

OPINION NO. 1955-1. Funds—State. For the purpose of alleviating livestock emergency, State funds are to be used only in accordance with Chapter 9, 1954 Statutes, Special Session.

CARSON CITY, January 4, 1955.

MR. ARTHUR N. SUVERKRUP, *Executive Assistant to the Governor, Carson City, Nevada.*

DEAR MR. SUVERKRUP: In your letter of December 31, 1954 you request the opinion of this office on the following question:

QUESTION

Prior to an agreement to be reached with the Federal Government, is the Governor authorized to use a small portion of the sum authorized by Chapter 9, Statutes of 1954, Special Session, for the purpose of defraying the cost of making inquiry into the feasibility of a cloud seeding operation designed for the purpose of alleviating the drought situation in certain parts of the State?

OPINION

The answer is in the negative.

The above-cited statute authorizes the Governor to enter into agreements with the Federal Government for the purpose of obtaining federal aid to alleviate the emergency in the livestock industry. The statute further authorizes the use of state funds in an amount not to exceed \$30,000 for the purpose of matching federal aid funds. Necessarily, the amount of federal aid must be determined by the agreement before the state funds can be used for matching purposes.

Article 4, Section 19, of the Nevada Constitution, provides that no money shall be drawn from the treasury but in consequence of appropriations made by law.

The \$30,000 or any portion of it can only be used in consequence of the statute here in question, and in accordance with the manner of use prescribed therein. See *State v. LaGrave*, 23 Nev. 88; *Abel v. Eggers*, 36 Nev. 372.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*
By: WILLIAM N. DUNSEATH, *Deputy Attorney General.*

OPINION NO. 1955-2. Public Employees Retirement Board may not consider eligibility for retirement allowances of employees of the City of Reno under conditions or requirements other than those contained in the Public Employees Retirement Act.

CARSON CITY, January 17, 1955.

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

DEAR MR. BUCK: This will acknowledge receipt of your letter of January 5, 1955 requesting the opinion of this office as follows:

In view of Sec. 9(1) of the Public Employees Retirement Act and the terms of the contract of integration entered into with the City of Reno on November 28, 1949, may this office consider eligibility for retirement allowances of employees of the City of Reno under conditions or requirements other than those contained in the Public Employees Retirement Act?

STATEMENT

Enos Jones entered the employment of the City of Reno in September of 1929, and worked continually until August 15, 1935, at which time, due to personal injury, his employment by the City of Reno was terminated. Mr. Jones was again employed by the City of Reno on April 15, 1941, and worked continually for said city to the date of his retirement on July 1, 1953.

Under the provisions of Sec. 9(1) of the Public Employees Retirement Act of the State of Nevada, the City of Reno entered into an integration contract with the Public Employees Retirement Board under date of December 1, 1949, and under said contract employees of the City of Reno became eligible for benefits under the Public Employees Retirement Act of the State of Nevada as of December 1, 1950.

Section 6 of the Integration Contract between the Public Employees Retirement Board of the State of Nevada, and the City of Reno, provides that the public employees retirement system, at the expiration of the year following the effective date of integration shall assume and be responsible for the payment of retirement or disability benefits to persons then receiving such benefits by virtue of membership in the City of Reno retirement system; provided, that such payments by the public employees retirement system shall be made only to persons receiving benefits through compliance with or attainment of requirements equal to, or consistent with, the requirements for retirement or disability benefits established by the Public Employees Retirement Act.

Section 16(4) of the Public Employees Retirement Act provides that an employee shall cease to be a member of the system (a) in the event that he is absent from the service of all employers participating in the system for a total of more than five (5) years during any six (6) year period after he becomes a member of the system.

At the time of the integration of the retirement system of the City of Reno with that of the State of Nevada, Secs. 3-15, Article III, Chapter 3, of the Reno Municipal Code, providing that no credit shall be given to a member for service prior to an interruption of service of five (5) or more years, was in effect.

While this section of the Reno Code would not be determinative of Mr. Jones' status under the public employees retirement system of the State of Nevada, it is set forth to show the analogy between the applicable provisions as to the five-year separation period in both systems.

Mr. Enos Jones was absent from the service of all employers participation in the public employees retirement system of the State of Nevada for the period from August 15, 1935, to April 15, 1941, a period of five years and eight months.

OPINION

Mr. Enos Jones is entitled to benefits under the public employees retirement system from April 15, 1941 to the date of his retirement on July 1, 1953. The Public Employees Retirement Board cannot consider or be governed by conditions or requirements for disability or retirement benefits of an employee of the City of Reno other than those contained in the Public Employees Retirement Act.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-3. Surveyor General—Public Lands—Surveyor General cannot refuse application of person applying for purchase of land under the 1841 Federal Land Grant upon the ground that applicant is not an actual settler or bona fide occupant of the land.

CARSON CITY, January 24, 1955.

HONORABLE CHARLES H. RUSSELL, *Governor of Nevada, Carson City, Nevada*.

DEAR GOVERNOR RUSSELL: The following is in answer to your letter dated January 14, 1955, received in this office January 17, 1955, requesting the opinion of this office upon the following facts and questions:

STATEMENT

Mrs. Estelle N. Wilburn has made application to purchase certain land from the State of Nevada upon the state's selection and acquisition of the land from the Federal Government. It appears that the land in question has been classified by the Federal Government as land suitable for acquisition by the State. It further appears that Mrs. Wilburn, although otherwise meeting all the requirements necessary to purchase the land, is not a settler or occupant of the land, nor is she a resident of the State of Nevada. The University of Nevada is also desirous of acquiring this same land for the establishment of a southern branch of the University of Nevada.

QUESTION

1. Has the Surveyor General of Nevada the right to refuse the application filed by Mrs. Wilburn?
2. If the application of Mrs. Wilburn is refused and cancelled, can the State acquire the land for the purpose of turning it over to the University of Nevada?

OPINION

Answering question No. 1, we are of the opinion that the surveyor General of Nevada cannot, upon the ground that she is not a settler or occupant of the land or a resident of Nevada, properly refuse and cancel the application of Mrs. Wilburn, if she is otherwise qualified.

Our examination discloses that the land in question is open to selection by the State of Nevada as a part of the 500,000 acre grant of land by the Federal Government to the State of Nevada under the Congressional Act of 1841. The 1841 Act granted such land to the various states and to each new state thereafter admitted to the Union. After Nevada was admitted to the Union, Congress confirmed the 500,000 acre grant to Nevada by an Act of 1886, being Chapter 166, 14 U.S. Statutes at Large, page 85.

Section 6 of the Act of 1866, cited above, provides, in part as follows:

* * * provided, that said State shall select such lands in her own name and right, in tracts of not less than forty acres, and dispose of the same in tracts not exceeding three hundred and twenty acres, *only to actual settlers and bona fide occupants.* (Italics ours.)

It is clear that the Federal Government conditioned this grant by the requirement that the land to be selected by State, on behalf of individual applicants, is to be disposed of by the State only to actual settlers and bona fide occupants.

This grant of land was accepted by the State in an Act of 1867, being 1867 Statutes of Nevada, page 57, in the following language:

The State of Nevada hereby accepts the grants of lands made by the Government of the United States to this State, in the Act of Congress entitled "An Act concerning certain lands granted to the State of Nevada," approved July 4th, 1866, upon the terms and conditions in said act expressed, and agrees to comply therewith.

The State of Nevada thereby agreed to comply with the provisos of the Congressional Act of 1866.

The term "actual settler and occupant" as used in the land laws is defined to mean those persons who actually reside upon the land. See 2 Words and Phrases, page 310; 39 Words and Phrases, page 69.

While we are cognizant of the conditions set forth in the Federal Act, quoted above, and of the Nevada Statute accepting those conditions, we are impelled to the view that the Surveyor General cannot, under the existing circumstances, properly refuse and cancel the application of Mrs. Wilburn.

