, Sec. 35.

That it was the intent of the Nevada Legislature in the past to limit the inquisitorial powers of the Grand Jury to investigation of crimes and offenses is well evidenced by the statutory oath administered to the foreman. See Section 10810, N.C.L. 1929, and also by Sections 10818 and 10826, N.C.L. 1929. Said Section 10826 was amended at 1943 Statutes, page 228, by the insertion therein of the following language:

* * * may inquire into any and all matters affecting the morals, health, and general welfare of the inhabitants of the county, or of any administrative division thereof, or of any township, incorporated city, irrigation district, or town therein.

While such amendment broadened the inquisitorial powers of the Grand Jury to a certain extent, still, we think, that such powers have not been broadened to the extent that investigations may be instituted upon an intimation to the Grand Jury that there may be something wrong in the administration of the duties of some board or officer. We think there must be at least some showing made to the jury that there has been willful and corrupt misconduct on the part of the board or officer in the administration of the matters within the control of the board or officer before the Grand Jury would be justified in entering upon an investigation thereof.

The Colorado River Commission is a State Board whose chairman is the Governor of the State. It has been and still is invested with extensive powers by the Legislature and in the exercise of those powers it has been invested with the power to exercise its discretion in carrying out the purposes and mandates of the Legislature. To the Commission the Legislature delegated the power in behalf of the State and with the approval of the State Board of Control to negotiate the purchase from the War Assets Administration of the United States Government or other government agency, any installation, equipment, rights, or other property of or appurtenant to the Basic Magnesium, Inc., in Clark County or elsewhere in the State. The Commission was further invested with the power to sell, lease or sublease any or all such property and after fulfilling its contract with the United States Government and making the payments due under such contract, deposit the balance of the proceeds derived from the sale or lease of the property in the State Treasury. See 1947 Statutes 450; 1949 Statutes 328; 1951 Statutes 175.

It is therefore most clear that the Colorado River Commission as to the transactions in question here was invested with powers and duties, civil in nature, pertaining to the executive department of this State exercised not only in and for the benefit of Clark County but also in and for the benefit of the State at large.

Adverting now to the formal request that the person signing the letter formulating the request submitted to the foreman of the Grand Jury, we think, the most that can be said of such request is that in the opinion of the writer thereof there may be some evidence of matters, not alleged to be criminal in nature, nor pointing to acts willful or corrupt of the Commission or individual members thereof, that inequities prevailed that may be corrected. We think such request does not contain sufficient or any evidence to warrant the Grand Jury to embark upon an investigation of an inquisitorial nature of a State Commission. There is no showing set forth in the letter in question that there is any evidence of a criminal or fraudulent nature, but simply that it is surmised something of that nature might exist. We think that this phase of the matter is well analyzed and exhaustively examined in the case of *Petition of McNair* (Penn.) 187 Atl. 498. The court examined into the facts purporting to sustain a demand for an investigation by the Grand Jury and found them insufficient, saying in part:

A grand jury's investigation cannot be a blanket inquiry to bring to light supposed grievances or wrongs for the purpose of criticizing an officer or a department of government, nor may it be instituted without direct knowledge or knowledge gained from trustworthy information that criminal conspiracy, systematic violations of the law, or other criminal acts of a widespread nature prevail, and at least one or more cognate offenses should exist on which to base a general investigation. The investigation cannot be aimed at individuals primarily, as such nor at the commission of ordinary crimes (*Commonwealth v. Zortman*, supra; *Commonwealth v. Reedy*, 21 P. Dist. & Co. R. 524; *In re Alleged Extortion Cases*, supra), but should be of matters of criminal nature wherein public officers or the interests of the general public are involved.

* * * * *

Investigations for purely speculative purposes are odious and oppressive and should not be tolerated by law. Before they may be instituted, there must be knowledge or information that a crime has been committed. There is no power to institute or prosecute an inquiry on chance or speculation that some crime may be discovered. *Matter of Morse*, 42, Misc. 664, 87 N.Y.S. 721. The grand jury must know what crimes it is to investigate. The court of quarter sessions has no power to set such in [an] inquiry in motion unless it has reasonable cause to believe that an investigation will disclose some criminal misconduct which is within its jurisdiction to punish.

The grand jury must not be set upon fruitless searches founded upon mere rumor, suspicion or conjecture. These are proper matters for police investigation.

Before reflection is cast upon the integrity of public officials, a preliminary investigation by the forces of law charged with the discovery of crime should be made to determine whether there is any real foundation. Such jury investigations involve great expense to the public, subject the citizen to inconvenience, and frequently interfere with the normal functioning of public officials and bodies brought before it. They throw a cloud of suspicion upon the parties subject to attack and undermine public confidence in them. There must be a sound, solid basis on which to proceed.

In the case of *In Re Investigation by Dauphin County Grand Jury*, 2 Atl. 2d, 783, the Supreme Court of Pennsylvania again had occasion to examine into the powers of a Grand Jury in a case quite analogous to the instant matter. The District Attorney charged many irregularities were had in the administration of matters connected with the State Government. The charges were made in general and vague terms and submitted to the Grand Jury for investigation. The Governor and the Attorney General sued out a writ of prohibition in the Supreme Court to prohibit the Grand Jury investigation. The Supreme Court examined the charges brought by the District Attorney and found them insufficient to set the machinery of investigation in motion by the Grand Jury. In course of its opinion the court said:

We now come to the more serious portion of our inquiry, and that is the consideration of the specific charges that have been made in the District Attorney's petition. Generally speaking, and this observation applies to each and every one of the eight charges made in the petition, they are vague, uncertain and indefinite, and, as we stated above, an investigation based thereon, if permitted to be carried through as intended, would hinder the State government and possibly cripple its functioning. But charges properly instituted, in accordance with the essential requisites we have outlined and will discuss more fully, would safeguard the State's interests, and should cause no such hinderance. All of the charges in the petition are subject to fatal defects, now to be mentioned, and no indictment predicated on the petition could stand. There is not a single allegation in any of the eight charges of the time when, and the place where, the alleged violations of the law were committed. There is no suggestion that anyone was committed within the jurisdiction of the Court of Quarter Sessions of Dauphin County. While petitions of this character need not set forth in detail the evidence on which they rely, we stated in *McNair's Petition*, and we wish to reiterate it here, there must be at least one specific crime charged as part of a system of related crimes for the discovery of which it is necessary to have the grand jury's assistance.

Entertaining the views hereinbefore set forth, it is the opinion of this office that the request for the exercise of inquisitorial powers of the Grand Jury in the investigation of alleged inequities committed or existent and caused by the acts of the Colorado River Commission is insufficient to enable the Grand Jury to initiate such investigation for the following reasons:

1. That there is no showing that any willful, corrupt or criminal act was committed by the Commission or any individual member thereof within Clark County or triable therein.
2. There is no showing of what the alleged inequities consisted of, nor to whom directed, and whether any such inequities were not of a civil nature, and if in fact any such inequities ever existed they were of a civil nature and subject to the judgment and discretion of the Commission and the members thereof.
3. There is no showing how or in what manner the alleged inequities affected the morals, health, and general welfare of the inhabitants of the county or any administrative division thereof.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-275 Motor Vehicles—Taxation—Construction of Motor Vehicle Law Pertaining to Dealers in Motorcycles and Trailers—Fees.

CARSON CITY, July 7, 1953

HONORABLE ROBERT A. ALLEN, *Motor Vehicle Commissioner, Carson City, Nevada.*

DEAR MR. ALLEN: Your letter of June 26, 1953, relative to the fees required to be paid by dealers in motorcycles and trailers was received in this office on July 1, 1953.

STATEMENT

Sears, Roebuck and Co., as sellers of motorcycles and trailers in this State (our information being that they do not sell motor vehicles or vehicles other than motorcycles and trailers), are required to comply with the 1931 Stats., Chap. 202, Secs. 16 and 26 as amended, 1953 Stats., Chap. 216, pages 282, 284, prior to operating such vehicles upon the public highways for the purposes set forth in Section 16.

QUERY

Is such a dealer required to pay a \$30 fee as required under Section 26 of dealers in motor vehicles other than motorcycles?

OPINION

The answer is in the negative.

Sections 16 and 26, as amended, provide, in part, as follows:

Section 16. A manufacturer of or dealer in vehicles in this state, owning or controlling any such new or used vehicles and operating them upon the highways exclusively for the purpose of testing, demonstrating, offering for sale, or selling the same, in lieu of registering each such vehicle, shall, prior to testing, demonstrating, or offering to sell the same, make application upon an official blank provided for that purpose to the department for a dealer's license and general distinguishing number or symbol.

* * * * *

(b) The application shall be upon a blank to be furnished by the department, and the applicant shall furnish such proof as the department may deem necessary that the applicant is a manufacturer or dealer, and entitled to register vehicles under the provisions of this section. The department, upon receipt of such application and when satisfied that the applicant is entitled thereto, shall issue to the applicant a certificate of registration containing the latter's name and business address and the general distinguishing number or symbol assigned to him in such form and containing such further information as the department may determine, and every vehicle owned or controlled by such manufacturer or dealer, and permitted to be registered under a general distinguishing number, while being operated for the purpose of testing, demonstrating, offering for sale, or selling the same, shall be regarded as registered hereunder.

* * * * *

Section 26. There shall be paid to the department for the registration of vehicles permitted by this act to be registered under a general distinguishing number assigned to a manufacturer of or a dealer in vehicles, in lieu of any other fees specified in this act; and such fees shall be paid at the time application is made for registration and for additional plates according to the following schedule:

(a) For the registration of motor vehicles other than motorcycles:	
For the first two sets of number plates and dealer's license.....	\$30
For each additional set of number plates.....	2
(b) For the registration of motorcycles:	
For the first plate	5
For each additional number plate	1
(c) For the registration of trailers and semitrailers:	
For the first plate	5
For each additional number plate	1

Section 26 clearly provides that there shall be paid to the Department, for the registration of vehicles, certain fees, and the fees to be paid for the registration of motorcycles and trailers are \$5 for the first plate and \$1 for each additional plate. Examination fails to disclose that the statute requires the payment of a \$30 fee in these instances.

We are aware that the 1951 Statutes, at page 166, amended Section 16 to provide that compliance with that section by the dealers is mandatory if they are to operate on the highways for the purposes stated; that the 1953 Statutes, at page 282, further amended the section to require application for a dealer's license whether the purpose is to operate and sell vehicles other than motorcycles and trailers or motorcycles and trailers only. However, it is to be observed that the amount of the fee in either or all three cases has not been changed. Even in the case of registration of vehicles other than motorcycles and trailers, wherein the schedule now includes a dealer's license, there is no indication that a greater fee is to be paid than was required under the prior statute wherein the dealer had his option of registering under a general distinguishing number. Therefore, although under Section 16 the dealer in motorcycles and trailers must apply for a dealer's license, there is nothing to indicate that he is to pay a greater fee than heretofore exacted. Moreover, we are unable to find that, under Section 16 as amended, the dealer will receive any further indicia of privilege or registration—that of certificate and plates—than he would have received prior to the 1953 amendment.

This office is, therefore, of the opinion that manufacturers or dealers in motorcycles or trailers, insofar as the fees to be paid by them are concerned, fall under the specific provisions of Section 26(b) and 26(c) and are not required to pay the \$30 fee required in schedule (a) of that section.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-276 Gambling—Statutory Construction—Repeal by Implication not Favored.

CARSON CITY, July 8, 1953

NEVADA TAX COMMISSION, *Carson City, Nevada*.
Attention: Mr. R. E. Cahill, Secretary.

GENTLEMEN: Reference is hereby made to your letter of July 1, 1953, requesting the opinion of this office whether, "An Act to prohibit the dissemination of information pertaining to racing, specifying certain exceptions thereto and exemptions therefrom, and fixing a penalty for the

violation thereof," approved March 28, 1941, being Chapter 134, Statutes of 1941, has been repealed by implication by Chapter 152, Statutes of 1949, the same being an Act regulating and providing for the licensing of the supplying and dissemination of horse racing information.

OPINION

It has long been a canon of statutory construction in this State that repeals of statutes by implication are not favored. Our Supreme Court has so held in many cases where such repeals were drawn in question, stating that if it be not perfectly manifest, either by irreconcilable repugnancy, or by some other means equally indicating the legislative intent to abrogate a former law, both laws must be maintained, as the presumption is always against intention to repeal where express terms are not used. *Carson City v. Board of County Commissioners*, 47 Nev. 415; *Kondas v. Washoe County Bank*, 50 Nev. 181; *State v. Eggers*, 36 Nev. 372.

The 1941 Act was enacted for one purpose only, i.e., to prohibit the furnishing and disseminating of any information whatsoever in regard to racing or races, from any point within this State to any point without the State of Nevada by means of telephone, telegraph, teletype, radio, or any signaling device, where such information was intended to induce betting, or used to decide any bet made upon a race or races. A severe penalty was and is provided for the violation of the Act.

The 1949 Act was enacted for the very purpose of licensing the supplying and dissemination of information concerning horse racing received from any sources without the State of Nevada by any person, firm, etc., within the State, when such information is to be used by the user thereof for the purpose of maintaining and operating a gambling game or horse race book *in this State*. In brief, the licensing of the dissemination in this State only of the racing information, etc., received from sources outside of Nevada. The 1949 Act contains no express clause repealing the 1941 Act. Most certainly the permissive use of racing information from sources without the State received by a person in this State for dissemination for use within this State for the purpose of maintaining and operating any gambling game or horse race book cannot well be said to evidence the intent of the Legislature to be that a most clear and express statute prohibiting the furnishing and disseminating of racing information from within this State to any point without the State by the means expressed in such statute, was to stand repealed, particularly so, when the Legislature, well knowing of the existence of the 1941 Act, did not expressly repeal it.

Applying the rule enunciated by our Supreme Court, as above stated, it is the opinion of this office that the 1941 Act was not impliedly or at all repealed by the enactment of the 1949 Act.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-277 Veterans—Period of Residence in State to Entitle Persons to Claim Veterans' Tax Exemption Under Chapters 343 and 344, Statutes of 1953.

CARSON CITY, July 9, 1953
HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. FOLEY: This will acknowledge receipt of a copy of your opinion to the County Assessor construing Chapters 343 and 344, Statutes of 1953, as to the time required of residence in this State in order to entitle a veteran to claim the \$1,000 tax exemption.

You consider the conflict in the provisions of the two chapters, and concluded that at this time there is no conflict as Chapter 343 is now in effect, and Chapter 344 does not become effective until January 1, 1955. Thus, from July 1, 1953 until January 1, 1955, a veteran must have three years' residence to entitle him to the exemption. After January 1, 1955, he will only need six months' residence.

We concur in your conclusion, and at your suggestion we render an official opinion.

QUERY

In what respect do Chapter 343 and Chapter 344, passed by the Legislature in 1953, affect the requirement as to residence in this State of a person claiming the \$1,000 tax exemption provided in the Acts?

OPINION

Chapter 343, Statutes of Nevada 1953, amends Section 5 of the Revenue Act, as last amended by Chapter 303, Statutes of 1951.

Subsection 7 of Section 5 as amended provides an exemption of \$1,000 assessed valuation on property of persons who have served or are serving in the armed forces of the United States in time of war. Among the qualifications mentioned is the filing annually of an affidavit which must show that the applicant has been an actual bona fide resident of this State for a period of more than three years immediately preceding the making of the affidavit.

The amendment was approved March 30, 1953 and as no effective date was specified in the Act, it became effective July 1, 1953.

Section 7301, N.C.L. 1929, provides that unless a law shall specifically prescribe a different effective date, it shall take effect on July 1 following its passage.

Chapter 303, Statutes of 1951, Section 5, before this amendment, required a residence of six months in this State at the time of filing the affidavit. Thus, a person making the required affidavit for exemption in 1953 would be required to show only six months' residence in the State. Any affidavit filed after July 1, 1953 will require a residence showing of more than three years. However, the three years' residence requirement will expire on January 1, 1955 according to the provisions of Chapter 344, Statutes of 1953, which require six months' residence on the same subject.

Chapter 344, Statutes of 1953, is a new Revenue Act.

Section 69 provides that all Acts and parts of Acts inconsistent with the provisions of this Act are repealed insofar as such inconsistency exists.

Section 70 declares the effective date of the Act as January 1, 1955.