Of the original 500,000 acres granted to the State of Nevada, there now remains only 1,540 acres to be selected and disposed of by the State. For a period of nearly one hundred years this grant has been disposed of through various selections and sales by the State, and our examination discloses that during that time the previous applicants have not been required to be actual settlers, bona fide occupants or even residents of the State. The general Land Grant Law of Nevada under which the selections and sales of Federal land grants are made, being Chapter 85, 1885 Statutes, page 101, as amended, does not require this qualification.

Moreover, the Federal Government, by whom this qualification and condition was required has never seen fit to disturb the long existing method of disposal of these lands by the State. In fact, in previous selections involving this particular 500,000 acre grant, the Federal Government has, by notice stamped in red ink upon the receipt given to the individual applicant, admonished that the person is not to occupy the land until further notice.

We feel that the long established practice in this matter, coupled with the long standing active acquiescence of the Federal Government in the State's method of disposal, substantially constitutes a waiver by the Federal Government of these conditions originally imposed upon the grant.

More than this, an adverse stand upon this question at this stage of the matter might well lead to serious consequences involving the validity of title to thousands of acres of land now held by individuals within this State.

The foregoing answer to question No. 1 renders an answer to question No. 2 unnecessary.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-4. Service with Nevada Emergency Relief Administration not service that can be accredited to retirement under Public Employees Retirement Act.

CARSON CITY, January 24, 1955.

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

MY DEAR MR. BUCK: This letter is in reply to your letter of January 17, 1955, requesting an opinion from this office as to the following question:

Can service for the organization formerly known as the Nevada Emergency Relief Administration be considered service accreditable towards retirement under the Public Employees Retirement Act of the State of Nevada?

STATEMENT

In 1932 and 1933 the Federal Government, in an effort to allay the serious unemployment situation in the United States, passed legislation to make federal funds available to the states for emergency relief (47 U.S. Stat. at L. 709, 48 U.S. Stat. at L. 55).

Under the Federal Emergency Relief Act of 1933 (48 U.S. Stat. at L. 55), the administrator of the FERA was given broad powers for the distribution of these relief funds upon application for said funds by the various states. Under section 4(b) of said Act the administrator was granted, under the rules and regulations prescribed by the President, the authority to assume control of the administration in any state or states where, in his judgment more effective cooperation between the state and federal authorities might be secured in carrying out the purposes of the Act.

Under the Act the State of Nevada could only expend the federal funds received for the exact purposes stipulated in the Act and in conformance with federal conditions therein contained. In such grants-in-aid the State of Nevada in return for the assistance received had to recognize the Federal Government's right to approve plans and policies, interpose regulations, fix minimum standards and inspect results.

In March of 1933 the Nevada Legislature enacted enabling legislation to permit the State of Nevada to take advantage of federal grants-in-aid under the Federal Emergency Relief Act of 1933 (Chap. 131, 1933 Stats. of Nev., page 168), and in such Act the State Board of Charities and Public Welfare was established. The Board, among other powers, had the authority to supervise and make such rules and regulations as might be necessary for the judicious and equitable administration of any funds made available by the State or Federal Government, or

from other sources for persons who were poor or distressed by reason of disease, infirmity, unemployment or other cause.

The Nevada Emergency Relief Administration was set up as an ex officio adjunct of the State Board of Charities and Public Welfare. This office cannot locate any Act passed by the Legislature which establishes the Nevada Emergency Relief Administration, nor any appropriation Act appropriating funds to such an administration. It is evident from a survey of the news stories of the period between January 1933 and December 1933 that the State Administrators of these relief funds were appointed by the Administrator of the Federal Emergency Relief Administration and that the State Administrators of such governmental agencies as WPA and PWA were federally appointed. They were, therefore, responsible to the Federal Government.

Our Supreme Court, in the case of State of Nevada Ex Rel. State Board of Charities and Public Welfare v. Nevada Industrial Commission, 55 Nev. 343, held that the provisions of the Nevada Industrial Insurance Act did not apply to employees of a federal relief project. The court cogently pointed out, "The Court is of the opinion that the federal emergency relief projects are in no sense state industries, but are created under the Act of Congress for the relief of the unemployed."

The Attorney General of Nevada, in Opinion No. 137, dated June 2, 1934, held that the administrative and supervisory relief personnel under the Federal Emergency Relief Administration of Nevada did not come within the provisions of the State Industrial Insurance Act, and called attention to the decision of the Supreme Court in State Ex Rel. Board of Charities and Public Welfare v. State Industrial Commission, referred to in the preceding paragraph of this opinion.

Under the definition set forth in Section 2, paragraph 2, of the Nevada Retirement Act, 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. Such a definition does not include the Federal government.

OPINION

It is the opinion of this office that employees of the Nevada Emergency Relief Administration were not employees of the State of Nevada, as contemplated by the Nevada Retirement Act, but were employees of the Federal Government, paid from federal funds and subject to federal jurisdiction and control. Therefore, service for such organization cannot be considered service creditable towards retirement under the Public Employees Retirement Act of the State of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-5. Counties—Legislature—Elections. In Nye County the Assemblymen apportioned to the assembly districts are to be voted upon by the electors of the entire county. In event of death or resignation of Assemblyman the appointment is to be made from the district.

CARSON CITY, January 28, 1955.

HONORABLE N. E. HANSON, *Assemblyman, Second District, Nye County, Nevada Legislature, Carson City, Nevada.*

DEAR MR. HANSON: This office is in receipt of your letter dated January 23, 1955 requesting the opinion of this office as to the correct interpretation of Chapter. 15, 1953 Statutes, at page 12. You ask the following specific question as to that law:

QUESTION

(1) Are the Assemblymen from the respective districts to be elected by the voters of their respective district only, or are they voted on by county at large?

(2) In the event of death or resignation of an Assembly person, is the appointment to be made from the district in which the vacancy occurs, or can it be made irrespective of the district?

OPINION

In answer to Question No. 1, this office is of the opinion that the two Assemblymen from Nye County are to be voted on by the county at large.

Chapter 15, 1953 Statutes, is an amendment and addition to Chapter 270 of the 1951 Statutes, and provides as follows:

SEC. 3.5 The county of Nye is hereby divided into two assembly districts as follows:

All that portion of Nye county comprising the election precincts of Manhattan, Round Mountain, Tonopah No. 1, Tonopah No. 2, and Tonopah No. 3 shall be known as assembly district No. 1, with one assemblyman to be elected at large. All the remaining of Nye county shall be known as assembly district No. 2, with one assemblyman to be elected at large.

Section 1 of Chapter 27, 1951 Statutes, to which the above-quoted provision is an addition, provides that the apportionment of Senators and Assemblymen in the several counties of this State shall be as follows: Thereafter, the section lists the various counties by name followed by the number of Senators and Assemblymen apportioned to each. Nye County is apportioned two Assemblymen.

It appears clear from Section 1 that the territorial unit to be represented by the Assemblyman is the county. That is to say that each of the two Assemblymen from Nye County are to represent the entire county in the Legislature. We are aware that Section 3 of Article IV of the Nevada Constitution provides that the members of the Assembly shall be chosen biennially by the electors of their respective districts. The word districts is used instead of the word counties. However, the word was there used not in the sense of territorial units comprising a county but to indicate the county itself as the territorial unit or district, or a territorial unit comprised of two or more counties. This is supported by Article XVII, Section 6 of the Nevada Constitution which provides that, until otherwise provided by law, the apportionment of Senators and Assemblymen in the different counties shall be as follows. Thereafter, the various counties are listed as the territorial units to be represented except Washoe and Roop Counties which were apparently to form one territorial unit or district. This coupled with wording in Section 3.5, above quoted, which reads, "to be elected at large" leaves little doubt that the Legislature intended that the entire qualified voting populace of Nye County is to vote upon both of the Assemblymen who will be its representatives.

We are aware that a different rule obtains in Washoe County. Section 3 of Chapter 270, 1951 Statutes, authorizes the establishment of assembly districts in Washoe County. Although this section also uses the wording "to be elected at large," it also provides specifically that the Assemblymen are to be elected or nominated by the electors of each assembly district. Thus, the intent of the Legislature, derived from the wording of this section, is that in Washoe County the electors of the district, and not those of the entire county, are to vote upon the Assemblymen apportioned to that district. We do not here express any opinion as to the constitutionality of the provision pertaining to Washoe County.

Answering Question No. 2, we are of the opinion that in the event of death or resignation of an Assemblyman the appointment is to be made from the district of the county in which the vacancy occurs.

Article IV, Section 12 of the Constitution of Nevada provides, in part as follows:

SEC. 12. In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person of the same political party as the party which elected such senator or assemblyman to fill such vacancy.

The constitutional provision is silent upon the question here involved. It is our opinion that this provision does not prohibit or limit legislation which would prescribe that the member to be appointed shall be from the assembly district prescribed. See *Wren v. Dixon*, 40 Nev. 171; *State v. Jon*, 46 Nev. 418.

The Legislature has seen fit to divide Nye County into assembly districts, and by that division apportion to each district an Assemblyman from that district to be elected by the people of Nye County. We deem it the primary purpose of such apportionment to provide, as a representative, a person from that district to represent the county in the Legislature. For the same reason, we deem it within the legislative intent that if a vacancy is to be filled from that county the vacancy will be filled by a person from the district in which the vacancy occurs.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-6. Office of Surveyor General not abolished for term 1955-1958 by constitutional amendment passed at 1954 General Election.

CARSON CITY, February 2, 1955.

HONORABLE WILLIAM EMBRY, *Assemblyman, Assembly Chamber, Carson City, Nevada*.

MY DEAR MR. EMBRY: Under date of January 25, 1955, you directed to me a letter containing the following questions:

1. Could the office of Surveyor General of Nevada be abolished by the Legislature so as to effect the present term of office of the incumbent Surveyor General?

2. If the Legislature enacted legislation to carry out the abolishment of the office of Surveyor General, what would be the status of the present incumbent as to term and salary?

STATEMENT

The office of Surveyor General was actually never created by, but was provided for by the Constitution of Nevada. Article V, Section 19, thereof, provides that the Surveyor General shall be elected at the same time and places, and in the same manner as the Governor. It further provides that the term of office shall be the same as is prescribed for the Governor.

An Act approved March 9, 1866, entitled "An Act relating to officers, their qualifications, times of election, terms of office, official duties, resignations, removals, vacancies in office, and the mode of supplying the same, misconduct in office, and to enforce official duty," provided for the election of a Surveyor General, provided that he should be a qualified elector, have attained the age of 25 years, and have resided in the State for a period of two years next preceding the election.

The Act further provided (Sec. 10) that the Surveyor General should be chosen at the General Election of the year 1866, and every fourth year thereafter, *and should hold his office for the term of four years from the time of his installment, and until his successor be qualified.*

It can be determined from this legislation that the Legislature was following the mandate of the Constitutional Convention in providing for qualifications and term of office for the Surveyor General.

It will be noted that the Act provided that the Surveyor General "shall hold office for the term of four years *from the time of his installment.*"

Assembly Joint Resolution Number 1 of the 1951 Legislature set in motion the proper procedure to amend Section 19 of Article V of the State Constitution, by eliminating therefrom the words "surveyor general." What was the purport of this amendment? It was nothing less than to remove from Section 19 of Article V the Constitutional directive to elect a Surveyor General.

Assembly Joint Resolution No. 2 of the 1953 Legislature, in compliance with the law relative to amendment of the Constitution of Nevada, was passed, thus paving the way for the submission of the question to the people at the General Election of 1954.

What the people of Nevada actually determined by a majority vote in the affirmative of Question No. 2 on the ballot, was that thereafter the people would not elect a Surveyor General, and that in this regard Section 19 of Article V of the Constitution of Nevada was amended.

However, we must remember that in the same General Election, and on the same ballot, provision was made for the election of a Surveyor General for a term of four years. Calling attention again to the Act of 1866, Section 10 thereof, the proviso was that the Surveyor General, when elected, should hold office for four years from the date of his installment. On January 3, 1955, the first official business day of the State Government after December 31, 1954, the Justices of the Supreme Court administered the oath of office prescribed by law to Louis Ferrari, the duly elected Surveyor General of Nevada. This, in my opinion, constituted an official installment as of January 1, 1955.

OPINION

It is my opinion that the act of the people in amending Section 19 of Article V of the Constitution, thus providing that in the future a Surveyor General should not be elected, and the further act of the people in electing a Surveyor General for the next four years are not inconsistent. The duly elected Surveyor General should serve for four years from the date of his installment (January 1, 1955), and provision should be made by the Legislature to provide for the salaries and expenses of that office. The office should not appear on the ballot for 1958.

I therefore answer Question No. 1 of your inquiry in the negative, i.e., the office of Surveyor General could not be abolished by the present Legislature so as to affect the present term of office or emoluments thereof.

Having answered Question No. 1 in the negative, no answer is necessary as to Question No. 2.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-7. Basic Science Act of 1951 applies to physical therapists, but does not apply to masseurs.

CARSON CITY, February 7, 1955.

DONALD G. COONEY, PHD., *Secretary-Treasurer, Board of Examiners in Basic Sciences, University of Nevada, Reno, Nevada.*

DEAR DR. COONEY: This is in reply to your letter of February 3, 1955, wherein you ask: "Does the Basic Science Act (Chap. 332, 1951, Statutes of Nevada) apply to physical therapists and/or masseurs?"

STATEMENT

Section 3 of the Act states, "For the purposes of this act, the healing art includes any system, treatment, operation, diagnosis, prescription, or practice, for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition."

Blackiston's New Gould Medical Dictionary, 1953 Ed., defines physical therapy as "the treatment of disease by physical means such as light, heat, cold, electricity, and massage."

A masseur is one who massages the body and massage is defined by Webster as a rubbing or kneading of the human body by one skilled in that art.

OPINION

It is the opinion of this office that a physical therapist, when acting in that capacity alone, does fall within the definitions set forth in Section 3 of the Basic Science Act, and should be required to obtain a Basic Science Certificate.

It is the further opinion of this office that masseurs, when acting in that capacity alone, do not fall within the definitions of Section 3 of the Act and that, therefore, they should not be required to obtain a Basic Science Certificate.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-8. Public Service Commission has right to grant Certificate of Public Convenience and Necessity to applicants whose property is embraced within the geographical limits of the Las Vegas Valley Water District, but whose property has not been acquired by the District according to law.

CARSON CITY, February 7, 1955.

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

DEAR MR. ALLEN: This is in reply to your letter of February 2, 1955, wherein you make the following queries: (1) Does the Las Vegas Valley Water District have any right to establish or change rates now in force in the 13 existing water systems embraced within the geographical limits of the Las Vegas Valley Water District, operating under certificates of public convenience and necessity issued by the Public Service Commission? (2) Does the Las Vegas Valley Water District have legal authority to request the nonissuance of certificates to applicants within the District by the Public Service Commission?

STATEMENT

The queries will be answered in order in the opinion which follows this statement.

It is necessary to consider first the reason for the Act, and amendments thereto, creating the Las Vegas Valley Water District.

The rapid growth in population in the Las Vegas area made it apparent as early as 1940 that something would have to be done to implement the water supply of the Las Vegas Valley. The depletion of artesian water and a startling drop in the artesian water levels indicated that a new and increased source of water would have to be found to meet the growing demand.

It was natural that the emergency should be met with an appropriation of the waters of Lake Mead. This, of course, meant the construction of lines and pumping stations at a great cost, only a part of which could be met by selling legally authorized bonds of the District. The Legislature wisely foresaw that the District would have to have a great latitude in the administration of the water system and in the establishment of rates which would enable the system to survive.