Section 1, Paragraph 7 of this Act contains the following language relative to residence in the State.

* * * Said affidavit to be made before the county assessor to the effect that they are actual bona fide residents of the State of Nevada and have been an actual bona fide resident of the State of Nevada and established his residence for a period of more than six months immediately preceding the making of said affidavit, * * *.

The provision in Chapter 343, Section 5, Paragraph 7, requiring more than three years' residence is inconsistent with Section 1, Paragraph 7 of Chapter 344, and is therefore repealed after the effective date January 1, 1955 of Chapter 344.

Therefore, a person claiming the tax exemption herein considered who filed the affidavit before July 1, 1953 would come within the six months' provision.

The claimant who files after July 1, 1953 and until January 1, 1955 must meet the three-year requirement.

After January 1, 1955, unless the Legislature amends the Act, the claimant will again come within the six-month period.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-278 Employer and Employee. Wages and Hours of Employment Involving Contractual Relations.

CARSON CITY, July 13, 1953

HONORABLE D. W. EVERETT, *Labor Commissioner, Carson City, Nevada.*

DEAR MR. EVERETT: This will acknowledge receipt of your letter in this office June 29, 1953, requesting an opinion construing certain sections of the Wage and Hour Law for women.

QUERY

If a female employee in a store is employed under an agreement whereby she is to receive a guaranteed salary plus a commission, must the guaranteed salary be not less than that provided for female employees in Section 2825.43, as amended, 1953 Stats., Chap. 194?

If a woman is employed as a manager of an establishment and is responsible for all the details involved in the success of the business, is this a contractual or employee relationship, and does Section 2825.42, as amended, 1953 Stats., Chap. 194, governing hours of employment for females apply in such a situation?

OPINION

Answering your first question:

The guaranteed salary must be within provisions of Section 1, Chapter 194, Statutes of 1953, which provides, “* * * and that not less than at the rate of seventy-five (75¢) cents for one hour or six (\$6) dollars for one day of eight (8) hours or thirty-six (\$36) dollars for one week of six (6) days of eight (8) hours each shall be paid such female workers in this state.” This is the salary guaranteed by the statute. The minimum salary per week is \$36.

Section 3 of the Act uses the term wage and wages and makes it unlawful for any employer to employ, cause to be employed, or permit to be employed, or contracted with any female for a lesser wage than 75¢ per hour, \$6 for one day, or \$36 for one week. A commission is not considered a wage, but an allowance made for transacting business for another.

A commission is contingent on a chance that something will occur to warrant payment.

An agreement made with a female employee to receive a wage less than the statutory minimum plus a commission would be in violation of the statute.

The word wages contemplates an employee and not an agent or factor, and any agreement with a female employee to pay less than the minimum wage would not escape the penalty provided, even though the commission might in fact result in payment to such employee of more money per day or week than provided in the statute, because under the same agreement it could be less.

Your second question involves an independent contract.

A manager is one who acts or transacts business for another, an agent. As defined in 38 C.J., page 524, it is an ambiguous term. It may mean either a person retained generally, to represent the principal in his absence, or one who has the superintendence of a particular contract or job, in which latter case he is like a fellow workman.

The example given in the inquiry is one who is responsible for all details involved in the success of the business. This would include the word management which is defined by the above authority as a word of comprehensive meaning, usually signifying positive, rather than negative, control not of particular work but general control of the entire work. This would bring the position within the definition of an independent contractor, and would be a contractual relationship rather than that of an ordinary employee.

An independent contractor as defined in 31 C.J., page 473, is that generally the term signifies one who, exercising an independent employment, contracts to do a piece of work according to

his own methods, and without being subject to the control of his employer, except as to the result of the work, and who has the right to employ and direct the action of the workmen independent of such employer and free from any superior authority to say how the specified work shall be done; one who undertakes to provide a given result without being in any way controlled as to the method by which he attains that result.

Each case, however, must depend upon its own facts.

Unless the woman comes within the definition of an independent contractor, she is then in such employment as contemplated in Section 2825.42, N.C.L. 1949 Supp., prohibiting employment for a longer period than the hours defined therein.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-279 State Purchasing Act—Powers of Director.

CARSON CITY, July 14, 1953

HONORABLE ROBERT A. ALLEN, *Chairman, Public Service Commission, Carson City, Nevada.*

DEAR MR. ALLEN: Receipt is hereby acknowledged of your letter of July 7, 1953, requesting the opinion of this office with respect to the purchase of certain automotive equipment for the use of the Highway Patrol, which automotive equipment, under the law, is required to be purchased pursuant to bids thereon by and through the State Purchasing Agent. This office is advised that some difference of opinion has arisen with respect to the awarding of bids received by the State Purchasing Agent in reply to advertisements therefor and specifications furnished in connection therewith. You address the following query to this office:

Are we, under the law and the bid asking, permitted to take the optional equipment we want in any bid and accept that bid provided it is low and covers the equipment we must have for our Patrol use?

OPINION

Under the State Department of Purchasing Act, the same being Chapter 333, Statutes of Nevada 1951, it appears that all purchases of supplies, materials and equipment exceeding an amount of \$500 must be had through the Office of the Director of Purchasing and, while the Act is not most artistically drawn and is somewhat ambiguous with respect, in particular, to the purchasing of automotive equipment, still this office is of the opinion that the Act is sufficient in its terms and binding in its provisions to the extent, at least, that the Director of Purchasing is vested with quite broad discretionary powers and that the departments seeking to purchase supplies, materials and equipment, through the Director of Purchasing, are bound by his decisions. We make this observation from a most careful examination of the statute in question and also the general law with respect to the powers and duties of administrative boards and particularly in the purchase of all commodities for and in behalf of the State.

An examination of the State Purchasing Act, particularly Section 35 thereof, discloses that the Director shall be responsible for developing and executing a progressive program of establishing standards and, while the Director may call upon any department or officer for assistance in the formulation of such standards, still standard specifications shall be developed and made sufficiently complete and precise to insure that all vendors bid on the same basis so as to attract the maximum competition possible with due consideration of suitability of products. In connection with Section 35, we also direct attention to Section 23 of the Act which provides that every contract or order shall be awarded to the lowest responsible bidder, taking into

consideration the location of the using agency to be supplied, the qualifications of the articles to be supplied and conformity with the specifications, the purposes for which they are required and the dates of delivery. This section provides a certain amount of discretion to be exercised by the Purchasing Agent, but, at the same time, does not eliminate the necessity of advertising for bids nor the furnishing of specifications detailing so far as possible the requirements to be met in furnishing a particular article, but such section does not open wide the doors for the advertising for any one particular article which could not be furnished except by one particular firm or manufacturer where other firms and manufacturers could produce an article fitting closely to the specifications furnished but departing from any particular brand or make of an article, including automotive equipment, so that in the final analysis, under the State Purchasing Act, ambiguous though it may be, we think that no department can specify with particularity any article or commodity which could be furnished from only one source. To do so would be to ignore the purposes and intent of the Legislature to provide competitive bidding and so far as possible to provide for the least cost to the State.

On the other hand, however, this office is of the opinion that alternative plans or specifications for materials, including automotive equipment, may be provided at the time of advertising for bids, provided such alternative plans or specifications are made available to all bidders proposing to sell the article, materials, or automotive equipment, to the State upon the particular specifications and also as called for in the alternative. 43 Am.Jur. 778, Sec. 37. However, if and when alternative proposals are submitted on the part of the Director of Purchasing, we are of the opinion that it is for the Director to determine which of the proposals, if offered and thereafter bids thereon are received, shall be for the best interests of the State and also that the same is furnished by the lowest responsible bidder. However, in this connection we desire to point out that the term "lowest responsible bidder" does not necessarily mean the bidder making the lowest bid in a financial sense, but means the bidder who makes the lowest bid in connection with the quality and availability of the articles under consideration. In 43 Am.Jur., 784, Sec. 42, it is well said:

The bidder to whom a contract for public work is to be awarded under a provision that such contracts shall be let to the "lowest responsible bidder" is one who is responsible and lowest in price on the advertised basis. Such a requirement does not compel the authorities to award a public contract to the lowest bidder who is financially responsible or who is able to produce responsible sureties. The term "responsible" as thus used is not limited in its meaning to financial resources and ability. What the public desires is a well constructed work, for which a lawsuit even against a responsible defendant is a poor substitute; and authorizations of this kind are held to invest public authorities with discretionary power to pass upon the honesty and integrity of the bidder necessary to a faithful performance of the contract—upon his skill and business judgment; his experience and his facilities for carrying out the contract; previous conduct under other contracts; and the quality of previous work—as well as his pecuniary ability, and when that discretion is properly exercised the courts will not interfere.

In the final analysis, however, this office is constrained to hold that with respect to the awarding of bids, under the State Purchasing Act, the award thereof lies within the discretion of the Director, even though the selection of the supplies, materials or equipment pursuant to the bids, is not what the department itself would select, provided that if and when alternative proposals are offered and bids received thereon that the Director give due consideration thereto.

If the State Purchasing Act fails to provide more reasonable facilities for State Departments to secure the materials, supplies and equipment deemed by each Department necessary for its use, the Legislature is the only body which can effect such change.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-280 Surveyor General—Exchange of Lands in Valley of Fire, Clark County, can Only be Made On Equal Acreage Basis.

CARSON CITY, July 14, 1953

HONORABLE LOUIS D. FERRARI, *Surveyor General, Carson City, Nevada.*

DEAR MR. FERRARI: This will acknowledged receipt of your letter of May 20, 1953, requesting the opinion of this office regarding the following question:

Should the State of Nevada exchange the State-owned lands located in the Valley of Fire in Clark County with the Federal Government on an equal value basis?

OPINION

Chapter 140, 1941 Statutes of Nevada, authorizes the exchange of the Valley of Fire lands, and provides, in part, in Section 1, as follows:

Upon the passage and approval of this act the *governor* of the State of Nevada is hereby authorized and directed to transfer the lands to the federal government of the United States of America, in exchange for an *equivalent acreage* to be selected and agreed upon between the representatives of the federal government and the governor of Nevada, * * *. (Italics ours.)

It is the opinion of this office that the exchange of lands in the Valley of Fire can only be made by the Governor on an equal acreage basis, and that there is no authority for exchange on an equal value basis. The language of Chapter 140, 1941 Statutes of Nevada, is clear and unambiguous, and the words "equivalent acreage" should be given their common ordinary meaning.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By JOHN W. BARRETT, *Deputy Attorney General.*

OPINION NO. 1953-281 Taxation—Petroleum Products—State Sealer—Construction of Section 12, 1953 Statutes, Chapter 204, Pertaining to the Regulation of the Sale and Distribution of Petroleum Products.

CARSON CITY, July 14, 1953

MR. WAYNE B. ADAMS, *State Sealer, Fifth and Sierra Streets, Reno, Nevada.*

DEAR MR. ADAMS: This will acknowledge receipt of your letter of July 8, 1953, wherein you request the opinion of this office on the meaning of Section 12, 1953 Statutes, Chapter 204.

STATEMENT

The Shell Oil Company by letter from its San Francisco office asserts that it operates a wholesale distributing plant as defined by the above Act. It asserts that it supplies their Nevada distributors and jobbers with petroleum products originating in California. It also asserts that it supplies its Reno sales depot by direct interstate shipments of petroleum products from

California. It further suggests that it is not subject to the licensing or other requirements of the Act by reason of the provisions of Section 12.

QUERY

Is a company operating a wholesale distributing plant in Nevada and supplying its sales depot by direct interstate shipments exempt from the provisions of the Act, 1953 Statutes, Chapter 204, page 254?

OPINION

Section 12 of the Act provides in part as follows:

This act shall not be construed to apply * * *; (b) to any direct interstate shipment or delivery of petroleum products to any person located in Nevada when such interstate shipments or deliveries are arranged for or made by any person who maintains and operates a wholesale distributing plant located in Nevada or operates through a wholesale distributing plant located in Nevada.

We interpret the above-quoted portion of Section 12 to mean that when a shipment of petroleum products is made from out of State directly to some person within the State, and when such shipment is arranged for or made by an operator of a wholesale distributing plant or one operating through such plant, such shipment is not subject to the provisions of this Act.

We are unable to perceive anything in Section 12 which exempts the operator of the wholesale distributing plant or one operating through such plant, who makes or arranges for such shipment, from the provisions of the Act appertaining to him.

It is to be noted that this is a regulatory Act. The 1953 Legislature made some distinct changes in the manner of the regulation of this industry. The regulation of the sale and distribution of petroleum products is now primarily at the wholesale level. In making this change the Legislature has attempted, while placing the primary check on the wholesale level, to stop all gaps wherein petroleum products may be brought into this State without check and regulation. For this reason, Section 10 was included to provide inspection of petroleum brought into Nevada by any person not operating a wholesale distributing plant or through such plant. The Legislature then provided in Section 12 that the Act shall not be construed to apply to persons bringing petroleum into the State for their own consumption, nor to direct interstate shipments to any person in the State provided such shipment is made or arranged for by one who does operate a wholesale distributing plant or through such plant and who is, by the terms of the Act, himself subject to its provisions.

The Shell Oil Company asserts that it operates a wholesale distributing plant in Nevada and that it supplies its Nevada jobbers and distributors with petroleum products originating in California. If Shell is arranging for or making shipments of such petroleum products directly to persons in Nevada, such shipments are not subject to the applicable provisions of this Act. Nonetheless, this company, if it operates a wholesale distributing plant or plants in Nevada, is itself subject to the Act. If such a company or other person be not operating such a plant, and unloads or causes to be unloaded petroleum products brought into Nevada, they will come under the provisions of Section 10 of the Act.

This office is, therefore, of the opinion that the Shell Oil Company, inasmuch as it operates a wholesale distributing plant in Nevada, is subject to the provisions of this Act, including the licensing provisions.

With reference to the amenability to the Act of the jobbers and distributors of Shell Oil Company in Nevada, we are of the opinion that if any such jobbers or distributors are operating a wholesale distributing plant or through such plant and thereby engaged in the business of selling at wholesale, such persons are subject to the applicable provisions of this Act, including the licensing provisions.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-282 Nevada State Children's Home. Expenses for Care and Support of Full Orphans is the Responsibility of the State of Nevada.

CARSON CITY, July 15, 1953
MR. R. VAN DER SMISSEN, *Superintendent, Nevada State Children's Home, Carson City, Nevada*.

DEAR MR. VAN DER SMISSEN: This will acknowledge receipt of your letter in this office July 14, 1953, requesting an opinion as to payment for care of full orphans at the Nevada State Children's Home under the 1953 amendment to the Act creating the State Orphans' Home.

STATEMENT

A precedent has been established that counties are not responsible for the care of full orphans at the Home. There are at the present time three full orphans at the Home, and you wish to know if the amendment increasing the monthly rate for care of children makes the counties responsible for payment to the Home for care of full orphans.

OPINION

Chapter 209, Statutes of 1953, amends Section 13 of the Act for the government and maintenance of the State Orphans' Home. This section and Section 12 are the sections under which dependent or neglected children are admitted to the Home.

Before amendment, Section 7592, N.C.L. 1929, Section 13 of the Act, after providing for admittance of such children to the Home, contains this language: "provided further, that the expense, transportation, and maintenance of such children, when committed to this institution by any district court or county commissioners of the state, shall become a charge against the county from which such children are committed, such charge for maintenance to be a reasonable rate to be fixed from time to time by the board of directors of said orphans home * * *."

Then follows further provisions for payment by parent or guardian to reimburse the county for such payment.

Chapter 209, Statutes of 1953, relates only to dependent or neglected children, and provides for a definite amount to be paid for care and support, and under certain conditions makes the county from which the child was committed liable for the support of such child.

This amendment does not change Section 6 of the original Act which declares that orphans admitted are wards of the State and entitled to the care, protection and guardianship of the State.

As stated by the court in *McKinnon v. Harwood*, 35 Nev. 494, decided after the amendment admitting neglected children, page 502: "We are of the opinion that the orphans' home was wisely and charitably provided only for such children as are so unfortunate as to be without parents and need to be maintained at the expense of the state, and at the discretion of the board of directors for children whose parents are unable to give them support and proper care, if the expense of their maintenance at the home is paid by the parent or county."