The Act of 1947, as amended in 1949 and 1951, is so far-reaching as to create an autonomy insofar as the Las Vegas Valley Water District is concerned, and insofar as its powers with regard to water are concerned. All cities within the District, and all boards and commissions, including the Public Service Commission, have powers subordinate to those of the District, once the District has acquired works or property in accordance with law.

However, to answer the questions put to this Department it is necessary to study those portions of the 1951 Act which are applicable.

Section 7 of the Act gives the District the right to condemn, either within or without the District any property necessary to carry out any of the objects or purposes of the Act (primarily to bring water into the valley from Lake Mead and to conserve the water resources of the District) whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise. Section 5 had already given the District the right to acquire

by purchase, lease, or otherwise all works or improvements within the District necessary and proper to carry out any of the objects or purposes of the Act.

The right to fix rates and charges applies only to such water companies, or properties as have come under the control of the District. Section 16d of the 1951 Act is under that Section (16) which deals with the issuance of negotiable bonds for the purpose of obtaining funds for the accomplishment of any of the District's corporate purposes. It is stated in said Section 16d that "It is the intent of this Act that, so far as possible, the principal and interest on any bonds issued by the district be paid from revenues *from the works and properties* of the district. (Italics ours.) The board shall, from time to time, establish reasonable rates and charges for the products "and services furnished *by such works and properties*, and no board or commission other than the governing body of the district shall have authority to fix or supervise the making of such rates and charger."

A study of the language above divulges that the provisions apply only to works and properties acquired by the District. They do not apply to those properties or works lying within the District which have not yet been acquired by the District.

OPINION

It is the opinion of this office that the Las Vegas Valley Water District does not have the right to establish or change rates now in effect in the 13 existing water systems embraced within the geographical limits of the District, and now operating under Certificates of Public Convenience and Necessity issued by the Public Service Commission of Nevada, so long as said systems have not been acquired by the District according to law.

It follows that the Public Service Commission of the State of Nevada is not legally bound to accede to the demand or requests of the Las Vegas Valley Water District for the nonissuance of Certificates of Public Convenience and Necessity to applicants whose properties, works or systems have not been acquired by the District in accordance with law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-9. Accumulated Annual Leave—Law does not authorize payment to heirs or estate upon death of public employee.

CARSON CITY, February 8, 1955.

MR. C. A. CARLSON, JR., *Director of the Budget, Carson City, Nevada*.

DEAR MR. CARLSON: The opinion of this office upon the following question has been requested.

QUESTION

If a public employee dies leaving accumulated annual leave to his credit, does the law, upon his death, authorize payment for the accumulated leave to his heirs or to his estate?

STATEMENT

Section 42, Chapter 351, of the 1953 Statutes, provided, "All employees in the public service, whether in the classified or unclassified service, shall be entitled to annual 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 thirty working days."

It is clear from the language of the statute that the benefits to be gained by cumulative annual leave are personal. The leave, or the pay therefor, is an increment arising from personal service, and a forbearance upon the part of the employee to take a vacation, either through personal choice or necessity, gives rise to a cumulative credit that cannot be passed on to others.

The purpose of a vacation, aside from the benefit to the employer resulting from a rested and revitalized employee, is a reward to the employee in the form of days of relaxation away from steady employment, which at best becomes tedious. The vacation, or the money in its stead, are strictly personal.

OPINION

It is the opinion of this office that when a public employee dies, having accumulated annual leave to his credit, the law does not authorize payment to his heirs or to his estate.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-10. Powers delegated by Legislature to Nevada Industrial Commission as a body, cannot be redelegated to individual member of Commission.

CARSON CITY, February 11, 1955.

HONORABLE RENE W. LEMAIRE, HONORABLE KEITH L. MOUNT, *Joint Chairmen of the Legislative Committee to Investigate the Nevada Industrial Commission, State Legislature, Carson City, Nevada.*

DEAR SIRs: This letter and opinion are in answer to your letter of February 9, 1955, wherein you ask the opinion of this office on the following questions:

1. Do paragraphs (1), (2), (3), (4), (5), (6), and (7) of the resolution proposed at a meeting of the Nevada Industrial Commission on June 30, 1953, violate any provisions contained in the Nevada Industrial Insurance Act of 1953, or in the Nevada Occupational Diseases Act of 1953?
2. Does that part of paragraph (4) delegating to the chairman of the Commission the responsibility and authority to establish rules and regulations for the selection, hiring, training, supervision, evaluation and firing of all Commission personnel violate Section 43 of the Nevada Industrial Insurance Act of 1953?

STATEMENT

In the Act of 1947, Sec. 39 of Chap. 168 of the 1947 Statutes, creating an Industrial Insurance Commission, the administration of the Act was imposed upon a Commission to be known as the Nevada Industrial Commission, to consist of three commissioners, and under paragraph (c) of said Section 39 the chairman of the Commission was named as executive officer of said Commission. Notwithstanding the naming of the chairman as executive officer of said

Commission, all act done in pursuance of the Act were authorized to be performed by the Commission and not by the executive officer.

At the 1951 session of the Legislature, Section 39 was amended, but the chairman of the Commission was designated under paragraph (c) of Section 39 as executive officer of the Commission.

However, during the 1953 session of the Legislature the Act was again amended by repealing Section 39 (Chap. 227, 1953 Statutes of Nevada) as it then stood, and by adding a new Section 39. Under the new section the three members of the Commission were to be appointed by the Governor, one from labor, one from the employers, and the third to have not less than five years experience as an actuary, have a degree of master of business administration or its equivalent in experience and said third appointee to act as Chairman.

It is to be noted at this point that the Legislature overlooked the fact that the Act repealed Section 39 of the 1947 Act as amended in 1951 and that therefore it repealed that paragraph (c) in the 1947 Act as amended in 1951, which designated that the Chairman should be the executive officer. While paragraph 7 of the 1953 Act states that the executive officer of the Commission shall not be financially interested in any business interfering or inconsistent with his duties, the paragraph is pointless in view of the fact that the Act has not designated an executive officer, and that therefore, as the Act exists today, there is no executive officer of the Nevada Industrial Commission.

The 1953 Legislature having failed to name one of the Commissioners as executive officer, it is a legal presumption that this was intentional.

The resolution proposed to the Nevada Industrial Commission by Mr. Cory on June 30, 1953, must be considered in the light of the legislative enactments heretofore referred to.

No resolution could be adopted which would be binding on the Commissioners unless that resolution followed the directives of the legislation creating the Commission. The duties and powers of officers are prescribed by statute and are measured by the terms and necessary implication of the grant. A statute conferring authority upon a commission should be strictly construed and all powers not specifically granted or necessarily implied, are reserved.

The mere fact that a majority of the Commission adopted the resolution in whole, or in part, would not sanction its legality. No amount of acquiescence or consent or approval of the doing of acts by the Commission could create a right to do that which is not authorized by the law. If broader powers are desired than those conferred by the law, they must be sought through legislative action.

While it is true that the prescription of official duties by statute is not an exclusive test of authority, for in all administrative positions, certain duties arise by implication, yet such implication is not to be extended beyond the boundaries established by the Legislature. The rights of one appointed to office are measured by law under which he was appointed.

Under the Act of 1953 as it now stands the duties and privileges sought to be secured by Mr. Cory by the resolution of June 30, 1953, are reserved to the Commission acting as a body.

The proposed resolution goes far beyond the power granted to the Commission under Section 44(a) to adopt reasonable and proper rules to govern its procedure.

It is to be noted that only paragraph 4 of the resolution of June 30, 1953 was adopted by the Commission and therefore the answer to question one is based on that paragraph.

OPINION

It is the opinion of this office that the Nevada Industrial Commission exceeded its legislative authority in adopting paragraph 4 of the resolution of June 30, 1953, in that the powers therein sought to be delegated to Mr. Cory were delegated by the Legislature to the entire Commission, and being thus delegated could not be transferred to an individual member of the Commission.

Question No. 2 is answered in the affirmative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-11. Public airport not owned by, but controlled by, political subdivision of State, is entitled to apply for funds available in State Airport Fund.

CARSON CITY, February 15, 1955.

HONORABLE JACK J. HUNTER, JR., *Assemblyman, Elko County, Assembly Chamber, Carson City, Nevada.*

DEAR MR. HUNTER: This is in reply to your letter of February 14, 1955, wherein you set forth two queries to be answered in an opinion from this office:

1. Under Section 3 of the State Airports Act is the use of the fund for the Reno Airport in compliance with the law upon the question of public ownership as set out in Section 3 as follows: "Owned or controlled, or to be established, owned or controlled by the state or any of its political subdivisions."
2. In considering the quotation from the law above, what interpretation would you give to the phrase "owned or controlled" so that a definite standard of ownership or control would be established with a view to protecting the investment of any of these funds to the use of the public.

OPINION

Section 3 of Chapter 246, 1949 Statutes of Nevada, authorizes the Nevada Tax Commission to set aside and earmark funds obtained from unrefunded taxes collected from the sale of aviation fuels for the planning, establishment, development, construction, enlargement, improvement, maintenance and operation of airports and air navigation facilities. The funds so designated are to be transferred by the State Controller to the State Airport Fund, and the State Highway Department is named as the administrative agency of such fund.

The Highway Department is authorized to expend such funds upon airports, landing areas and air navigation facilities owned or controlled, or to be established, owned or controlled by the State or any of its political subdivisions.

There is no question but that the City of Reno, operating under a charter granted by the State Legislature, is a political subdivision of the State of Nevada. If the City of Reno is operating an airport which it owns or controls, it then becomes a prospective beneficiary under the 1949 Act, and the Highway Department, as the agency administering the funds realized under such Act, has the discretion to make such funds available to the City of Reno.

It is to be noted that there is no restriction in the Act as to the amount of funds available which can be placed at the disposal of an applying agency. This is purely within the discretion of the Highway Department.

The answer to your first question must then be that the use of the fund for the Reno Airport is in compliance with the state law.

To answer your second question the key word is "controlled." There can be no question as to the meaning of the word "owned." To control means to exercise a restraining or governing influence over and connotes the power of regulation. If the City of Reno, in its lease with United, has regulatory powers over the airport, so as to permit or to restrain its use except under conditions established by the City, then it has such control as would bring it within the conditions of the Act of 1949, and would entitle it to apply for funds available in the State Airport Fund.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-12. Counties—County Commissioner cannot at same time be Probation Officer.

CARSON CITY, February 17, 1955.

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

DEAR MR. BLAISDELL: This will acknowledge receipt of your letter of January 27, 1955, in which you request the opinion of this office regarding the following question:

May a County Commissioner lawfully serve as Probation Officer as defined in the Juvenile Court Act of 1949, without resigning as Commissioner?

OPINION

The question you have asked has to do with one of the innumerable situations which can and do arise constantly. Each such case must be treated individually, with the decision being based upon specific constitutional or statutory provisions or upon the ground that the two positions are otherwise incompatible when occupied simultaneously by one person. In answering your question it is out thought that whether or not there may be some constitutional or statutory bar to a County Commissioner serving as Probation Officer, the two offices or positions are incompatible for the reasons hereinafter stated.

A good general discussion of the holding of two offices or positions of employment is found in Vol. 67, C.J.S., commencing at page 133, and it is stated therein that the inconsistency, which at common law makes offices incompatible, lies in a conflict of interest, "as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, * * *."

Section 10 of the Juvenile Court Act of 1949, being Section 1038.10, N.C.L. 1943-1949 Supp., provides, inter alia, as follows:

The salaries of the probation officers, detention home personnel, and other employees shall be fixed by the judge with the advice of the probation committee and consent of the board or boards of county commissioners.

And Section 1038.25 provides:

All expenses incurred in complying with the provisions of this act shall be a county charge. The salaries, expenses, and other compensation of referees, probation officers, and all employees shall be fixed by the judge, within the limit provided by the county therefor.

The above-cited N.C.L. sections very definitely place in the hands of the County Commissioners a strong measure of control over the salaries, expenses and other compensation of the Probation Officers and other personnel connected with the administration of the Juvenile Act, which, we think, creates an irreconcilable conflict of interest, a conflict which is not in keeping with good public policy.

It is the opinion of this office that aside from the possible constitutional or statutory prohibitions, the positions of County Commissioner and Probation Officer, whether the latter holds an office or is merely an employee, are incompatible and cannot be held simultaneously by one person.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1955-13. Hospitals—County Hospitals—Cost of medical aid to indigent transients to be paid by county where injury occurs.

CARSON CITY, February 23, 1955.

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

DEAR MR. PRIMEAUX: You request the opinion of this office on the following facts and question:

STATEMENT

A, a nonresident, indigent transient, is injured in county XY in an automobile accident and is taken to county BY for medical treatment.

QUESTION

Which county is responsible for A's medical cost?

OPINION

This office is of the opinion that county XY, the county in which the accident occurred is responsible for A's medical costs.

We understand the use of the word "transient" as used here to mean one who is not a bona fide resident of the State.

The Act relating to county hospitals, Section 9, Chapter 169, 1929 Statutes, being Section 2233, N.C.L. 1929, provides in part as follows:

Every hospital established under this act shall be for the benefit of the inhabitants of such county or counties, *and of any person falling sick or being injured or maimed* within its limits. (Italics ours.)

The above section is quoted to show that these hospitals are established to provide aid not only for county residents but also for any person needing medical attention within the particular county wherein he falls sick or is injured.

Section 2, Chapter 132, 1941 Statutes, as amended, being Section 2245.01, N.C.L. 1943-1949 Supp., which also pertains to county hospitals, provides in part as follows:

When the privileges and use of said hospital are extended to a resident of another county who is entitled under the laws of this state to relief, support, care, nursing, medicine, medical, or surgical aid from such other county, *or to one who is injured, maimed, or falls sick in such other county*, the governing head shall immediately notify the board of county commissioners of such county * * * and it shall be the duty of the board of county commissioners receiving such notice * * * to pay a reasonable sum to said hospital * * *. (Italics ours.)

The italicized portion of Section 2 quoted above was the sole subject of an addition to the section by Chapter 285, 1949 Statutes. It is clear that prior to this addition the county of the person's residence was to pay for service incurred in another county if such person was entitled to aid in his own county. Had the intention been to require the paying county to pay only for those persons who are resident in the county there would have been no purpose in providing the addition to the section, because the section would have so provided without the addition. In order, therefore, to give the addition a meaning we must conclude that the paying county will also pay for anyone who is injured in that county and receiving aid in another county regardless of whether such person is a resident or not.

Thus if an indigent transient is injured in XY and receives hospitalization in county BY, county XY is required to pay for such service. See also *Washoe County v. Eureka County*, 25 Nev. 356.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-14. Rental of school facilities to religious group for presentation of show or exhibition which in no way tends to impart, teach or disseminate religious teachings or doctrines does not contravene constitutional provisions separating church and state.

CARSON CITY, February 23, 1955.

HONORABLE M. J. CHRISTENSEN, *Assemblyman, Clark County, Assembly Chambers, Carson City, Nevada*.

DEAR MR. CHRISTENSEN: You have requested of this office an opinion clarifying Opinion No. 316 of the Attorney General, dated February 19, 1954, insofar as said opinion governs the use of school auditoriums and gymnasiums for the presentation of educational and cultural shows and/or exhibitions which in no way tend to promulgate, disseminate, or teach any religious doctrine, where said educational and cultural shows and/or exhibitions are sponsored by a religious group willing to pay rent for said school premises.

STATEMENT

In order to initiate a clarification of Opinion No. 316 of the Attorney General it is necessary to re-examine the facts which led the District Attorney of Clark County to request an opinion of this office.