Therefore, we are of the opinion that the amendment of Section 13 by chapter 209, Statutes of 1953, does not alter the precedent that counties are not responsible for payment of care and maintenance of full orphans.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

By GEORGE P. ANNAND, *Deputy Attorney General.*

OPINION NO. 1953-283 Corporations—Fee for Filing Participation Certificates Same as Fee for Filing Amendments to Articles Increasing Capital Stock.

CARSON CITY, July 21, 1953

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

DEAR MR. KOONTZ: Reference is hereby made to your letter of July 17, 1953, requesting the opinion of this office as to whether a Nevada corporation is required to pay filing fees provided by statute for the filing of amendments to articles of incorporation whereby its authorized capital stock is increased, in view of the fact that such corporation desires to issue participation certificates in an amount approximating \$2,700,000 in lieu of filing amendments to its articles in the nature of proposing to increase its capital stock. The participation certificates purport to enable the holder thereof to participate in a percentage of the gross earnings of the corporation at 10 percent of such gross income up to \$2,700,000.

OPINION

Section 10 of the 1925 Corporation Law, being Section 1609, N.C.L. 1929, provides: "The board of directors or trustees of any corporation which is organized under this act, and which may desire to issue certificates of investment, or participation certificates, in lieu of or in addition to stocks, bonds, promissory notes * * *," may do so upon following the procedure outlined in the section. It appears that the corporation has followed the statutory procedure and, undoubtedly, is authorized by such section to issue such participation certificates.

We think the provisions of the section specifically permitting the issuance of participation certificates in lieu or in addition to stocks, etc., constitutes, in effect, an increase in its capital to the extent provided in the resolution adopted by the stockholders and trustees. Such being the status of the matter, it is therefore the opinion of this office that the corporation should pay the fee computed in accordance with the provisions of Section 1, Chapter 275, page 393, Statutes of 1951.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

OPINION NO. 1953-284 Municipal Corporations. Provisions of Chap. 138, 1953 Stats. of Nevada re Endowment Care Cemeteries not Applicable to Municipal Corporations.

CARSON CITY, July 23, 1953

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

DEAR MR. HAMMEL: This will acknowledge receipt of your letter of June 5, 1953 in which you request the opinion of this office regarding the following questions:

1. Are the provisions of Chap. 138, 1953 Stats. of Nevada, applicable to a municipal corporation which operates an Endowment Care Cemetery?
2. Does the answer to the above question apply whether the cemetery is operated as a profit making venture or not?

OPINION

Since you have stated in your letter that the municipal corporation involved is the city of Las Vegas, we will confine our opinion, in part at least, to the subject city.

Chapter 138, 1953 Statutes of Nevada, is an Act entitled as follows: "An Act concerning the establishment and operation of endowment care cemeteries, defining the duties of cemetery corporations or associations receiving funds for endowment care of a plot or plots, authorizing the investment of such funds in certain classes of securities, providing penalties for the violation thereof, and repealing all acts and parts of acts in conflict herewith."

After careful examination of said Act, we feel that the intention of the Legislature, which is of primary importance in the construction or interpretation of any statute (see *Escalle v. Mark*, 43 Nev. 172) can accurately and properly be determined by reference to certain language used in the Act. We quote parts of the Act which we feel clearly indicate the Legislature did not intend application to municipal corporations, as follows:

Section 1. Every cemetery corporation, association or other organization, herein referred to as a "cemetery authority," which now or hereafter maintains a cemetery may place its cemetery under endowment care and establish, maintain, and operate an endowment care fund after having first applied for and received a permit from the commissioner of insurance of the State of Nevada.

Section 6. The cemetery authority may appoint a board of trustees of not less than three in number as trustees of its endowment care fund. The members of the board of trustees shall hold office subject to the direction of the cemetery authority. The directors of a cemetery authority, if any, may be the trustee of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. No sum in excess of 5 percent of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified under the laws of the State of Nevada to engage in the trust business.

Section 7. * * * The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. * * *

We find it difficult, if not impossible, to classify a municipal corporation as a "cemetery corporation, association or other organization." Certainly a municipal corporation cannot be considered a cemetery corporation or association, and we know of no basis for holding that a municipal corporation should be included in the term "other organization." Had the Legislature intended that the provisions of the Act apply to municipal corporations, it would have, and should have, specifically so stated, such corporations being governmental subdivisions and entitled to being placed on a higher and different plane than "other organizations."

The quoted portions of Sections 6 and 7 cannot conceivably be considered as having been intended by the Legislature to apply to municipal corporations, since the subject matter of such provisions is entirely foreign to the purposes for which cities are incorporated.

In addition to the foregoing, we point out that Section 31, Subsection 58 of the City Charter of the City of Las Vegas, said charter being Chapter 132, 1911 Statutes of Nevada, as last amended by Chapter 314, 1953 Stats., empowers the Board of Commissioners of Las Vegas as follows:

To purchase, hold, and pay for lands within or without the city limits for the burial of the dead, and all necessary grounds for hospitals, and to erect, maintain, and manage suitable buildings thereon, and to have and exercise police jurisdiction over the same and over any cemetery used by the inhabitants of said city; and to survey, plat, map, fence, ornament, and otherwise improve all public burial and cemetery grounds; and to convey cemetery lots owned by the city, and pass rules

and ordinances for the protection and government of said grounds; to vacate public burial and cemetery ground, to prohibit subsequent burials therein and to provide for the removal therefrom of all bodies which may have been interred therein.

The Act incorporating the city of Las Vegas is a special Act, while Chapter 138, 1953 Statutes, in question here, is a general Act, and the Supreme Court of Nevada has held that if a special Act be passed for a particular case, the presumption of the applicability of the general law is overcome by the presumption in favor of the special Act that the general Act was not applicable in that case. *Quilici v. Strosnider*, 34 Nev. 9. Here we have a case where the Board of Commissioners of Las Vegas was empowered many years ago to purchase land for and operate a cemetery, without regard to the type of cemetery maintained; the Las Vegas City Charter was last amended in 1953 and contains the same identical provision for cemeteries as was contained in the 1911 Act. It is our opinion that, for the above reasons, the general Act of 1953 regarding endowment care cemeteries is not applicable to the city of Las Vegas.

In answer to your first question, it is the opinion of this office that the provisions of Chapter 138, 1953 Stats. of Nevada, are not applicable to a municipal corporation which owns and operates an Endowment Care Cemetery, and that such provisions are specifically not applicable to the city of Las Vegas. We are of the opinion that Chapter 138, 1953 Stats., was intended by the Legislature to apply only to privately owned cemetery corporations, associations and other organizations, and that said Act was designed to protect the public from unscrupulous or irresponsible parties.

In view of our answer to your first question, which is based on grounds other than profit or non-profit, we feel no answer to your second question is necessary.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-285 Personnel, State—State Engineer—Water Law—State Water Commissioners not Within Classified Service Under State Personnel Act.

CARSON CITY, July 24, 1953

MR. HUGH A. SHAMBERGER, *State Engineer, Carson City, Nevada*.
Attention: Edmund Muth, Assistant State Engineer.

DEAR SIR: This will acknowledge receipt of your letter dated July 20, 1953, relating to the applicability of the 1953 Personnel Act to positions of Water Commissioners.

QUERY

Your question as we interpret it is as follows: Are the Water Commissioners to be placed in the classified service under the 1953 Personnel Act?

OPINION

It is the opinion of this office that the Water Commissioners are not to be placed in the classified service.

The 1913 Statutes, Chapter 140, Section 52, as last amended by the 1951 Statutes, Chapter 110, page 133, provides for the employment of Water Commissioners. This section provides, in part, as follows:

Section 52. (a) There shall be appointed by the governor, on the recommendation of the state engineer, one or more commissioners for any stream system or water district subject to regulation and control by the state engineer.

It is to be noted that the above-quoted law requires appointment of the Commissioners by the Governor.

Section 18 of the Personnel Act, 1953 Statutes, Chapter 351, at page 649, provides, in part, as follows:

Section 18. The unclassified service of the State of Nevada shall comprise positions held by state officers or employees as follows:

(4) All employees in the office of the governor and all persons required by law to be appointed by the governor or heads of departments or agencies appointed by the governor or by boards.

As Water Commissioners are required by law to be appointed by the Governor, and all persons required by law to be appointed by the Governor, comprise a part of the unclassified service, we conclude that the Water Commissioners are a part of the unclassified service. This excludes them as part of the classified service.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-286 Constitutional Law. Counties. Sanitary Districts. Validity of Section 41, Chapter 252, 1953 Stats., Providing for the Organization of Water and Sanitary Districts in Counties of More Than 30,000 Population.

CARSON CITY, July 30, 1953
HONORABLE JON R. COLLINS, *District Attorney, White Pine County, Ely, Nevada*.

DEAR MR. COLLINS: This will acknowledge receipt of your letter dated July 20, 1953, relating to Section 41, Chapter 252, 1953 Statutes.

STATEMENT

The 1953 Statutes, Chapter 252, is an Act providing for the organization of water and sanitary districts. Section 41 provides a limitation as follows: "Section 41. Limitation. The provisions of this act shall be applicable only to those counties having a population, according to the 1950 United States census, of more than 30,000 persons, as an alternate method to that prescribed by Chapter 138, Statutes of Nevada 1947." A question has arisen as to the constitutionality of Section 41 of this Act because it is thought that it renders the Act not of uniform application throughout the State.

QUERY

As per your letter the question is this: "Is Section 41, Chapter 252, Statutes of Nevada 1953, unconstitutional for the reason that it violates Sections 20 and 21, Article IV, Constitution of Nevada?"

OPINION

In the opinion of this office the answer is in the negative.

Section 20, Article IV of the Constitution, provides that the Legislature shall not pass local or special laws in any of the following enumerated cases. It then lists the cases upon which no special law shall be passed.

Section 21, Article IV of the Constitution, provides that in all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

These sections restrict the enactment of special laws in certain cases and where general laws can be made applicable. The restriction, therefore, is against the passage of special laws.

We do not believe Section 41, above quoted in the Statement, is in itself special in nature, nor does it render the Act special or local; thereby bringing it within the purview of the Constitutional restriction.

The fact that certain counties are placed in a classification according to population does not in itself render an Act local or special. See *State v. Donovan*, 20 Nev. 75.

If it were clear that the Legislature intended by Section 41 of the Act in question to exclude in the future those counties which may at a future date attain a population of 30,000, there might then be a basis for the objection that the Act is special rather than general.

We do not think that the Legislature so intended. The Act throughout is designed to be more suitable to counties having a large population, and to our minds the Legislature intended that counties presently or in the future having a population of 30,000 can as an alternate method avail themselves of the Act.

The wording in Section 41, "according to the 1950 United States census," is intended, we believe, simply as a starting point and not for the purpose of fixing the status of the counties never to be thereafter changed.

We take it as well settled that in the construction of statutes it is the intention of the Legislature determined from the Act itself which is controlling. The court in *State v. Woodbury*, 17 Nev. 343, quoting from *Ex Parte Siebenhauer*, 14 Nev. 368, had this to say:

In order to reach the intention of the legislature, courts are not bound to always take the words of a statute—either in their literal or ordinary sense—if by so doing it would lead to any absurdity or manifest injustice, but may, in such cases, modify, restrict or extend the meaning of the words so as to meet the plain, evident policy and purview of the act and bring it within the intention which the legislature had in view at the time it was enacted.

Moreover, it is a settled rule in the construction of statutes involving their constitutionality, and wherein there is any doubt, that every possible presumption and intendment will be made in favor of their constitutionality. See *Clarks v. Irwin*, 5 Nev. 111; *State v. Com's. Humboldt Co.*, 21 Nev. 235.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-287 Nevada Horse Racing Act—Pari-mutuel Wagers—Counties and Towns not Empowered to Tax.

CARSON CITY, August 3, 1953

HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. FOLEY: Receipt is hereby acknowledged of your letter of July 24, 1953, received July 27, 1953, wherein you request the opinion of this office in answer to the following questions:

1. May the Board of County Commissioners levy a daily license fee tax upon the Las Vegas Jockey Club for each day of the racing meet?
2. May the Board of County Commissioners levy a tax upon a percent of the total money wagered on each race?
3. May the Board of County Commissioners levy a per capita admission tax to be paid by patrons of the track?

STATEMENT

We are advised that the Las Vegas Jockey Club contemplates holding a horse race meet in accordance with the Nevada Horse Racing Act, the same being Chapter 321, page 532, Statutes of 1951, and as amended at Chapter 366, page 698, Statutes of 1953. The purport of your inquiries is whether the Board of County Commissioners have the power to, by ordinance, levy certain license fee taxes, i.e., (1) on the club for each day of the racing meet, (2) upon a percentage of the money wagered on each race, (3) a per capita admission tax to be paid by patrons of the race track.

OPINION

We think a close examination of the statutory law governing horse racing discloses that the Legislature in the enactment of the Nevada Horse Racing Act has provided for the exclusive control, insofar as cities, counties and other political subdivisions are concerned, in and by the Racing Commission created by the terms of the Act, with the exception that pursuant to Chapter 231, page 507, Statutes of 1949, any person, firm, etc., was required to obtain a license from the Nevada Tax Commission before carrying on, conducting, etc., in Nevada the pari-mutuel wagering system on any racing or sporting event. However, it is to be noted that in 1951 the Legislature amended Section 3 of the 1949 Act and provided in Chapter 322, page 538, Statutes of 1951, as follows:

The Nevada tax commission shall, before issuing a pari-mutuel wagering license under this act, charge and collect in advance from each applicant a license fee of fifty (\$50) dollars per day; provided, however, that said fee shall not be charged for horse racing if the applicant has filed with the tax commission a certificate executed by the Nevada state racing commission certifying that he is duly licensed by said racing commission and has paid the license fees required by the provisions of the Nevada horse racing act.

By this amendment, we think, the Legislature recognized the import of the Horse Racing Act and the comprehensive control of horse racing by the Racing Commission and its power, discretion and judgment in the selection of all the persons and parties licensed by it to conduct a race meet. We think that as to horse racing, in view of the 1951 amendment, that the now major function of the Tax Commission is to issue the racing license provided in the 1949 Act theretofore certified to it by the Racing Commission, and to receive from the licensee for the use of the State 2 percent on the total amount of money wagered on any such racing event and deposit the same in the State Treasury as provided in Section 7 of the 1949 Act, as amended at page 701, Statutes of 1953.

Section 18 of the Nevada Horse Racing Act provides:

The provisions of this act are intended to be statewide and exclusive in their effect and no city, county or other political subdivision of the state shall have the

authority or power to make or enforce any local law, ordinance or regulation upon the subject of racing.

This section makes clear, we think, that the Legislature intended, beyond question, that the provisions of the Act were to be Statewide in scope and that the respective political subdivisions of the State shall not have the authority or power to make or enforce any local law, ordinance or regulation governing the subject of horse racing.

Answering Query No. 1—Section 7 of the 1951 Horse Racing Act provides the Racing Commission with the power to fix the dates upon and within which horse race meets may be held each year, and Section 6 requires that a license to conduct a horse race meet be obtained from the Commission. Section 9 of the Act as amended at 1953 Statutes, page 699, fixes the license fee to be paid by the licensee for each day of the race meeting at not less than \$50 nor more than \$200 for each day. There is no provision in either the Horse Racing Act or the 1949 Act providing for a license issued by the Tax Commission, requiring or permitting of the issuance of a city, county or other local political subdivision license. In order for the Board of County Commissioners to levy a tax upon the Jockey Club for each day of the racing meet it would be necessary for such board to enact and enforce an ordinance therefor. This, we think, is prohibited by Section 18 of the Horse Racing Act. The query is answered in the negative.

Answering Query No. 2—The licensing of pari-mutuel wagering is provided for in the provisions of Chapter 221, page 507, Statutes of 1949, as amended at 1951 Statutes, page 538, and 1953 Statutes, page 701. Section 7 of the Horse Racing Act provides that if the applicant for a license to conduct horse racing desires to carry on any form of wagering under the pari-mutuel [pari-mutuel] system on any racing event, he shall secure the license therefor from the Nevada Tax Commission as provided in said Chapter 221.