The rapid and unforeseen growth of Southern Nevada resulted in a lack of churches, just as it resulted in a lack of schools and a lack of housing. As the population increased, so did the number of religious sects. Many of these sought temporary shelters in which to hold religious services, and petitions were made to the Board of Education of the Las Vegas Union School District to allow the use of schoolrooms and buildings after school hours and on Sundays for the purpose of holding religious services.

The present holder of the office of Attorney General has no fault to find with the learned and scholarly opinion of his predecessor in office. Attention should be called, however, to the language used in the initial paragraph of Opinion No. 316. It states, "The Constitution is the premise from which we infer and conclude that the governing boards of public schools, being governmental agencies of the State of Nevada, do not have authority to allow the use of public school buildings or facilities by religious groups for sectarian purposes," and there follow those provisions of the Constitution of the State of Nevada which tend to separate the State and church. With this we heartily agree.

It is appropriate here to call attention to the Constitution of Nevada insofar as its restrictions apply to the use of school property.

Article XI, Section 2, provides as follows: "The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools."

It is to be noted that Section 2 of Article XI of the Constitution is concerned with the restriction of instruction of a sectarian nature.

Section 9 of Article XI of the Constitution of Nevada provides, "No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this constitution."

Again we note that the restriction is against the imparting or instructing of sectarian principles or teachings.

Section 10 of Article XI reads, "No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes."

Throughout the State of Nevada there are many towns and cities whose funds are so limited as to restrict the building of both a school auditorium or a gymnasium capable of being used as an

auditorium, and a municipal auditorium. In deference to the educational needs of the community funds are raised in an amount necessary to erect the needed school structure, and in nearly all Nevada communities the school auditorium, or the school gymnasium, is used for the benefit of the general public when necessary. Organizations are afforded the use of the school premises, usually on a rental basis.

The question then arises as to whether the presentation of a show, pageant, exhibition, or amusement similar in import, by a religious group for the benefit of the general public would be barred from a school auditorium or gymnasium by reason of the restrictions of the Constitution of Nevada.

OPINION

It is the opinion of this office that the constitutional restrictions hereinbefore set forth would not prevent a school board from the discretionary rental of a school auditorium or gymnasium to a religious group for the purpose of presenting an exhibition or show, open to the general public, which in no way attempted to impart, promulgate or disseminate religious teachings or doctrines.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-15. Industrial Commission—Experience of Chairman does not meet qualifications prescribed by Chapter 227, Statutes of 1953.

CARSON CITY, February 24, 1955.

HONORABLE RENE W. LEMAIRE, *Co-Chairman Committee to Investigate Nevada Industrial Commission; Chairman of Senate Judiciary Committee, Senate Chamber, Carson City, Nevada.*

DEAR SENATOR LEMAIRE: This acknowledges your request of an opinion as to whether the experience and training of Mr. John Cory, as set forth in the testimony of your committee meeting of February 16, 1955, qualifies him for the office of Chairman of the Nevada Industrial Commission, under qualifications prescribed by Chapter 227 of the Nevada Statutes of 1953, and particularly Section 39 thereof.

STATEMENT

It is to be remembered that at the time Attorney General W. T. Mathews directed an informal opinion to Governor Charles H. Russell to the effect that Mr. Cory had the necessary qualifications to serve as chairman of the Nevada Industrial Commission, that his only source of information was the Governor's letter to him setting forth Mr. Cory's qualifications.

It is to be noted that General Mathews in his letter to Governor Russell reserved the right to furnish a more formal opinion.

The difference in the opinion as rendered informally by General Mathews, and this opinion in its more formal nature, arises as a result of definite information made available by Mr. Cory to your committee, and by your committee to me, which was not available to General Mathews.

Let us first consider the qualifications imposed upon the chairman of the Nevada Industrial Commission by Chapter 227 of the 1953 Statutes of Nevada. The law reads, “* * * The third

commissioner selected by the governor shall be the chairman, and such appointee shall have not less than five years experience as an insurance actuary, and have a degree of master of business administration or experience deemed equivalent to that degree. * * *.”

It is to be noted that the law does not require a chairman with actuarial experience, but a chairman who has actually been an insurance actuary for five years.

There is not the latitude in discretion here that follows in the qualification of a degree in business administration, for in the latter the Legislature permitted the appointing authority to use independent judgment as to whether the experience of the appointee was equivalent to such a degree.

The requirement that the chairman have five years of experience as an insurance actuary is clear and explicit, and cannot be qualified.

An insurance actuary is a skilled professional whose profession it is to calculate insurance risks and premiums and who is skilled in the theories and mathematical problems involved in making these calculations (Champagne v. Unity Industrial Life Insurance Co., 161 So. 52).

An actuary determines and establishes the premiums to be paid on life insurance conditioned on the life expectancy of those insured as measured by the insured's state of health as revealed by medical examinations and taking into consideration the hazards of the insured's occupation. It is a highly specialized field requiring extensive training and education in mathematics, and the tables compiled by actuaries are used by insurance companies as the basis for their rates.

At the time of Mr. Cory's appointment, according to his testimony before your honorable committee, he had had the following experience in the insurance field:

- a. Four years prior to 1942 with Equitable Life Assurance Society of the United States in Salt Lake City.
- b. One and one-half to two years during 1946, 1947 and 1948 with Equitable Life Assurance Society in Reno (part of this period as District Manager).
- c. 1948-1950 acting as a general agent in the selling of life, fire, and casualty insurance.

Was any of this period of time spent as an actuary? The testimony of Mr. Cory on page 7 of the transcript of testimony of the meeting of your committee on February 16, 1955, reveals that he had no part in establishing rates and that his determination of premium rates to be paid was obtained by consulting established tables from rate books carried for that purpose.

Furthermore, on page 6 of said transcript, Mr. Cory stated to the committee that his experience in the insurance business included primarily sales work, sales management work, both in life insurance and what is usually called multiple line or fire and casualty insurance. He also stated that he had had resident and correspondence courses in the technical aspects of insurance work as well as in agency management work.

Would this experience include five years as an insurance actuary as required by the Legislature? It would only if the Legislature's interpretation of an insurance actuary coincided with the definition of a general agent or manager of an insurance company. In view of the great responsibility entailed in the chairmanship of the Nevada Industrial Commission and in view of

the fact that the words “insurance actuary” were in no way qualified, it must be apparent that Mr. Cory’s qualifications at the time of his appointment did not meet the requirements of the law.

OPINION

It is the opinion of this office that the experience of Mr. John Cory, as set forth in the transcript of testimony of your committee for the meeting of February 16, 1955, does not now, nor did it at the time of his appointment, qualify him for the office of Chairman of the Nevada Industrial Commission under qualifications prescribed by Chapter 227 of the Nevada Statutes of 1953, and particularly Section 39 thereof.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-16. Employment Security—Enabling Act of 1953 (Chap. 103, Stats. 1953) does not reach the 1954 amendments to Sec 218, Title 2 of the Social Security Act.

CARSON CITY, March 1, 1955.

HONORABLE HARRY A. DEPAOLI, *Executive Director, Employment Security Department, P.O. Box 602, Carson City, Nevada.*

DEAR MR. DEPAOLI: In answer to your letter of February 28, 1955, with regard to the 1954 amendments to the Social Security Act insofar as they apply to Chapter 103 of the 1953 Statutes of Nevada, it is my understanding that you want the following questions answered:

1. Would Chap. 103 of the 1953 Statutes of Nevada be far-reaching enough to cover the 1954 amendments to the Social Security Act (Pub. Law 761, 83rd Congress)?
2. Does the Enabling Act of 1953 (Chap. 103, Statutes of Nevada 1953) give the Governor authorization to conduct referenda and make certifications to the Secretary of Health, Education and Welfare as required by Sec. 218 (d)(3) of the 1954 amendments to the Social Security Law (Pub. Law 761, 83rd Congress)?

STATEMENT

The Enabling Act of 1953 (Chap. 103 of the 1953 Statutes of Nevada) in paragraph 2 of Section 1, and in Sections 2 and 6, refers to Section 218 of Title 2 of the Social Security Act, and applicable federal regulations adopted pursuant thereto.

The Act referred to Section 218, Title 2 of the Social Security Act as then in effect (March 16, 1953). The phrase “and applicable federal regulation adopted pursuant thereto” did not refer to amendments to the Act. If it had been the intention of the Legislature for the Enabling Act to cover future amendments, it would have referred to “Section 218, Title 2 of the Social Security Act, as now in effect or as it may hereafter be amended.”

OPINION

It is the opinion of this office that the Enabling Act of 1953 (Chap. 103 of the Statutes of Nevada 1953) was applicable to Section 218 of Title 2 of the Social Security Act as of March 16,

1953, and projected coverage of Section 218 of Title 2 of such Act only until such time as Section 218 of Title 2 of the Social Security Act should be amended.

It is the further opinion of this office that enabling legislation would be necessary to meet the requirement of Section 218 (d)(3) of Title 2 of the Social Security Act as amended.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-17. Public Health—Food inspection and milk regulatory laws not designed for application to federal military installations, but do apply to individuals and companies possessing milk within the State for delivery to such installations.

CARSON CITY, March 1, 1955.

DANIEL J. HURLEY, M.D., *Acting State Health Officer, Nevada State Department of Health, Carson City, Nevada.*

DEAR DOCTOR HURLEY: This will acknowledge receipt of your letter dated February 16, 1955, requesting the opinion of this office on the following facts and questions:

STATEMENT

Recently a milk distribution company within the State has contracted with Nellis Air Force Base to supply certain quantities of milk to that Base. It appears that this company holds a preferred listing with the military people permitting it to bid for and serve the Base. However, the company is fulfilling its contract from a source of milk supply which has not been authorized by the State Department of Health and holds no permit to supply milk products for consumption in Nevada. It appears that the milk from this source is processed at the source outside of Nevada and brought directly to Nellis Base by the distributor. Thus, the milk has not been subject to inspection and grading by the Health Department as required by the Department regulations. The milk thus supplied is consumed in the mess hall by military personnel and sold at the Base commissary and, as it appears, carried off the Base for consumption by both military and civilian personnel.

QUESTIONS

We quote your questions from your letter:

1. In your opinion does the State Health Department jurisdiction extend to military reservations in Nevada, Nellis Air Force Base in particular, as to milk at this base being from a source in compliance with Nevada requirements?
2. If the answer to the preceding question is in the affirmative, does this jurisdiction apply to that milk used exclusively and only in military messes by only military personnel?

OPINION

The question of whether the State laws extend over Federal military installations within the State is dependent upon the State cession statutes concerning each particular installation. If by such statutes the State has ceded exclusive jurisdiction to the Federal Government or, on the

particular question, had ceded such jurisdiction to the Federal Government as would now prevent the operation of our health laws over the particular area ceded, the answer would be that the jurisdiction of the State Health Department would not extend over the particular area involved. As to Nellis Air Force Base, we find no statute ceding jurisdiction either exclusive, limited or otherwise. Therefore, we are of the opinion that our State laws and the jurisdiction of the State Health Department, so long as the Federal project at Nellis Base is not impeded by their enforcement, would extend over that Base.

However, in our opinion, this question is foreclosed by the fact that as to the point concerning the applicability of the regulations concerning milk products to military installations, the state law simply does not contemplate regulation of Federal military installations.

Section 2 of the regulations promulgated by the State Department of Health governing the sanitation and grading of milk and milk products provides as follows:

No person shall within the State of Nevada produce, sell, offer, or expose for sale, or have in possession with intent to sell, any milk, or milk product, which is adulterated, misbranded, or ungraded. It shall be unlawful for any person elsewhere than in a private home, to have in possession any adulterated, partially homogenized, misbranded, or ungraded milk or milk product, or raw milk as hereinafter provided. Adulterated, misbranded, raw milk or milk products except as hereinafter provided, and/or ungraded milk or milk products may be impounded by the health officer and disposed of in accordance with the state law.

Section 3 of these regulations provide as follows:

It shall be unlawful for any person to bring into, send into, or receive into this State, or to have in his possession, for sale, or to sell, or offer for sale therein, or have in storage where milk or milk products are sold or served, any milk or milk product defined in these regulations, who does not possess a permit from the health officer.

Only a person who complies with the requirements of these regulations shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Such a permit may be temporarily suspended by the health officer upon violation by the holder of any of these regulations, or for interference with the health officer in the performance of his duties, or revoked after an opportunity for a hearing by the health officer upon serious or repeated violations.

Any person desiring to use any grade A, Ungraded Pasteurized milk, or any other descriptive label in representing, publishing or advertising any milk or milk product offered for sale or to be sold within the State of Nevada, shall make application to the health officer for a permit to use such label in advertising, representing, or labeling such milk or milk product. The health officer receiving such application as provided for in this section is hereby authorized and empowered to take the necessary steps to determine and award the grade of milk or milk product offered for sale by the applicant according to these requirements set up by the State Board of Health.

The word "person" as defined by these regulations in Section 1 as follows:

The word "person" shall mean any individual, partnership, company, trustee, corporation, or association.

We do not think that the word "person" was intended to encompass the Federal Government or any of its authorized officers or agents operating a military installation. We are, therefore, of the opinion that these regulations are inapplicable to the use and sale of milk on Nellis Base by military personnel.

The question will naturally arise as to the applicability to such military bases of the Act relating to inspection of food establishments by the State Health Department. Chapter 116, 1943 Statutes.) This Act requires the inspection of all food establishments within the State. The term "food establishment" is defined by the Act as follows:

The term "food establishment" shall mean any place, structure, premises, vehicle, or vessel, or any part thereof, in which any "food product" as defined herein intended for ultimate human consumption are manufactured or prepared by any manner or means whatsoever, or in which they are sold, offered, or displayed for sale, or served; provided, that this definition shall not be construed to include private homes, fraternal or social clubhouses, attendance at which is limited to club members nor any establishment to the sanitation of which is specifically governed by other acts or rules and regulation of the state board of health, nor should this definition be construed to include vehicles operating on common carriers engaged in interstate commerce.

This section standing by itself would indicate that commissaries or mess halls at military installations are "food establishments" as contemplated by the Act.

This, coupled with Section 2 of this Act which provides in part, that the health officer shall have authority to inspect all food establishments would indicate that the jurisdiction of the Health Department extends over those military installations which are subject to state laws.

However, the Act is to be construed as a whole. See *Garson V. Steamboat Canal Co.*, 43 Nev. 298; 185 P. 801. It is to be observed that Section 12 provides that it shall be unlawful for any person to operate a food establishment without a permit from the Health Officer. Again, in Section 1 of this Act a person is defined as "person, firm, copartnership, association or corporation." Again we are of the opinion that the Federal Government and its officers or agents is not such person as is contemplated by the Act to be subject to this control. Since the prohibition of Section 12 does not apply to the Federal Government, it follows that the regulatory powers of the Health Department do not apply to it.

We do think, however, that the companies or individuals who bring milk into Nevada or possess it within the State for sale, whether to military bases or not, and who are not authorized to do so by our Health Department are in violation of our laws and must obtain a permit from and subject themselves to the requirements set forth in the Health Laws.

The answer to Question 1 answers Question 2. However, in this connection it may be added that the primary purpose of our health laws is to protect the residents of this State. It is our information that very few, if any, of the military personnel stationed at Nellis Base are Nevada residents. The food served in the mess halls is served to military personnel, the health and well being of which is, of course, properly left to the military people in charge.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-18. Public Schools—Trustees of school districts other than those of the first class not authorized to lease or rent out the school district real property.

CARSON CITY, March 2, 1955.

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

DEAR MR. BEKO: This will acknowledge receipt of your letter dated January 26, 1955 requesting the opinion of this office on the following fact and questions.