We think it is clear that by the enactment of the 1949 Pari-mutuel Licensing Act and the 1951 Horse Racing Act the Legislature has withdrawn from the purview of the 1931 Gambling Act the licensing of pari-mutuel wagering on horse racing, even if it can be said that such wagering was ever included therein, and that the licensing of pari-mutuel wagering is now governed exclusively by the 1949 Act as to horse racing as supplemented by the 1951 Act. In neither Act has the Legislature delegated to cities, towns or counties the power to license pari-mutuel wagering on horse racing. The Legislature in 1931 did delegate the power to license tax all other forms of gambling. See Section 3302.14, 1929 N.C.L. 1941 Supp. We think it significant that the Legislature did not so delegate such power, if it intended that political subdivisions of the State should license and tax pari-mutuel wagering on horse racing.

If and when an applicant for license to conduct horse racing under the Horse Racing Act of 1951 secures a license to operate, carry on and conduct pari-mutuel wagering in connection with the race meet, we think, such pari-mutuel wagering becomes an integral part of the race meet; in brief, it becomes a subject of racing within the meaning of Section 18 of such Act.

It may be thought that the power of Boards of County Commissioners to tax money wagered on each horse race is contained in Subparagraph Fourteenth of Section 1942, 1929 N.C.L. 1941 Supp., as amended at 1953 Statutes, page 683, providing that such Boards are empowered to fix, impose and collect a license tax for revenue to regulate lawful callings, etc., outside of incorporated cities and towns. However, neither this amendment, nor the statute it amends contains an express or general repealing clause. It has long been a canon of statutory construction that repeals by implication are not favored. Repeals by implication are not favored and occur only where there is such an irreconcilable repugnancy that two Acts cannot stand together, and, in the absence of a clear showing, the repeal or modification of a statute is not presumed. The presumption is always against intention to repeal where express terms are not used. *State v. Ducker*, 35 Nev. 214; *Dotta v. Hesson*, 38 Nev. 372; *State v. Boerlin*, 38 Nev. 39; *Carson City v. Board of Commissioners*, 47 Nev. 415; *Kondas v. Washoe County Bank*, 50 Nev. 181; *Ronnow v. City of Las Vegas*, 57 Nev. 332.

It may be that pari-mutuel wagering on horse racing is a lawful business or undertaking, still the Legislature has seen fit to provide for the control thereof in a most comprehensive statute, i.e., the Horse Racing Act, supplemented in effect by the 1949 Pari-mutuel Wagering Act,

without delegating power to other political subdivisions of the State to levy a license tax thereon, and the Legislature, being presumed to have knowledge of the state of the law upon the subject upon which it legislates, *Clover Valley Land & S. Co. v. Lamb*, 43 Nev. 375, and not having signified its intention that neither Horse Racing Act or the 1949 Act was repealed or modified by Section 1942, N.C.L. supra, as amended, it is the opinion of this office that the Board of County Commissioners is not empowered to levy a tax upon a percent of the money wagered upon each race.

Answering Query No. 3—Section 12 of the Horse Racing Act of 1951 contained the following language, “Said commission may make rules governing, restricting or regulating the rate of charge by the licensee for admission * * *.” Section 12 was amended at 1953 Statutes, page 699, and all of the quoted language was stricken from the amended section. We think the striking of such language from the Act abrogated the power of the Racing Commission to govern the matter of admission charges to patrons of the race track, and that a levy of a tax on the admission of patrons of the track is not within the prohibition of Section 18 of the Act. The query is answered in the affirmative.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-288 Public Employees Retirement. Section 8(4) of the Act as Amended by Chapter 183, Statutes of 1951, not Retrospective in Operation to Alter Preexisting Rights.

CARSON CITY, August 5, 1953

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

DEAR MR. BUCK: This will acknowledge receipt of your letter in this office July 30, 1953. You request an opinion upon the following question:

QUESTION

In consideration of your Opinion No. 264, dated June 22, 1953, may we credit towards retirement service rendered as a State legislator prior to July 1, 1951, during the time when Sec. 8(4) of the Retirement Act read as follows: “No employee whose position normally requires less than 600 hours of service per year may become a member of the system.”

OPINION

Chapter 181, Statutes of 1947, established a system of retirement and benefits for certain officers and employees of the State. Section 8, Paragraph 4, read as follows: “No employee whose position normally requires less than 600 hours of service per year may become a member of the system.”

This paragraph remained unchanged until amended by Chapter 183, Statutes of 1951, which provides: “No employee whose position normally requires less than 1,200 hours of service per year may become or remain a member of the system.” The number of hours of service was changed from 600 to 1,200 and the words “or remain” were added.

Under the original Act, Section 15, Paragraph (3) provided as follows: “Credit shall be granted a member of the system for all continuous service which he rendered to the state or to his employer prior to the time it commenced to participate in the system. Within 120 days after his employer becomes a participant in the system the board shall issue to the member entitled to

such credit, a certificate of the aggregate of such credit to which he is entitled. The certificate shall be final unless the board, for cause on its own motion, modify the certificate.”

This paragraph remained the same until Chapter 183, Statutes of 1951 deleted all but the first sentence, leaving the paragraph to read as follows: “(3) Credit shall be granted a member of the system for all continuous service which he rendered to the state or to his employer prior to the time it commenced to participate in the system.”

Chapter 125, Statutes of 1953 amended Section 15, changed the number of the paragraph to (2) but retained the same language as the 1951 amendment.

This paragraph is in the nature of a savings clause provided in the title of the Act. An employee or officer in order to become a member prior to the amendment of Section 8(4) in 1951 was required to show that his position normally required 600 hours per year. Section 2, Paragraph 7 of the Act as amended by Chapter 183, Statutes of 1951, provides the term continuous service means service in public employment of the State and for its political subdivisions participating in the system, in positions subject to the provisions of this Act or in positions which would have been subject to this Act, not interrupted for five years or more.

This was the same chapter which changed the 600-hour requirement to 1,200 hours. This indicates that an employee who was a member prior to July 1, 1951 should receive credit for prior continuous service, including such service under the 600-hour requirement.

The 1951 amendment requiring 1,200 hours did not affect the credit already established under the provisions of the section before amendment.

A position coming within the 600 hours before the amendment in 1951 would be considered for credit within the language of Section 2, Paragraph 7, of the amendment, namely, “or in positions which would have been subject to this act * * *.”

It is evident that it was the intention of the Legislature that members who were entitled to credit for continuous service including positions requiring 600 hours which would have been subject to the provisions of the Act before amendment to 1,200 hours, should not lose such credit by the amendment.

There is always a presumption that statutes are intended to operate prospectively only, and not have a retrospective operation.

As held in *Welde v. State*, 43 Nev. 388, citing *United States v. Heath*, 3 Cranch 399, “the rule ought especially to be adhered to, when such a construction (retrospective operation) will alter the preexisting situation of parties, or will affect or interfere with their antecedent rights, services, and remuneration.”

The amendment to Section 8(4) of the Retirement Act refers to the future, and applies to one who becomes a member or who is entitled to remain as such after July 1, 1953; but it does not cancel credit for continuous service based upon the provisions of the section before the effective date of the amendment.

Section 8(6) of the Act before amendment in 1951, provided that a person holding an elective office or an appointive office may become a member of the system only by giving the Board written notice of his desire to do so.

We are therefore of the opinion that a State legislator whose application was accepted as a member of the system prior to July 1, 1951, may be credited toward retirement with services rendered as such before that date.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-289 Planning and Zoning—Planning and Zoning Act of 1941 and Maps and Plats Act of 1905 Relate to Same Subject Matter, but are Independent Acts and not Inconsistent With nor Repugnant to Each Other.

CARSON CITY, August 5, 1953

HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. FOLEY: This will acknowledge receipt of your letter of July 21, 1953, in which you request the opinion of this office as to whether the Maps and Plats Act of 1905, being Sections 134-1354, N.C.L. 1929, as amended, still applies in view of the Planning and Zoning Act of 1941, being Sections 5063-5063.35, 1929 N.C.L. 1941 Supp., as amended, and in particular, whether Sections 1342 and 1344, N.C.L. 1929, are presently applicable in view of the later Act, as amended.

OPINION

The Maps and Plats Act of 1905, as amended at various times up to and including the year 1953, is an Act entitled as follows:

An Act authorizing owners of land to lay out and plat such land into lots, streets, alleys and public places, and providing for the approval and filing of maps or plats thereof.

Said Act, in our estimation, should be read and applied, under proper circumstances, in conjunction with the following acts:

1. Act of December 5, 1926, being Sections 1264-1266, N.C.L. 1929, providing for the reconveyance of dedicated property.
2. Act of March 21, 1921, being Sections 1267-1273, N.C.L. 1929, providing for planning commissions for incorporated cities and towns.
3. Act of March 27, 1919, being Sections 1355-1371, N.C.L. 1929, as amended, providing for disposition of certain problems arising in connection with city and town plats.
4. Act of March 13, 1917, being Sections 1372-1374, as amended, providing for the vacation of portions of city and town plats.
5. Act of March 10, 1923, being Sections 1274-1280, N.C.L. 1929, providing for zoning within cities and incorporated towns.

The Planning and Zoning Act of 1941, being Section 5063-5063.35, 1929 N.C.L. 1941 Supp., as amended by Chapter 267, 1947 Statutes of Nevada, is a comprehensive Act entitled as follows:

An Act to provide for city, county, and regional planning in a certain class of counties; the creation, organization, and powers of planning commissions and zoning boards of adjustment; the regulation of the use of land and of the subdivision of land; the improvement of streets; the inspection of structures; and providing penalties for the violation of this act.

Prior to the enactment of the said Planning and Zoning Act of 1941, the only general laws relating to the subject matter here involved were the 1905 Act and related Acts, as above noted. The 1941 Act originally provided, in Section 5063.02, 1929 N.C.L. 1941 Supp., that "The legislative body of each city and of each county having not less than fifteen thousand (15,000) population *may* create by ordinance a planning commission to consist of nine members * * *." (Italics ours.)

We think that any city or county, qualified by population, electing to operate under the provisions of the 1941 Act, could do so, and that if any such city or county so elected, it would be governed solely by the provisions of the 1941 Act, and would no longer be required to comply with the provisions of the 1905 Act, each Act being complete and comprehensive in itself, and while relating to the same subject matter, being designed to fit a particular situation. And, we feel, the Legislature so intended.

In 1947 the 1941 Act was amended to provide, in part, in Section 5063.02, as follows:

The governing body of each city and of each county having not less than fifteen thousand (15,000) population *shall* create by ordinance a planning commission to consist of nine members. Cities and counties of less than fifteen thousand (15,000) population *may* create by ordinance a planning commission to consist of nine members. * * * (Italics ours.)

From and after the passage and approval of the 1947 amendment to the 1941 Act it was, and is, mandatory that cities and counties having not less than 15,000 population comply with the provisions of said Act, and that cities and counties having less than 15,000 population may operate under the provisions of said Act, if they so elect.

We think the 1947 amendment, which includes the smaller cities and counties at their election, has not fundamentally changed the previous situation, except to permit the smaller cities and counties to operate under the 1941 Act, if they, or any of them, choose so to do. Any city or county having less than 15,000 population, and not electing to operate under the provisions of the 1941 Act, is still covered by the 1905 Act.

In view of the above, it is the considered opinion of this office that the said Acts of 1905 and 1941, while relating to the same subject matter, are independent Acts, neither being inconsistent with nor repugnant to the other, but each being designed to fit a particular situation and together to provide operable legislation throughout the State, regardless of local population.

In answer to your questions, and in view of the foregoing, it is our opinion that the city of Las Vegas, whether it has its own planning commission or is a member of a regional planning commission, is required to comply with the provisions of the 1941 Act, as amended, and that the 1905 Act has no application to said city.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-290 Motor Vehicles—Highways—Construction of 1953 Statutes, Chapter 347, Weight of Load Limitations and Penalties for Violation Therefor—Court Jurisdiction Over Such Offenses.

CARSON CITY, August 21, 1953
HONORABLE ROBERT A. ALLEN, *Chairman, Public Service Commission, Carson City, Nevada*.

DEAR MR. ALLEN: We are in receipt of your letter of July 28, 1953, relative to the matter of overload carried by vehicles traveling on the highways.

STATEMENT

Your letter states that on a recent weighing of a truck, the gross overload was found to be 11,015 pounds, the interior overload between axles was 17,480 pounds, and the second interior overload on axles was 10,510 pounds.

QUERY

We interpret your letter to pose two questions, which are:

1. Is a separate fine to be exacted for each violation of a weight limitation found in one vehicle or combination of connected vehicles?
2. What court has jurisdiction of the offenses prescribed by Section 23 of the Act providing for the licensing and registration of motor vehicles?

OPINION

The answer to question No. 1 is in the affirmative.

The 1953 Statutes, Chapter 347, page 628, is the last amendment to Section 23, Chapter 122, Statutes of 1925.

Section 23, as amended, provides, in effect, three different types of weight limitations for vehicles traveling over the highways of Nevada. First, no vehicle shall impose weight on any single axle which exceeds 18,000 pounds. Second, no vehicle shall impose weight between the first and last axles of a group of two or more consecutive axles which exceed the designated allowable weight set forth in Table (a) of the section. Third, no vehicle when loaded shall impose a total gross weight upon the highway which exceeds the weight limitations calculated from Tables (a) and (b) of the section. The section also provides as follows:

Every person convicted of a violation of any weight limitation provision of this section and every person, company, association or corporation, either personally or by his or its agent or employee, who is found guilty of violating any weight limitation of this section shall be punished by a fine which shall equal the amounts specified in the following table: (Here a table of fines is set forth to be levied according to the poundage of excess weight carried.)

The maximum fine under this section shall be six hundred dollars (\$600).

The fines provided herein shall be mandatory and shall not be waived or suspended under any circumstances by the court.

It will be readily observed that the inclusion of the paragraph providing that the maximum fine shall be six hundred dollars creates an ambiguity.

It may be thought that the Legislature intended that no matter how many weight limitations have been violated by one vehicle or combination of connected vehicles the penalty exacted is to be only one fine not exceeding six hundred dollars, or that all the excess weight violations are to be lumped into one excess weight violation for which one fine shall be exacted, according to the table, not to exceed six hundred dollars.

This view we do not take to be consonant with the over-all intendment of the Act. It seems clear to us that the Legislature since 1925, has expressed itself to the effect that a separate offense is committed by each violation of a weight limitation; that damage to the highways is incurred by concentrations of excess weight imposed at various points or areas of the highway as the loaded vehicle passes over it. The object throughout being to diffuse weight to the extent that a concentration of weight which will damage the highway does not occur.

It is true that the Legislature in the original enactment of this section and in the four succeeding amendments up to the 1953 amendment saw fit to impose but a single fine upon the violator although several weight limitations might have been violated by him in a single transporting operation. However, in 1953 the Legislature specifically provides that any person found guilty of violating *any weight limitation* of Section 23 shall be punished by a fine which shall be equal to the amounts specified in the table set forth therein. The reference to "any weight limitation" indicates that each violation of a weight limitation is to be considered a separate offense for which a separate fine is to be exacted in accordance with the table.

We think that the Legislature, being aware of the gravity of the condition created on and the damage done to our highways by the continual carrying of excessive loads by trucking concerns, intended considerably more stringent penalties for the purpose of alleviating the condition. If it is to be said that all that the Legislature did in this regard was to raise the maximum penalty from \$500 to \$600, it would most surely not accord with the seriousness of the condition which the Legislature clearly intended to eliminate.

We are inclined to the view that the inclusion of the paragraph providing that the maximum fine shall be six hundred dollars was intended to mean that the fine for each violation of any weight limitation shall not exceed \$600. It is true that inasmuch as the table set forth at page 631

itself provides the maximum fine, the view we take renders the paragraph setting the maximum fine at \$600 largely unnecessary. However, we consider this result necessary if we are to give effect to the obvious intent of the Legislature as expressed by the entire section.

We are aware of the rule of statutory construction that in penal statutes where doubt exists a strict construction in favor of the party to be penalized is to be placed upon the statute. However, the intention of the Legislature is not to be sacrificed for the rule. See *Ex Parte Todd*, 46 Nev. 218; *Sutherland Statutory Construction*, Vol. 3, 3d edition, Section 5606.

We are of the opinion, therefore, that, as to question No. 1, each violation of each weight limitation bears a separate fine even though the total amount levied against one person or company for violations occurring in one trucking or transporting operation may exceed \$600.

The following will express our opinion with regard to question No. 2:

Article VI, Section 8 of the Nevada Constitution, provided that justices' courts shall have such criminal jurisdiction as may be prescribed by law.

Section 8393, N.C.L. 1929, provides that justices' courts shall have jurisdiction of all misdemeanors punishable by fine not exceeding \$500.

Article VI, Section 6 of the Nevada Constitution, provides that the District Courts shall have original jurisdiction in all criminal cases not otherwise provided by law.

Now, it may be thought that because Section 23 of the Act in question provides that a person shall be punishable by a fine up to and including \$600 that the jurisdiction of the offenses prescribed in the section is properly within the District Court. This would be true if the provision were only to the effect that anyone violating the provisions of the section shall be fined in an amount not to exceed \$600 because it is the maximum punishment assessable which determines the jurisdiction of the court. The section, however, prescribes each offense with the mandatory fine to be exacted for each according to a table therein. If a vehicle carries excess weight of between 10,501 and 11,000 pounds between the first and last axles of a group, a fine will be incurred, according to the table, of \$475. This amount is mandatory by the terms of the section and that person cannot be fined more than \$475 for that particular violation. It is the maximum fine for the particular offense. The jurisdiction of such an offense is properly within the justices' courts. If the excess weight is over 11,001 pounds, the fine prescribed is over \$500 and the offense is properly within the jurisdiction of the District Courts. See *Ex Parte McGee*, 44 Nev. 23; *Ex Parte Arascada*, 44 Nev. 30.

We conclude, therefore, that the offenses incurring a fine of \$500 or less are triable only in the justices' courts. Those incurring a fine of more than \$500 are triable only in the District Courts.

In your letter you also make particular reference to that portion of the section providing as follows:

Any driver of a vehicle who fails to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer of the highway patrol upon a weighing of the vehicle to stop and otherwise comply with the provisions of this section, shall be deemed guilty of a misdemeanor.

It may be thought that this provision has some bearing upon the provisions relating to weight limitations and the penalties for violation thereof.

The use of the wording "and otherwise comply with the provisions of this section" must be read in connection with the provisions of the section having reference to what the driver is obliged to do when stopped by an officer. We believe the only relation this phrase has to the balance of the section is that when a driver is required to stop and reduce his load, he must make the reduction so that the reduced load is in compliance with the weight limitations as prescribed in the section. However, we think that if the vehicle is bearing excess weight in violation of the section, the violation of transporting excess weight has by that time been committed and if the party is found guilty, he is liable to the fine or fines prescribed in the table at page 631. If he fails to comply with the request of the patrolman, he is also, and in addition thereto, guilty of a misdemeanor, and liable to a fine to be assessed by the justice court not to exceed \$500. We think that the work "misdemeanor" here used is to be given the same classification as that

prescribed in the 1929 N.C.L., Section 9950, wherein it is provided that every crime punishable by a fine of not more than five hundred dollars, or by imprisonment in a county jail for not more than six months, is a misdemeanor. Every other crime is a gross misdemeanor.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-291 Fish and Game. Nonresident Owners of Patented and Unpatented Mining Claims Within This State in Same Status as Other Nonresident Owners of Lands in the State Under Chapter 359, Statutes of 1953.

CARSON CITY, August 26, 1953
MR. H. SHIRL COLEMAN, *Administrative Assistant, Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MR. COLEMAN: This will acknowledge receipt of your letter in this office August 21, 1953, requesting an opinion upon the following subject.

STATEMENT

The State Fish and Game Commission has received an application from a nonresident of this State for a hunting license to hunt deer on his property in this State consisting of four patented and seven unpatented mining claims.

QUERY

With regard to the conditions added to Section 50(a) by Paragraph (c) contained in Chapter 359 Statutes of Nevada 1953, we would like to be informed as to the status of nonresident owners of patented and unpatented mining claims within this State.

OPINION

We are of the opinion that nonresident owners of patented mining claims and valid mining locations in this State are in the same status as nonresident owners of other lands within Nevada under the provisions of Chapter 359 Statutes of 1953, Section 50(a), Paragraph (c).

Section 50(a) of the Fish and Game Act of Nevada as amended by Chapter 359 Statutes of 1953, Section 50(a), Paragraph (c), reads as follows:

Nothing in this section shall be construed as a limitation upon the issuance of a hunting license to any nonresident of this state, to the immediate members of such nonresident's family, who is a bona fide property owner of land within this state, for the right to hunt upon that land which he has title to; provided, that not less than 75 percent of all land belonging to the property owner in the State of Nevada and upon which he proposes to hunt is open to the public for hunting. Such nonresident may hunt deer, upland game birds, waterfowl and any other game birds or animals during the same period and subject to the same limitations as may be allowed or imposed upon residents of Nevada in connection with such hunting; provided that said persons have first complied with all the other requirements of the State of Nevada regulating hunting; and further provided, that such licenses to be issued to nonresident land owners shall be issued by either the state fish and game commission or its agents only upon proof of the applicant's title to certain lands

within this state. Such license or permit shall be issued only upon payment of the regular nonresident fee and shall be valid for use only on the land owned and described.

The purpose of the paragraph is to issue hunting licenses to nonresidents who come within its provisions. This privilege is initiated by the language that nothing in the section shall be construed as a limitation upon the issuance of such hunting license to one who is a bona fide property owner of land within this State for the right to hunt upon that land to which he has title.

A bona fide property owner of land means an owner in good faith.

Ownership, as expressed in 50 C.J. page 779, is that the chief incidents of the ownership of property is the right to its possession, use, and enjoyment, and to sell or otherwise dispose of it according to the will of the owner, usually to the exclusion of all others.

The word title, as applied to land, may be used in different senses.

A locator of a mining claim on the public domain may acquire one of three possible estates in the land, namely: By locating the claim in compliance with the statutes, rules and regulations, he may acquire a possessory right, both the equitable and legal title remaining in the government; or, after making such location, he may comply with further requirements essential to the procurement of a patent and acquire the equitable title, the legal title remaining in the United States in trust for him, the interest of the locator being treated as a vested estate; or he may proceed to obtain a patent, thus divesting the government of all interest both legal and equitable. 40 C.J., page 815, Section 237.

As held in *Watterson v. Cruse*, 176 P. 870, while the paramount fee remains in the government until it has issued its patent, yet as to everyone else, the estate acquired by a perfected mining location possesses all the attributes of a title in fee, and so long as the requirements of the law with reference to continued developments are satisfied, the character of the tenure remains that of a fee.

Section 2322, U.S. Revised Statutes, relative to United States Mining Laws, provides that the locators of all mining locations heretofore or hereafter made, on the public domain, their heirs and assigns, so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their location.

There is no apparent distinction in the section between lands capable of ownership and title and lands included in patented or unpatented mining lands.

The terms, title and owner, are used in the many cases before the Nevada Supreme Court in actions to quiet title to mining claims.

The section in question uses the terms in their judicial sense, and as held in *Los Angeles v. District Court*, 58 Nev. 1, the Supreme Court should not speculate beyond the reasonable import of words used in the statute.

An in *Goodman v. Goodman*, 68 Nev. 484, the Supreme Court said, "Thus, where the legislature has spoken with imperfect clarity or has failed to speak at all, it is still the function of the court not to 'will' the law, but to discern it."

Wherefore, we are of the opinion that we cannot construe the section to limit the issuance of hunting licenses to nonresident owners of land distinct from the owners who have title to lands held under mineral patents and those holding land under valid mining locations.

The licenses are issued by the State Fish and Game Commission upon applicant's proof of title to land, which in respect to mining locations would require proof of full compliance with the laws and regulations governing valid mining locations, and patented mining claims on the basis of patent.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-292 Public Schools—Trustees May Enter Into Agreement to Transport and Educate Pupils in Another District in the State.

CARSON CITY, August 28, 1953
HONORABLE WM. J. CROWELL, *District Attorney, Nye County, Tonopah, Nevada.*

DEAR MR. CROWELL: This will acknowledge receipt of your letter in this office August 27, 1953, respecting Section 274 of the Nevada School Code, Paragraph 13, as amended in 1951.

STATEMENT

The respective elementary school boards of Goldfield, Esmeralda County, and Tonopah, Nye County, desire to enter into an agreement for the transportation and education of eighth-grade pupils of Goldfield in the Tonopah public schools. You call attention to Section 274, Paragraph 13 of the 1947 School Code, as amended by Chapter 78, Statutes of 1951, which provides for agreements between trustees to admit pupils from an adjoining State or contiguous districts or to pay tuition for pupils residing in a district to attend school in an adjoining State or contiguous district. The school districts in question are not contiguous.

QUERY

May the respective boards of trustees mentioned in the statement enter into an agreement to educate the pupils in the Tonopah elementary school district?

OPINION

Chapter 348, Statutes of 1953, amended Section 274, Subsection 13, to read as follows:

The governing body of any high or elementary school district may, with the approval of the deputy superintendent of public instruction in the supervision district in which said high or elementary school district is located, admit to the school or schools of the district pupil or pupils living in an adjoining state or *in a district within this state*, or it may pay tuition for pupils residing in the district but who attend school in an adjoining state or *in a district within this state*. An agreement shall be entered into between the governing board of the district in which the pupil or pupils reside and the governing board of the district in which the said pupil or pupils attend school providing for the payment of such tuition as may be agreed upon; provided, that the amount of tuition per pupil in average daily attendance shall not exceed the average current expenditure per pupil in the school which such pupil or pupils attend school and it is further provided that transportation costs, if any, shall be paid by the governing board of the district in which said pupil or pupils reside. (Italics supplied.)

The subsection before amendment contained the language, "pupils living in an adjoining State or district which is contiguous to the school district."

The language in italics in the above, "or in a district within this state," answers your question in the affirmative.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*
By GEORGE P. ANNAND, *Deputy Attorney General.*

OPINION NO. 1953-293 Conditional Sales. Implements of Husbandry, Usual Types of Farm Machinery, not Included in Definition of Vehicles Transporting Persons or Property on Highways.

CARSON CITY, August 28, 1953

HONORABLE PAUL D. LAXALT, *District Attorney, Carson City, Nevada.*

DEAR MR. LAXALT: This will acknowledge receipt of your letter in this office August 26, 1953, submitting your opinion as to the construction of Chapter 346, Statutes of Nevada 1953.

Your opinion concludes that the usual type of farm machinery not intended primarily as a mode of transportation upon the public highways does not come within the meaning of the Act.

QUERY

You request an opinion from the Attorney General as to the construction of the term "vehicle" used in Section 1, Paragraph (j) of the Act.

OPINION

The title of Chapter 346, Statutes of Nevada 1953, reads as follows: "An Act to regulate sales of certain vehicles and other matters appropriate thereto."

The subject is to regulate sales of certain vehicles, not all vehicles.

Where, by the title, the subject of an Act is restricted to a certain purpose, the purview of the Act cannot be extended to other purposes not indicated in the title. The Act can be no broader than the subject expressed in the title. *State v. Board of Commissioners of Washoe County*, 22 Nev. 399.

Section 1 of the Act relates to definitions of words and phrases, which shall have the meanings ascribed to them except in those instance where the context clearly indicates a different meaning.

Paragraph (j) of this section reads as follows: "'Vehicle' shall mean every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks."

While the rule is that legislative definitions should be followed in the interpretation of the Act, it often, as in the present case, becomes necessary to interpret the definition.

In the definition the words vehicle and device are used. Both words are used in connection with transportation on public highways, and would mean that which is formed or designed for transportation.

Devices moved by human power are excepted and devices used exclusively upon stationary rails or tracks.

The latter exception clearly indicates rolling stock of railroads which never transport over public highways but over railroad rights of way. This part of the definition may be considered as surplusage and unnecessary.

Words having no meaning in harmony with the legislative intent as collected from the entire Act, will be treated as surplus, and will be wholly disregarded in the construction of the Act to effectuate the legislative intent. 59 C.J., page 992 and notes.

The context of the Act as disclosed by the frequent use of the terms vehicles with or without accessories, and contracts providing for insurance, insurance charges and certificates of insurance under master policies, clearly indicates the certain vehicles expressed in the title of the Act.

Accessories, insurance and major policies are words in common use in conditional sales contracts for automobiles as indicated by the many cases involving finance companies. See title "Accession," American Digest System, Fifth Decennial Digest.

Certain vehicles used for transportation have been clearly defined by the motor vehicle statutes of this State.

As stated in 59 C.J., page 1012: "Thus words which have been defined by statute, or which have previously been given a well defined meaning by the courts, are presumed to have that same meaning in the statute."

The definition is copied from Section 1 of the Act requiring registration of motor vehicles as amended by Chapter 216, Statutes of 1953.

Section 6 of this Act, as amended by Chapter 233, Statutes of 1949, Paragraph 1(e), provides: "The provisions of this act requiring the registration of certain vehicles shall not apply to special mobile equipments nor to implements of husbandry temporarily drawn, moved or otherwise propelled upon the highways."

The context of the conditional sales Act clearly indicates that the above exceptions should apply to the meaning of the word vehicle contained in Chapter 346, Statutes of Nevada 1953.

We therefore concur in your opinion and construe the definition of vehicle given in Chapter 346, Statutes of 1953, does not apply to implements of husbandry temporarily drawn, moved or otherwise propelled upon the highways.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-294 Bonds—Consolidated School District No. 1, Pershing County, Nevada. General Obligation Bonds Approved.

CARSON CITY, September 2, 1953
HONORABLE GRANT L. ROBISON, *Secretary, State Board of Finance, Carson City, Nevada*.

DEAR MR. ROBISON: Pursuant to your request of September 1, 1953, we have examined the transcript of proceedings of the Board of Trustees of Consolidated School District No. 1, Pershing County, Nevada, providing for the issuance by said school district of its General Obligation Bonds in the aggregate principal amount of \$300,000, consisting of an issue of 300 bonds in the principal sum of \$1,000 each, bearing interest at the rate of 3 1/2 percent per annum, payable semiannually on the first day of January and the first day of July in each year commencing January 1, 1954.

It is the opinion of this office that the transcript of proceedings shows that each and every step leading up to the issuance of said bonds was and is in legal and proper sequence, and that the same are in strict accordance with the statutes and laws and ordinances in such case made and provided. The Notice of Bond Sale contained in said transcript recites that the legality of the bonds will be approved by Pershing, Bosworth, Dick and Dawson, bonding attorneys, and that the opinion of said firm, together with the printed bonds and the certified transcript of the legal proceedings will be furnished the purchaser without charge. The opinion of Pershing, Bosworth, Dick and Dawson, together with its certification, should be furnished to the State Board of Finance.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-295 Motor Vehicles—Use of Highways by Nonresident—Service of Process on Chairman of Public Service Commission Pursuant to Chapter 275, Statutes of 1953, Supersedes Service on Secretary of State Under Act of 1937.

CARSON CITY, September 4, 1953

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

DEAR MR. KOONTZ: Reference is hereby made to your letter of September 3, 1953, requesting the opinion of this office as to whether Chapter 275, page 384, Statutes of 1953, repealed Sections 4441.01- 4441.05, 1929 N.C.L. 1941 Supp., in that Chapter 275 contains no express repealing clause.

STATEMENT

Sections 4441.01- 4441.05 constitute “An Act to provide for the service of process upon nonresidents in actions or proceedings against such nonresidents growing out of any accident or collision in which such nonresidents may be involved while operating a motor vehicle upon the public highways of this state.” Approved March 10, 1937.

This Act provided that the operation by a nonresident of a motor vehicle upon a public highway in the State of Nevada shall be deemed an appointment by such nonresident of the Secretary of State of Nevada to be his lawful attorney upon whom may be served all legal process in any action against such nonresident growing out of the use of a motor vehicle by such nonresident resulting in loss or damage to other persons or property.

Chapter 275, page 384, Statues of Nevada 1953, was enacted under a title reading as follows:

An Act to provide for the service of process in actions or proceedings arising out of any motor vehicle accident or collision upon the public roads, streets or highways in this state, and other matters properly relating thereto.

Section 1 of the 1953 Act in consonance with the title provides that use and operation of a motor vehicle over the highways of the State by the operator thereof, irrespective of whether such operator is a nonresident or resident of the State, thereby in effect constitutes the Chairman of the Public Service Commission his true and lawful attorney upon whom service of all legal process can be made in any action or proceeding against him growing out of the use of such highways and/or resulting in damage or loss to the person or his property complaining against such defendant operator.

Aside from Section 1 of the 1953 Act, the balance of such Act, i.e., Sections 2, 3, 4, and 5 are identical with the same numbered sections of the 1937 Act, save, such sections do not contain the term “nonresident” and where the term “secretary of state” appeared in the 1937 Act the term “chairman of the public service commission” was substituted.

OPINION

We think it clear that the Legislature in the enactment of the 1953 Act intended to revise the entire subject of service of process in actions growing out of motor vehicle accidents in the use of the highways of this State, including those in which nonresidents were involved. Most certainly the Act is broad and comprehensive enough to include all such nonresidents, and exercising its legislative powers substituted the Chairman of the Public Service Commission as the attorney of the alleged defendant upon who service of process could be made instead of on the Secretary of State. The 1953 Act was undoubtedly framed from the 1937 Act. That part of the 1937 Act relating to the Secretary of State was omitted. The Supreme Court of Nevada in *Gill v. Goldfield Con. M. Co.*, 43 Nev. 9, well said:

When a statute is revised, or one act framed from another, some part being omitted, the parts omitted are not revived by construction, but are to be considered as annulled. Eureka Bank Cases, 35 Nev. 85, 126 Pac. 655, 129 Pac. 308; State v. Wilson, 43 N.H. 419, 82 Am. Dec. 163; Farr v. Brackett, 30 Vt. 344; Pingree v. Snell, 42 Me. 53.

The foregoing rule of statutory construction is well supported in 1 Sutherland, Statutory Construction 475, Section 2018, as follows:

The intent to repeal all former laws upon the subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with the subject. Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative intent not only to repeal former statutory law upon the subject, but also to supersede the common law relating to the same subject. Therefore, the failure to set out former statutory provisions in a later comprehensive enactment will operate to repeal the omitted provisions which are inconsistent, and former provisions which are not repugnant to the later legislation as well.

Entertaining the foregoing views it is the opinion of this office that Chapter 275, Statutes of 1953, being a comprehensive revision of the 1937 Act, i.e., Sections 4441.01- 4441.05, 1929 N.C.L. 1941 Supp., repealed said 1937 Act, and that service of process on the Secretary of State is superfluous and no longer required.

We express no opinion concerning the service of process under Chapter 275 in actions brought against residents of this State.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-296 Elections—Candidates—Residence Once Established in State not Lost by Reason of Service in and for United States.

CARSON CITY, September 11, 1953
HONORABLE JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: This will acknowledge receipt of your letter of September 10, 1953, wherein you request the opinion of this office based upon the following statement of a citizen of Nevada with respect to his eligibility to become a candidate for public office during the next ensuing political campaign. The statement of such citizen is as follows:

I came to Nevada to make my home in the spring of 1936, as engineer in charge of a quicksilver mine out from Mina. Later, I worked for the Nevada-Mass. Tungsten Corp., at their Silver Dike Mine until it closed down in 1938, and then accepted an appointment as field engineer with the Dept. of the Interior, making my home in Fallon for over three years, and served in charge of range improvements for Churchill County, and later made my headquarters in Gerlach and Elko. Shortly after the start of the war, I was assigned to the War Dept., and placed in charge of explosive safety engineering in explosive manufacturing plants and proving grounds in the eastern and southern States. I returned to Las Vegas in the fall of 1945, to work for the Blue Diamond Corp., and in February 1947, I was recalled to

government service to become safety director at the Sacramento Signal Depot. Retiring from that position in the spring of 1951, I returned to my home in Fallon to develop a tungsten property I have owned since 1941, and at the same time took over management of the Western Hotel.

You submit the following query: Is such citizen qualified to become a candidate for public office in view of the provisions of Chapter 370, page 711, Statutes of 1953, providing, inter alia, "No person who is not a qualified elector and domiciled in the State of Nevada for five years next preceding his declaration or acceptance of candidacy shall be eligible to any office of honor, profit, or trust, in and under the government and laws of this state."

OPINION

Notwithstanding the language of said Chapter 370, it is the opinion of this office that the citizen in question is fully qualified as an elector to become a candidate for public office, by reason of the fact that, in our opinion, such citizen established his residence in Nevada in 1936, and, in view of the provisions of Section 2, Article II, of the Constitution of the State of Nevada reading, "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison," such citizen did not and has not lost his residence in the State of Nevada and is entitled to become a candidate for public office.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.

OPINION NO. 1953-297 Cemeteries—Roman Catholic Bishop of Reno, a Corporation Sole, Subject to Provisions of Chapter 138, 1953 Statutes of Nevada.

CARSON CITY, September 15, 1953
HONORABLE PAUL A. HAMMEL, *Insurance Commissioner, State of Nevada, Carson City, Nevada.*

DEAR MR. HAMMEL: This will acknowledge receipt of your letter of September 4, 1953, in which you request the opinion of this office as to whether the Roman Catholic Bishop of Reno, a corporation sole, organized and existing under and by virtue of the laws of the State of Nevada, is exempt from compliance with the provisions of Chapter 138, 1953 Statutes of Nevada, an Act concerning the establishment and operation of endowment care cemeteries.

The Roman Catholic Bishop of Reno, a corporation sole, contends that, by virtue of its articles of incorporation, it has the right to own and operate Catholic cemeteries within the limits of the State of Nevada, and for that reason is exempt from the licensing requirement under said Chapter 138, 1953 Statutes.

OPINION

The articles of incorporation of the Roman Catholic Bishop of Reno, a corporation sole, provide, in part, as follows:

That under the rules, regulations and discipline of the Roman Catholic Church, all property, real and personal, belonging to said Church, or used for charitable, educational, burial, religious, eleemosynary or church purposes of said Church in and for said Diocese of Reno, is vested in me, the Roman Catholic Bishop of said

Diocese, and I have full power to sell, mortgage, lease or incumber the same and to apply the proceeds as I may deem proper.

And, in paragraph 15:

I do further certify and state that said corporation sole is the owner of all property, real and personal, situated in any of the counties of the State of Nevada, used for charitable, educational, burial, religious or school purposes, of said Roman Catholic Church.

There can be no doubt but that the Roman Catholic Bishop of Reno, a corporation sole, has the right to own and operate Catholic cemeteries in the State of Nevada, just as do cemetery corporations and certain other religious and fraternal corporations, organizations and societies. It is fundamental, however, that the mere right to own and operate a cemetery or any other legitimate business does not relieve such corporation or other organization from compliance with reasonable regulatory measures enacted by the Legislature under the police power of the State. Chapter 138, 1953 Statutes, was enacted to protect the people of the State of Nevada from persons who lacked either the financial ability or the intention, or both, to conscientiously operate endowment care cemeteries which they would establish, or had established, and in which endowment care plots, niches and crypts would be, or had been, sold to unsuspecting individuals. May we state at this point that we are not aware of any conduct, past or present, on the part of the subject corporation or any other cemetery authority presently operating an endowment care cemetery in the State of Nevada which may have prompted the enactment of Chapter 138, 1953 Statutes, nor do we make or intend to make, any inference to that effect. The Legislature, having felt the need for regulatory legislation regarding the establishment and operation of endowment care cemeteries, had no alternative in enacting such legislation but to provide a statute which would be, and is, uniformly applicable to all cemetery corporations, associations and other organizations falling within the general classification of "cemetery authority."

It is the opinion of this office that the provisions of Chapter 138, 1953 Statutes of Nevada, do apply to the Roman Catholic Bishop of Reno, a corporation sole, and that said corporation must comply therewith if it operates, or contemplates operating, an endowment care cemetery. And should it operate, or represent that it is operating, an endowment care cemetery without having first complied with the provisions of said Act, then the provisions for civil and criminal liability contained in Section 14 of the Act will become applicable.

Respectfully submitted,

W. T. MATHEWS, *Attorney General.*

By JOHN W. BARRETT, *Deputy Attorney General.*

OPINION NO. 1953-298 State Employees' Social Security Old-Age and Survivors Insurance. Interpretation of Chapter 103, Stats. 1953—Regarding State Employees, Governing Body Means the Administrative Head of Each State Agency or Department.

CARSON CITY, September 24, 1953
HONORABLE HARRY A. DEPAOLI, *State Authority of OASI, Employment Security Department,*
Carson City, Nevada.

DEAR MR. DEPAOLI: This will acknowledge receipt of your letter dated September 16, 1953 requesting the opinion of this office as to the meaning of the term "legislative or governing body" as used in Chapter 103, Statutes of Nevada 1953.

QUESTION

What is meant by “legislative or governing body” as used in the Nevada Act insofar as that term is used to designate the body authorized to make formal application to the State authority on behalf of eligible State employees for inclusion in the Federal-State agreement to afford coverage for such employees under the old-age and survivors’ insurance system of the Federal Social Security Act? Does the term refer to: (1) the State Legislature, (2) the Governor, (3) the administrative head of each State agency or instrumentality?

OPINION

This office is in accord with the opinion of Mr. George L. Vargas, legal counsel for the Nevada Employment Security Department, released September 14, 1953, concerning this particular question. In addition to and supplementary to that opinion, we respectfully submit the following:

This office is of the opinion that the Legislature did not intend nor contemplate that it was naming itself as the body to perform the function of making such application to the State authority except insofar as such application may be made in behalf of its own members or employees immediately connected with the legislative function. It would, we think, be an unusual provision which would require the State law-making body to perform what is largely an administrative function to be effected from time to time as the necessity arises.

Moreover, inasmuch as the Legislature indicates that the advantages of this Act are to be availed of as soon as possible after March 16, 1953 by entrance into an agreement with the Federal Government and such modifications of the agreement as soon after the initial agreement as necessity dictates, we think it most certainly was not the intention of the Legislature to require a two-year lapse before the initial agreement could be entered into on behalf of the State employees or succeeding time intervals of two years before modification of the agreement could be effected.

We feel that the declared purpose of the Act is to afford coverage for as many eligible State employees as possible. To this end, we feel that treating each State agency as the public agency contemplated in the Nevada Act will more nearly accord with that purpose than treating the State itself with the Governor necessarily as its governing head as the public agency so contemplated.

We are inclined to this view for the reason that it is entirely possible that if the coverage group is taken to consist of all the eligible State employees as a group, it may well be that all of the employees of a particular State agency or department will vote to be covered and yet, because of adverse votes by employees of other agencies, an affirmative vote of a majority of all the eligible State employees is not obtainable, thereby precluding those who would desire coverage.

Legislation must construed in the light of the purpose to be accomplished. In re Forsyth’s Estate, 45 Nev. 385, 204 Pac. 887.

If, therefore, each State agency or instrumentality constitutes the public agency contemplated by the Nevada Act and the eligible State employees of such public agency constitutes a coverage group, we believe that the governing body of each such public agency is, in accordance with Section 3 of the Nevada Act, the proper body to make application for inclusion on behalf of that coverage group.

We believe that the term “governing body” of a State agency or instrumentality is to be taken in its ordinary signification and to mean the administrative or managing head of such agency whether it be one or a group of persons.

We are therefore of the opinion that the Legislature intended that the administrative function of making application to the State authority for inclusion in the Federal-State agreement on behalf of State employees is to be performed by the administrative head or board of each State agency or instrumentality, and such administrative head is the governing body contemplated by the Nevada Act.

Respectfully submitted,

W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-299 Fish and Game—Free Fishing and Hunting Licenses Issued to Servicemen Valid for Usual Life of Such License—Construction of Law Pertaining to What Types of Rifles May Be Used for Deer Hunting.

CARSON CITY, October 2, 1953
MR. FRANK GROVES, *Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MR. GROVES: We are in receipt of your letter of September 24, 1953, requesting the opinion of this office on the following facts and questions.

STATEMENT

In accordance with Chapter 186, Stats. 1951, page 278, a Nevada resident serving with the U.S. armed services and stationed outside of Nevada, returned home on leave and made application for and received free hunting and fishing licenses for the 1953 fishing and hunting season. Before the expiration date of said licenses, the licensee was honorably discharged from the armed services and has now returned to Nevada.

QUESTION

1. Is such license still valid?

STATEMENT

We quote the following statement from your letter:

On page 66 of our 1951-1953 Fish and Game Laws of Nevada, a provision for the elimination of certain guns for use on big game is made. Said law specifies that any gun giving less than a thousand foot pounds of energy at one thousand yards is illegal. We have received numerous requests regarding the 25-35 Winchester which is a popular model and used by many hunters. Up until approximately two years ago, this was a legal deer rifle, but since it is no longer manufactured, and many of the guns will not stand the high powered shells, the manufacturers have reduced the load in this gun to where it no longer meets the required standard. In other words, shells manufactured two or three years ago and still being used are legal. Yet shells manufactured during the last few years are illegal. We are constantly requested to definitely state whether said gun is illegal or legal, and if it is illegal, why don't we enforce it? We certainly don't feel that it is our prerogative to definitely tell a man a gun is legal when the shells now being manufactured make it illegal. However, we also know that we could not get a conviction in court unless we could prove the man was using shells manufactured within the last two years.

QUESTION

2. Is the use of such rifle for hunting deer lawful or unlawful; if unlawful how can the law be enforced?

OPINION

The answer to question No. 1 is in the affirmative.

The 1951 Statutes, Chapter 186, Section 1, page 278, provides as follows:

Section 1. The state board of fish and game commissioners are hereby authorized to give to those persons serving in the U.S. armed services, who are bona fide residents of the State of Nevada, fishing or hunting licenses without charge; provided, that those persons requesting said licenses are at such time on active duty in the armed services and are not stationed in the State of Nevada.

We are of the opinion that a person, otherwise qualified, who, at the time he makes request for such licenses, is on active duty in the armed services and not stationed in the State of Nevada is entitled to valid licenses to hunt and fish for that particular hunting and fishing year. Such license remains valid even though the licensee resumes civilian life in Nevada following honorable discharge prior to the expiration date of the license.

In conformity with the spirit of the Act, we do not believe the Legislature intended such implied revocation of a permit valid when given.

We are therefore of the opinion that the licenses in question are valid until the expiration of the 1953 hunting and fishing year.

The following represents the opinion of this office with respect to question No. 2.

Section 69 of the Nevada Fish and Game Law as amended by Section 21, Chapter 146, Stats. 1949, at page 302, provides, in part, as follows:

It shall be unlawful for any person at any time to hunt any deer, antelope, elk, mountain sheep, or mountain goat with any shot gun, or any pistol or revolver, or with any gun or firearm capable of firing two or more rounds with one continuous pull of the trigger, or with any full steel, full metal jacket, tracer or incendiary bullet. Rifles used for said purpose shall exert at least one thousand (1,000) foot pounds of energy at 100 yards.

We believe this provision is mandatory to the effect that rifles used for the hunting of deer, antelope, elk, mountain sheep, or mountain goat shall exert at least one thousand foot pounds of energy at one hundred yards. It follows that rifles which do not exert such energy are prohibited for the use stated.

We think that it is not material that a rifle when sufficiently charged is capable of producing the requisite power. The provision of the statute seems clear in the requirement that the rifle must produce the requisite minimum power when used for the purpose stated. Conceivably any rifle, if insufficiently charged, will lack the requisite power. The use of such a rifle when insufficiently charged would be unlawful while hunting the specified game.

We determine, therefore, that the use of a 25-35 Winchester rifle which produces at least one thousand foot pounds of energy at one hundred yards is lawful. The use of that rifle, if it does not produce the requisite energy or is not sufficiently charged to produce the requisite energy, is unlawful while hunting the specified game.

Whereas some of the cartridges now in existence and being used in the 25-35 Winchester rifle are sufficiently charged to produce the requisite power and others being used are insufficiently charged, and inasmuch as it appears, for all practical purposes, impossible to determine whether the individual user of this gun is using sufficiently powered shells, we are of the opinion that the law insofar as this rifle is concerned is not properly enforceable.

Having in mind that the standard rifles manufactured and used in this country are variously constructed to withstand and produce certain pressures and powers some of which, because of their construction and the standard cartridges made for them, will produce the necessary power and others will not, it may well be that legislation specifically prohibiting the use of certain named rifles would be preferable to the present general provision. Moreover, because the 25-35 Winchester rifles are no longer manufactured and because the increasing age and wear of the

presently existing guns renders them border-line rifles, it may be preferable to include them in the list of prohibited guns if the suggested legislation is found to be in order.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-300 Blind Persons. The Standard Set-up in Section 6 of the Aid to the Blind Act is not the Only Rule or Measure to Determine Loss or Impairment of Eyesight in Persons Otherwise Eligible to Receive Aid Under the Act.

CARSON CITY, November 5, 1953
MRS. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department, P.O. Box 1331, Reno, Nevada.*

DEAR MRS. COUGHLAN: This will acknowledge receipt of your letter in this office November 2, 1953, requesting an opinion as to the interpretation of Section 6 of Chapter 369, Statutes of Nevada 1953.

STATEMENT

The Manual of Rules and Regulations for the administration of this law (Manual Section 300, part 310, item 311) contains the following language: “* * * loss or impairment of eyesight is defined as visual acuity with correcting lenses not in excess of 20/200 in the better eye, or no greater field of vision in the better eye than subtends an angle of 20 degrees.”

QUESTION

Does the Manual carry out the intent of Section 6 of the aid to the blind law? In view of the provisions of Chapter 369, Statutes of 1953, can aid to the blind legally be paid to persons, otherwise eligible, whose visual acuity with correcting lenses is in excess of 20/200 in the better eye or to persons whose vision in the better eye subtends an angle greater than 20 degrees?

OPINION

We are of the opinion that the quoted provision in the manual does not carry out the intent of the Legislature in the light of the purpose sought to be accomplished, as ascertained by consideration of the entire Act.

Section 1 of the Act recites that the purpose of the provisions of the Act is to relieve blind persons from the distress of poverty and to encourage and assist blind individuals in their efforts to render themselves more self-supporting. Section 3 provides that the provisions of the Act shall be liberally construed to effect its objects and purposes.

Section 6 reads as follows: “As used in this act, ‘blind person’ means any person who by reason of loss or impairment of eyesight is unable to provide himself with the necessities of life and who has not sufficient income of his own to maintain himself. No individual whose visual acuity with correcting lenses does not exceed 20/200 in the better eye or whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20 degrees shall be denied aid to the blind on the ground that he is not blind.”

The negative expressions in the latter part of the paragraph is ambiguous and of doubtful import and is subject to construction.

The definition of a blind person as given in Section 6 may be divided into three classes:

1. Any person who by reason of loss or impairment of eyesight is unable to provide himself with the necessities of life and who has not sufficient income of his own to maintain himself.
2. An individual whose visual acuity with correcting lenses does not exceed 20/200 in the better eye.
3. An individual whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20 degrees.

The second and third classes are couched in negative terms, and under the rule of statutory construction are almost invariably held to be mandatory.

Thus an individual who comes within the second or third class is a blind person for the purpose of the Act, and cannot be denied aid on the ground that he is not blind.

This provision, however, in view of the first sentence in Section 6, cannot be transposed to mean that a person with visual acuity that exceeds the standard set for blindness does not come within the meaning of "blind person" as used in the Act.

This conclusion is supported by the language in the first sentence of the section defining "blind person" as any person who by reason of loss or impairment of eyesight is unable to provide himself with the necessities of life.

The extent of such loss or impairment of eyesight must be determined by the scope or purview of the Act.

As stated in Sutherland Statutory Construction, 3d Edition, Vol. 2, page 356:

In construing the purview all matter contained therein must be interpreted together and it is presumed that all of the matter, regardless of the form of sectioning, must harmonize with the other sections of the act and with the purpose of the legislature. Therefore, it is an elementary rule of construction that all sections of an act relating to the same subject matter should be considered together and not each by itself unless to do so would be plainly contrary to the legislative intent. Thus all the sections of the act must read together in the light of the general intent of the statute so that the auxiliary effect of each individual part of the section is made consistent with the whole.

The purpose of the Act as clearly expressed is to relieve blind persons from the distress of poverty and to encourage them in their efforts to render themselves self-supporting.

Section 28 of the Act authorized the Welfare Department to provide treatment to prevent blindness or restore vision to applicants.

Section 29 provides that rules and regulations of the Department shall recognize that the needs and problems of blind persons are special to them.

Section 35 provides for the filing of applications in which the sworn statements shall constitute prima-facie evidence of the facts stated, except the degree of blindness.

Section 38 provides that the Welfare Department shall not grant any certificate of qualification for aid under the provisions of the Act until it has been satisfied that the applicant is entitled to such aid by such evidence as is acceptable to the Department, of a duly licensed and practicing physician skilled in the diseases of the eye, or other specialists, who shall describe the condition of applicant's eyes and testify to the degree of his blindness.

It therefore appears that a person who is totally blind, or one declared to be blind under the definite standards set in Section 6, and a person whose degree of blindness, established by a competent medical authority, is such an impairment of eyesight that the person is unable to provide himself with the necessities of life, is a "blind person" under the purview of the statute.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-301 Engineers—Professional Engineers—License as Land Surveyor Not To Be Granted Solely on Basis That One is a Registered Professional Engineer.

CARSON CITY, November 5, 1953

NEVADA STATE BOARD OF REGISTERED PROFESSIONAL ENGINEERS, *Carson City, Nevada.*

Attention: Honorable Huston D. Mills.

GENTLEMEN: This will acknowledge receipt of your letter of October 27, 1953, wherein you request the opinion of this office on the following facts and question.

STATEMENT

A particular person who holds a Nevada license as a professional civil engineer and who is also a registered professional engineer in good standing in Nebraska makes application for a Nevada license as a land surveyor without taking the examination therefor. This person has held the Nebraska engineer's license for many years and because of this and his long experience in the profession was granted the Nevada engineer's license on the basis of reciprocity. It is our information that a registered professional engineer in Nebraska is not required to hold a separate license as a land surveyor in order to practice that part or branch of the engineering profession, but rather is privileged because he is a registered professional engineer to practice land surveying and to perform all the duties and enjoy all the benefits of a land surveyor.

QUESTION

1. Can the particular person be granted a Nevada license as a land surveyor without the requirement of the oral or written examination?
2. Can a land surveyor's license be granted to a person solely on the basis that he holds a Nevada license as a professional civil engineer and without taking the oral or written examination required to obtain a land surveyor's license?

OPINION

The answer to question No. 1 is in the affirmative.

That part of the professional engineers act pertaining to licensed land surveyors and being Section 14, as amended by the 1951 Stats., Chapter 299, Section 4 at page 462, provides in part as follows:

2. Certificates may be granted under the provisions of section 3 of this act to applicants for land surveyors licenses who are registered in other states.

We are of the opinion that inasmuch as a license as a professional civil engineer in the State of Nebraska includes the license as a land surveyor that a person holding such license is to be considered registered in that capacity in that State, and for that reason may be granted a Nevada license as a land surveyor without examination as provided in the above-quoted section.

The answer to question No. 2 is in the negative.

It seems incongruous to conclude that while one may be granted a Nevada land surveyor's license because he is a licensed professional civil engineer in another State that he may not be granted such license on the basis that he holds a Nevada license as a professional civil engineer, yet we feel that the incongruity lies in the Act itself and leads to this conclusion.

The very title of the Act designates land surveying as a distinct branch of professional engineering.

Section 13, as amended by the 1949 Stats., at page 639, provides, in part, as follows:

It is unlawful for any person to practice, offer to practice or represent himself as a land surveyor in this state or to set, reset, or replace any survey monument unless he has been licensed or specifically exempt from license under this act.

Section 14, as amended by the 1951 Stats., at page 462, provides, in part, as follows:

A professional engineer registered heretofore under the provisions of the engineers registration law, may at the discretion of the board, be issued a certificate which includes land surveying, provided he makes application therefor in writing, not later than thirty (30) days after notification by the board, by registered mail, subsequent to the passage and approval of this act, and in any event, not later than ninety (90) days after the passage and approval of this act * * *.

It seems clear that the Legislature intended that at the expiration of 90 days from the approval of the above provision all Nevada registered professional engineers are to be denied the privilege of obtaining a land surveyor's license to be included in the engineer's certificate through motion of the Board and without passing a written or oral examination; that after the expiration of that date, the passage of examination would be required.

We are aware that the field of professional engineering includes the surveying branch. Moreover, Section 2 of the Act, as amended by the 1951 Stats., at page 460, includes surveying in its definition of the practice of professional engineering. However, it is clear that the Legislature intended that land surveying shall be a separate and distinct branch of engineering, the qualifications for the practice of which must be met before a license may be issued. The passage of an oral or written examination is, among others, one of the qualifications that must be met.

We are further of the opinion and in addition respectfully suggest, inasmuch as professional civil engineering encompasses land surveying within its field and inasmuch as any licensed professional civil engineer would also be a qualified land surveyor, that if the present condition of the law in any way works a hardship upon licensed professional engineers in Nevada, the law should be altered to provide in effect that a professional civil engineering license shall automatically include the license for land surveying. This should also include any other branch of professional engineering wherein, by reason of the scope and training of the branch, land surveying is included therein.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-302 Bonds—Lyon County, Nevada, General Obligation Hospital Bonds Approved.

CARSON CITY, November 10, 1953
HONORABLE GRANT L. ROBISON, *Secretary, Nevada State Board of Finance, Carson City, Nevada*.

DEAR MR. ROBISON: We have examined the transcript of proceedings of the County Commissioners and Board of Hospital Trustees of Lyon County, Nevada, providing for the issuance by said county of its general obligation bonds in the aggregate principal amount of \$150,000, such bonds to mature \$15,000 on the first day of October in the years 1954 to 1963, bearing interest at the rate of 3 percent per annum, payable semi-annually on the first day of April and October in each year.

It is the opinion of this office that the transcript of proceedings leading up to the issuance and sale of said bonds was and is according to law, and the same is in accordance with the statutes and regulations in such cases provided.

That all necessary steps and proceedings creating the bond issue were duly and legally taken and had, and that the said bond issue creates a legal debt and binding obligation of Lyon County, State of Nevada.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-303 Counties—County Commissioners—County Commissioners Have Authority to Pass Certain Penal Ordinances Outside Unincorporated Towns and Cities.

CARSON CITY, November 17, 1953
HONORABLE L. E. BLAISDELL, *District Attorney, Mineral County, Hawthorne, Nevada*.

DEAR MR. BLAISDELL: This will acknowledge receipt of your letter of October 28, 1953, in which you request the opinion of this office regarding the following questions:

Does a county have authority to pass any penal ordinances effective outside of an unincorporated town or city? If your opinion is in the affirmative, to what fund should fines collected thereunder be allocated?

OPINION

As was stated in Attorney General's Opinion No. 150, February 28, 1952, Biennial Report 1950-1952, to which this opinion is supplemental: "The Board of County Commissioners can only exercise such powers as are expressly granted them by the Legislature, or such powers as are necessarily implied to carry out the express powers so granted, as is shown by many decisions of our Supreme Court." See *Waitz v. Ormsby County*, 1 Nev. 370 (1865); *Sadler v. Eureka County*, 15 Nev. 39 (1880); *State of Nevada v. Commissioners of Washoe County*, 22 Nev. 14 (1894); *Schweiss v. District Court*, 23 Nev. 226 (1896); *State ex rel. King v. Lothrop*, 55 Nev. 405 (1934), as a representative of the decisions of the Supreme Court of Nevada.

As to penal ordinances effective outside unincorporated towns and cities, the Legislature has seen fit to authorize the Boards of County Commissioners to pass such ordinances concerning certain specified matters, two of which are as follows:

Chapter 265, Statutes of Nevada 1915, at page 394, regarding any town or voting precinct, is entitled: "An Act to authorize any board of county commissioners to pass ordinances relating to certain animals running at large, making the violation thereof a misdemeanor, and fixing the punishment."

Chapter 165, Statutes of Nevada 1919, at page 290, is entitled: "An Act authorizing and empowering boards of county commissioners to pass ordinances to prohibit horses, cattle, swine, goats or sheep from running at large upon any portion of roads and highways of the State of Nevada, which are fenced on one side or both sides within certain districts." Section 3 of said Act provides: "The said boards of county commissioners are hereby authorized and empowered to provide in such ordinance for the impounding and sale of any such livestock running at large within such district, and making a violation of any of the provisions of said ordinance a misdemeanor and punishable as such."

In view of the foregoing, the answer to the first of your questions is in the affirmative, the authority being limited, of course, to those instances in which the Legislature has expressly provided for the enactment of penal ordinances.

In answer to your second question and in view of Article XI, Section 3 of the Constitution of Nevada which contains the language: “* * * all fines collected under the penal laws of the state * * * shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses * * *,” it is the opinion of this office that all fines collected under penal ordinances authorized by the Legislature to be enacted by the Boards of County Commissioners should be allocated to the State School Fund, unless the authorizing statute directs otherwise.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-304 Taxation—Schools—Bonds—Tax Levies on Behalf of School District Does Not Take Precedence Over Levies Made on Behalf of Other Taxing Subdivisions or Units.

CARSON CITY, November 20, 1953
MR. GRANT L. ROBISON, *Secretary State Board of Finance, Carson City, Nevada*.

DEAR MR. ROBISON: This will acknowledge receipt of your letter dated November 10, 1953, requesting the opinion of this office on the following questions quoted from your letter.

QUESTIONS

1. Do school district taxes levied for bond and interest redemption take precedence over all levies except the State levy and previously approved bond redemption and interest levies?
2. If an affirmative answer is given to No. 1, would the Board of Finance be within its legal right in authorizing an emergency loan to a school district, even though the over-all tax rate within the school district is at the \$5 constitutional limit, on the theory that the other taxing subdivisions would have to reduce their levies to accommodate the school district levy?

OPINION

A careful examination of the law fails to disclose such a priority over other taxing subdivisions or other units.

Section 6094.06, N.C.L. 1943-1949 Supp., does, however, provide for a reduction in the levies made in behalf of a school district for purposes other than the school district's bonded indebtedness in order to give precedence to the bond redemption. It seems clear, however, that this means a reduction in the levies made for and on behalf of the school district and not a reduction in levies made in behalf of other taxing units. A like precedence to bond redemption is provided in Section 6094.13, N.C.L. 1943-1949 Supp.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-305 Architects—Nevada Board of Architecture Not Authorized to Issue Temporary Licenses; Nor to Deny by Rule or Regulation the Issuance of a License to Nonresidents Until They Become Residents.

CARSON CITY, November 24, 1953

STATE BOARD OF ARCHITECTURE OF NEVADA, *1420 South Fifth Street, Las Vegas, Nevada.*

Attention: Mr. Edward S. Parsons, Chairman.

GENTLEMEN: This will acknowledge receipt of your letter dated November 17, 1953, requesting the opinion of this office upon the following facts and questions.

STATEMENT

The following facts are determined from your letter: That a nonresident person who is a certified and registered architect in California has made application for a temporary certificate to practice architecture in Nevada in order that he may perform under an existing contract or contemplated contract for architectural services here in Nevada; that the Nevada Board of Architecture has in the past issued temporary certificates to out-of-State architects for a specific job on the basis that the applicant be licensed and in good standing in the State in which he is registered, and that the laws of that State are equal to those of Nevada; that the procedure of issuing temporary licenses on this basis has been adopted by rule or regulation of the Board; that the Board has also passed and adopted a rule or regulation whereby it will not grant a permanent license to an architect of another State until he becomes a resident of, and has opened an office in Nevada. Thus, as your letter states, a person sincerely interested in a permanent license may obtain a temporary license until he becomes a resident without being denied his right to a livelihood.

QUESTIONS

You propose the following questions for answer in the opinion of this office:

1. Is the rule or regulation of the Board authorizing the issuance of temporary licenses and the action of the Board in pursuance thereof authorized?
2. Is the rule or regulation of the Board authorizing the denial of a permanent license to nonresident architects until they become Nevada residents and open offices here, and the action of the Board in pursuance thereof authorized?

OPINION

The Nevada statute in question is Chapter 220, 1949 Statutes, page 486.

The answer to question No. 1 is in the negative.

Section 12 of the above-cited Act provides as follows: "Within thirty days from and after the date of their appointment, the board shall meet to organize, elect officers as in this act provided for, and formulate and adopt a code of rules and regulations for its government in the examination of applicants for certificates to practice architecture in this state; and such other rules and regulations as may be necessary and proper, not inconsistent with this act."

It is clear that the Board has rule and regulation making powers. It is also clear by the provisions of Section 12, and as a fundamental proposition of law, that the Board cannot promulgate and act upon rules or regulations inconsistent with the provisions of the Act granting that power. See 42 American Jurisprudence, Section 49, at page 355.

What, then, are the provisions of the Act regarding the issuance of licenses beyond the scope of which the Board cannot act?

Section 19 of the Act provides as follows: "Any person who is at least twenty-one (21) years of age and of good moral character, may apply for academic and technical examination for certificate and registration under this act, but before being admitted to the technical examination,

shall submit satisfactory evidence of having completed a four-year course in and graduated from a high school approved by the board or the equivalent thereof.”

Section 21 provides, in part, as follows: “The board may, in lieu of all examinations, accept satisfactory evidence of any one of the qualifications set forth under the following subdivisions of this section: * * * (2) Registration and certification as an architect in another state or country where the qualifications required are equal to those required in this act at the date of application.”

Section 22 provides, in part, as follows: “The board shall issue a certificate of registration upon payment of a registration fee as hereinafter provided for in this act, to any applicant who shall successfully pass such examinations, or in lieu thereof shall bring himself within any one or more of the subdivisions of section 21 of this act. * * *”

It is clear from the above-quoted sections that there are only two types of applicants which may, if found eligible, receive certificates: (1) Those making application for academic or technical examinations, and (2) Those bringing themselves within the subdivisions of Section 21. It is also clear, if type (1) passes the examination or the Board accepts the qualifications of type (2), that by the mandatory provisions of Section 22 the Board must issue a certificate or license to those applicants.

What, then, is the type of certificate which must be issued?

Section 24 provides as follows: “Each original certificate so issued and registered shall authorize the holder thereof to practice architecture as a registered architect throughout this state from the date of issuance until the last day of December next succeeding the date upon which such certificate was issued, unless such certificate shall have been revoked for cause as hereinafter provided.”

Section 25 provides mandatorily for renewal of the certificate on a calendar year basis upon application and fee payment.

It is also clear, therefore, that the type of certificate is prescribed and that the Board must issue that prescribed certificate to those entitled to such certificate under the Act.

We conclude, therefore, that, in the face of the clear and mandatory provisions of the Act, the Board is not authorized to issue temporary or any other type of certificate than that prescribed; nor can it for the same reason promulgate rules or regulations authorizing itself to issue any other type of certificate than the prescribed.

For purposes of clarification, we would like to add that it may be thought that the issuance of a temporary license and the promulgation of a regulation for that purpose might properly be authorized under subsection (1) of Section 33 of the Act wherein it is provided that a nonresident practicing architecture in the State is exempt from the provisions of the Act provided he has made application for a permanent certificate, and such exemption to last only such reasonable time as takes the Board to act upon his application. It may be thought that the issuance of a temporary license would be proper and reasonable during the period of exemption and until the Board acted. However, the purpose of this section is, we believe, to afford the nonresident the liberty of practicing without a license for a limited period of time and without being subject to prosecution therefor. It does not, however, contemplate extending the privilege to such nonresident of any stamp or indicia of approval by the Board by way of a temporary license or certificate.

The answer to question No. 2 is in the negative.

Section 19, above-quoted, provides that any person 21 years of age and of good moral character may make application to take the examination. The only limitation in the section to the applicant's right to take the examination is that he must have completed an approved 4-year high school course. We believe the correct interpretation of this section to be that when such applicant meets these requirements he shall as a matter of right be given the opportunity to take the examination.

If such applicant passes the examination, it becomes, by the provisions of Sections 18 and 22, mandatory for the Board to issue the prescribed certificate.

Inasmuch, therefore, as any person meeting these requirements may take the examination, and inasmuch as the use of the wording “any person” eliminates any possibility of implication that

only Nevada residents may apply for, take the examination and receive a certificate, we conclude that any action by the Board in denying the application of, the taking of examination by, and the issuance of a certificate to a nonresident who has successfully qualified is in derogation of the statute, and any rule or regulation passed and adopted by the Board for the purpose of permitting such action, conflicts with the statute.

Concerning nonresident architects registered in another State who make application for a Nevada certificate under the provisions of the subsections of Section 21, we are likewise of the opinion that a rule or regulation authorizing the denial of a prescribed certificate on the ground simply that the person is a nonresident and must first become a resident and open an office in Nevada is in conflict with the provisions of the Act.

While Section 21 makes it discretionary with the Board to accept or reject such qualifications in lieu of examination, it was not contemplated by the Legislature in the grant of rule making power that the Board may by a blanket rule or regulation nullify subsections (2) and (4) of Section 21.

It is within the province of the Board to reject each such applicant as he makes application on whatever proper ground the Board sees fit, but not simply on the ground of nonresidence under the authority of a blanket regulation denying all such nonresidents.

Section 21 has been incorporated in the Act for the purpose of permitting the Board to certify a person, who by reason of his existing proven qualification, to be admitted to practice without taking the examination; the examination not being necessary.

Concerning the particular person presently making application for license, we are of the opinion that if this person's qualifications are sufficiently acceptable to the Board to grant the issuance of a temporary license, if it were possible to issue such license, then this person should be qualified under Section 21 of the Act to receive the license prescribed by the Act.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1953-306 Jurors—In Justice Courts Only Jurors Who Serve at the Trial are Entitled to Compensation for Such Service.

CARSON CITY, December 3, 1953
HONORABLE F. H. KOEHLER, *District Attorney, Lyon County, Yerington, Nevada*.

DEAR MR. KOEHLER: This will acknowledge receipt of your letter in this office November 30, 1953. You request an opinion as to the interpretation of Chapter 127, Statutes of Nevada 1923, respecting payment of trial jurors in a criminal action in the Justice Court.

STATEMENT

In a criminal action in the Justice Court, 30 jurors were summoned and 12 jurors were selected and served at the trial which lasted only part of a day.

QUESTION

Does the county pay the 30 jurors summoned to attend, or just the 12 jurors who were selected and served?

OPINION

We are of the opinion that in criminal cases in the Justice Court only those jurors who actually serve at the trial are entitled to be paid.

Jurors summoned upon order of the Justice of the Peace and who do not serve at the trial are not entitled to pay under the statute.

Section 2, Chapter 127, Statutes of 1953, quoting that part deemed relevant, reads as follows: "Each person summoned to attend as a grand or trial juror, unless on or before the day he is summoned to attend he be excused by the court at his own request from serving, shall receive (except as hereinafter provided) \$6 per day for each day he may be in attendance * * *."

The exception as to jurors in criminal cases in Justice Courts is contained in the following language: "Trial jurors in criminal cases in justice courts shall receive \$6 per day each as full compensation for each day's service * * *."

The first paragraph in Section 2 refers to persons summoned and who attend unless excused, and fixes the amount to be paid for each day he may be in attendance. The paragraph relating to jurors in Justice Courts uses the terms "trial" and "service" which indicates the intention of the Legislature to be that those who serve at the trial as jurors are the persons to receive the per diem allowance.

If each juror summoned was paid for each day he may be in attendance awaiting selection as a trial juror in a Justice Court, the paragraph specifically mentioning jurors in Justice Courts would be redundant or superfluous.

The statute, until its amendment by Chapter 121, Statutes of 1933, provided that no fees shall be allowed nor mileage paid trial jurors in criminal cases in Justice Courts. This amendment provided that trial jurors in criminal cases in Justice Courts shall receive one dollar per day each as full compensation for each day of service. The language in the subsequent amendments has remained the same with the exception that the per diem allowance has been increased.

A distinction is made in the section between summoned to attend and attendance and the terms "trial jurors" and "service" in the paragraph specifying Justice Courts. As stated in 35 C.J. Juries, Section 317, "Unless a distinction is made between 'service' and 'attendance,' a juror is entitled to his per diem allowance for all the time that he is necessarily in attendance upon the court, whether during all of the time he is actually serving as a juror or not."

We, therefore, conclude that the intention of the Legislature is to except jurors in criminal cases in Justice Courts from the general provision in the first part of the section which provides a per diem for each person summoned and each day he may be in attendance. The exception is that only jurors who serve as trial jurors shall be paid a per diem for each day of such service.

Respectfully submitted,

W. T. MATHEWS, *Attorney General.*

By GEORGE P. ANNAND, *Deputy Attorney General.*

OPINION NO. 1953-307 Personnel Act—General Classifications in Personnel Act Do Not Repeal Special Provisions in Certain Acts Creating New Offices.

CARSON CITY, December 7, 1953

MR. J. E. SPRINGMEYER, *Legislative Counsel, Carson City, Nevada.*

DEAR MR. SPRINGMEYER: This will acknowledge receipt of your letter in this office December 1, 1953, in which you request an opinion as to classification of certain State officers under the Act creating a State Department of Personnel, being Chapter 351, Statutes of 1953.

STATEMENT

The State Librarian, the Insurance Commissioner and the Director of the Department of Purchasing have been placed in the unclassified plan, while the Director of the State Welfare

Department, the Superintendent of the Nevada State Hospital, the Legislative Counsel and the State Auditor are placed in the classified plan.

QUESTION

As far as the matter at hand is concerned, can the State Librarian, the Insurance Commissioner and the Director of the Department of Purchasing be distinguished from the other four positions, and be placed in the unclassified service, as is now the case in the job classification plan and the pay plan as proposed by the Department of Personnel?

OPINION

We are of the opinion that Section 18, Chapter 351, Statutes of Nevada 1953, defining unclassified service, does not in paragraphs 2 or 4 repeal the special statutory provisions as to the contingent appointments by the Governor under the Acts creating the offices of State Librarian, Commissioner of Insurance and Director of Purchasing.

Chapter 146, Statutes of Nevada 1951, is a new Act concerning the Nevada State Library. Section 1 provides that the State Librarian shall be appointed by and responsible to the Governor. He shall be appointed on the basis of merit under the State merit or personnel system, if and when such system is established, and shall be in the classified service.

Chapter 314, Statutes of 1951, amended the Act relating to insurance. Section 129 created the position of Insurance Commissioner. Section 129b provided for the appointment by the Governor of a Commissioner. He shall be appointed on the basis of merit under the provisions of the State merit and personnel system, if and when such system is established, and shall be in the classified service.

Chapter 333, Statutes of 1951, is an Act creating a State Department of Purchasing. Section 5 of the Act provides for the appointment of a Director by the Governor. He shall be appointed under the provisions of the State personnel system, and shall be in the classified service.

Each of the appointments were authorized to be made by the Governor to fill the newly created offices, contingent upon the approval by the Legislature of the personnel system.

The Act creating the State Department of Personnel was approved by the Legislature March 30, 1953, under Chapter 351. It follows that the intention of the Legislature was that appointments made subsequent to the approval of the Act will be on the basis of merit under the Personnel Act and such officers will be in the classified service.

As held in *Pershing County v. Humboldt County*, 43 Nev. 78, we fully recognize the rule that the Legislature has the power to pass a law to take effect upon a contingency expressed in the body of the law.

Section 18, Chapter 351, Statutes of 1953, of the Personnel Act, which makes a general provision for unclassified service, did not repeal the specific provisions contained in the Acts under consideration.

This is supported by the decision in *State v. Boerlin*, 38 Nev. 39, which held that in the absence of a clear showing the repeal or modification of statute is not presumed, and, when there is a general and special statutory provision relating to the same subject, the special provision will control.

Future appointments to the offices of Commissioner of Insurance, Director of Purchasing and State Librarian and the incorporation of such officers in the classified service becomes a part of the Personnel Act.

Walsh ex rel. v. Buckingham, 58 Nev. 342, held that a statute which by reference is made a part of another law becomes incorporated in the other law and remains so as long as the statute is in force.

Regarding departments which come within the provisions of the State Merit System, approved March 26, 1945, Section 74 of the Personnel Act, Chapter 351, Statutes of 1953, provides that July 1, 1955, shall be the effective date for the repeal of the State Merit System Act.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By GEORGE P. ANNAND, *Deputy Attorney General*.

OPINION NO. 1953-308 Insurance—Carson City Licensing Ordinance Does Not Apply to Insurance Agents Having Established Offices Elsewhere in Nevada.

CARSON CITY, December 17, 1953
HONORABLE PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*.

DEAR MR. HAMMEL: This will acknowledge receipt of your letter of November 17, 1953, in which you request the opinion of this office upon the following statement.

STATEMENT

An insurance agent, licensed under the provisions of Section 3656.59, 1929 N.C.L. 1941 Supp., as last amended by Chapter 217, 1953 Statutes of Nevada, and having an established office in Reno, Nevada, has been required, under the provisions of Section 25, Ordinance No. 168 of Carson City, Nevada, to obtain a license in order to solicit and transact insurance business in the latter city.

QUERY

As applied to the above-stated case, are the provisions of Section 25, Ordinance No. 168 of Carson City, Nevada, contrary to the provisions of Section 3656.59, 1929 N.C.L. 1941 Supp., as amended, and if so, can such insurance agent be required to comply with the provisions of said ordinance?

OPINION

Section 3656.59, 1929 N.C.L. 1941 Supp., as last amended by Chapter 217, 1953 Statutes of Nevada, provides in subsection (2) thereof, as follows:

The possession of a license, under the provisions of this act, shall be authorization to transact such business as shall be indicated in such license and shall be in lieu of all licenses required to solicit insurance business within the State of Nevada.

Ordinance No. 168 of Carson City, Nevada, provides in Section 25 thereof, as follows:

Every insurance agent conducting and carrying on the insurance business within said city shall first obtain a license so to do and shall pay quarterly therefor the sum of Three (\$3.00) Dollars for each and every insurance company by him represented.

It is the opinion of this office that the provisions of said city ordinance are contrary to the provisions of Section 3656.59 when applied to license insurance agents who solicit and transact insurance business in Carson City, but who have established offices elsewhere in the State of Nevada. It necessarily follows that an insurance agent having an established office in Reno cannot be required to purchase a license in Carson City in order to solicit and transact insurance business in said city. We think the language of Section 3656.59 is clear and unambiguous and therefore not subject to being given any but its plain and ordinary meaning.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1953-309 Public Employees Retirement—Water Districts—The Las Vegas Valley Water District is not a Public Employer Within the Meaning of the Public Employees Retirement Act.

CARSON CITY, December 28, 1953

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

DEAR MR. BUCK: We are in receipt of your letter dated December 14, 1953, requesting our opinion concerning the eligibility of the employees of the Las Vegas Valley Water District for inclusion in the public employees retirement system.

QUESTION

May we consider the Las Vegas Valley Water District to be a “public employer” within the meaning of Section 2(2) of the Retirement Act and consequently eligible for participation under the retirement system?

OPINION

The Las Vegas Valley Water District was created by authority of Chapter 167, 1947 Statutes of Nevada, as amended.

The Public Employees Retirement Act is Chapter 181, 1947 Statutes of Nevada, as amended. Section 8 of the latter Act provides, in part, as follows:

No person may become a member of the system unless he is in the service of a public employer.

Subsection 2 of Section 2 of the same Act defines a “public employer” as follows:

The term “public employer” means the state, one of its agencies or one of its political subdivisions and irrigation districts created under the State of Nevada.

Is the Las Vegas Valley Water District a public employer as defined in the above-quoted subsection?

The district is neither the State nor an irrigation district; nor is it a political subdivision of the State. We determine that it is not a political subdivision for the reason that the character and function of such a district is very analogous to that of an irrigation district. Both such districts are primarily organized for the promotion of the material prosperity of the members of the district, and, except in a very limited sense, they do not carry out the usual political or governmental function. It is for this reason that irrigation districts have been determined by case law in this State not to be political subdivisions, and for this reason we conclude that water districts such as the one in question is not a political subdivision. See *In re Walker River Irr. Dist.*, 44 Nev. 321; *State v. Lincoln Co. P.D.*, 60 Nev. 401.

Nor do we consider the Las Vegas Valley Water District to be an agency of the State within the meaning of the above-quoted subsection 2. This office is of the opinion that, by the specific inclusion of irrigation districts in that subsection, the Legislature intended a distinction between “agencies” as referred to therein and such entities as irrigation districts and similar organizations.

Moreover, we are of the opinion that the rule of statutory construction to the effect that the specific inclusion of one thing is to be taken in contrast to and to the exclusion of other things not specifically included is applicable; thus the specific inclusion of irrigation districts is, in our opinion, to be taken as an exclusion of other organizations of similar nature which are not specifically named.

We conclude, therefore, that the Las Vegas Valley Water District is not a public employer within the meaning of the Public Employees Retirement Act and its employees are not eligible for inclusion in that retirement system.

Respectfully submitted,
W. T. MATHEWS, *Attorney General*.
By WILLIAM N. DUNSEATH, *Deputy Attorney General*.