We quote the factual situation from your letter as follows:

On the ballot in the general election on November 2, 1954, there appeared a proposition to the voters providing for authorization to issue school bonds for the construction of a new high school at Gabbs, Nevada. Another proposition provided for the construction of a new high school gymnasium in that community. The voters authorized the issuance of bonds for the construction of the school but the proposition providing for the new gymnasium failed to carry the necessary vote. The Board of Trustees of the Toiyabe School District at Gabbs, Nevada, have proposed a plan whereby the voters of that district would initiate the proper proceedings for a special election for the purpose of issuing bonds for the construction of a gymnasium for the elementary school within that district. In the event that the proposition carries at the election their plan is to build the gymnasium, rent the building to the Nye County Board of Education, which governs and supervises the high school in that community, and as part of the rent to require the Nye County Board of Education to maintain and operate the building. This, of course, would provide the students of the high school with a gymnasium, which is desperately needed at this time.

Your questions are quoted as follows:

1. If the voters of the Toiyabe School District, in a special election, approve the issuance of bonds providing for the construction of a gymnasium for the elementary school, governed by the Board of Trustees of said district, could the said Board of Trustees legally rent the gymnasium to the Nye County Board of Education?
2. If Question 1 is answered in the affirmative, could the Nye county Board of Education legally provide for sufficient funds in their annual budget for the purchase of the equipment and furnishings necessary in said gymnasium?
3. Again, if Question 1 is answered in the affirmative, could the Nye County Board of Education legally provide for sufficient funds in their budget for part or all of the expenses of maintenance and operation of said gymnasium?

OPINION

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

We have assumed in our study of this problem that the cooperation of Nye County as a whole is required in order that the proposed gymnasium be equipped and maintained after it is constructed, and for this reason this plan is purposed; although it appears that possibly some of

the rent from the county may be used to alleviate the burden of reducing the obligation of the Toiyabe School District on its bond for construction of the elementary school gymnasium. However this may be, in light of your reported desperate need for the gymnasium we have endeavored to work this plan into the law to the end that it be authorized.

After a careful examination of the law on the subject, we are unable to find authorization for the rental by the school district trustees of any of the district's real property.

Chapter 31, Section 277 of the 1947 School Code provides as follows:

Boards of school trustees of districts of the first class, county boards of education, and boards of school trustees in charge of high school districts, *and none other*, in this state, are hereby authorized to sell or lease any real property belonging to one (1) or both of their respective districts, whether acquired by purchase, dedication or otherwise. (Italics added.)

It is our information that the Toiyabe School District is not a district of the first class. In light of this fact, the trustees of that district cannot lease or rent the real property of the district to anyone let alone to the County Board of Education of the county which by vote has rejected the burden of constructing the building.

Nor are we able to find provision permitting the people of the district by vote to authorize the rental of the district's school real property. See in this connection Section 274, Chapter 31, of the School Code.

Answers to Questions Nos. 2 and 3 are unnecessary.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-19. State Tax Commission—Formation of Nevada corporation by foreign liquor importer for sole purpose of buying bulk liquor in foreign jurisdiction for shipment to importer forming the Nevada corporation will not avoid Nevada laws applicable to liquor importers.

CARSON CITY, March 3, 1955.

MR. GROVER HILLYGUS, *Supervisor, Liquor Tax Division, Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. HILLYGUS: This is in answer to your letter of March 2, 1955, wherein you inquire as to whether a California importer of liquors, forming a new corporation in Nevada for the sole purpose of buying bulk whiskey in Kentucky for delivery in California can avoid securing a license in Nevada or from paying an excise tax in this State.

STATEMENT

A study of the applicable Nevada statutes will reveal that the Legislature foresaw the possibilities of such transactions and enacted appropriate safeguards.

Section 3690.01(e) provides that "To sell" or "sale" means * * * "to solicit or receive an order for. * * *"

Section 3690.01(i) defines importer as "any person who, in the case of liquors which are brewed, fermented or produced outside the state, is first in possession thereof within the estate after completion of the act of importation."

Section 3690.02 provides that "No person shall be an importer unless he first secures an importer's license or permit from the State of Nevada as hereinafter provided."

In addition Section 3690.02 provides that in addition to an importer's license, a license is required for sale according to the class of business he is in.

In order to apply for a license the law provides (Sec. 3690.05) "* * * Each applicant for a wholesale wine or liquor dealer's license or for a wholesale beer dealer's license shall agree to establish and maintain a place of business in the State of Nevada, and must keep on hand therein at all times liquor of a wholesale value of at least one thousand (\$1,000) dollars. * * *."

Section 3690.16 provides that "No person shall directly or indirectly * * * furnish or sell, or solicit the purchase or sale of any liquor in this state * * *, unless such person shall have fully complied with the provisions of this act."

Section 3690.19 provides for an excise tax for importers.

It can be ascertained from the letter of Heller, Ehrman, White & McAuliffe addressed to your office that orders would be received in Nevada for delivery to Kentucky covering shipments to California. You will note that under Section 3690.01(e) N.C.L. "To sell" or "sale" means * * * "to solicit or *receive an order for* * * *." (Italics ours.)

In order to "sell" under the statutes hereinbefore referred to, it is necessary under the circumstances set forth in the letter from counsel for the proposed new Nevada corporation, that an application be made for (1) an importer's license, and (2) for a license to sell.

In order to apply for a license the applicant must agree to establish and maintain a place of business in Nevada and keep on hand at all times liquor for a wholesale value of at least one thousand (\$1,000) dollars.

The sale, or solicitation for sale, of any liquor in this State is prohibited unless the seller has first complied with our laws.

If the liquor of a value of not less than one thousand (\$1,000) dollars is stored in this State as required, then of course it is subject to tax.

OPINION

It is the opinion of this office that an importer in California, forming a corporation in Nevada for the sole purpose of buying bulk whiskey in Kentucky for delivery in California, would, for the reasons hereinbefore stated, have to secure an importer's and seller's license, to store liquor of a wholesale value of not less than one thousand (\$1,000) dollars at an established place of business in Nevada, and to pay a tax thereon.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-20. Constitutional Law—State legislation attempting to fix the purchase price of milk purchased in another state for consumption in Nevada is unconstitutional.

CARSON CITY, March 10, 1955.

HONORABLE NORMAN SHUEY, *Assemblyman, Churchill County, State Capitol, Carson City, Nevada.*

DEAR MR. SHUEY: This office is in receipt of your letter dated March 8, 1955, requesting the opinion of this office on the following question:

We quote your question from your letter:

I am requesting an opinion concerning Senate Bill No. 151, as to the constitutionality that would arise if it were put into law. My principal concern is whether or not California's controlled milk price can enter into another state's controlled price without entering into interstate trade jurisdiction.

After conversation with you, we conclude that the precise question you wish determined is whether those provisions of the proposed law which effect or attempt to effect a control of the price to be paid by distributors to out of state producers or distributors is constitutional.

OPINION

This office is of the opinion that those provisions of the proposed law requiring the purchase of milk from any producer at the prices fixed by the proposed commission would be unconstitutional because such law would encompass out of state producers, as well as those within the state, thereby creating a direct burden on interstate commerce.

The enactment of state milk price control legislation has been held valid as within the constitutional power of state legislatures in a series of United States Supreme Court decisions upon the basis that such control may, by determination of the Legislature, be necessary to save producers and the consumers from such unfair trade practices as would be so destructive as to endanger the milk supply. The basic case on this point is *Nebbia v. New York*, 291 U.S. 502.

Thus we find that constitutional objections to this type of law have heretofore been resolved by the courts in favor of its validity so long as the law is not arbitrary, discriminatory or obviously irrelevant to the purpose for which it was designed. Concerning the proposed law here under discussion, this office is of the opinion that should the Legislature determine that the public welfare requires its enactment, it would meet the constitutional requirements and be free from objection on that basis; save and except for those provisions heretofore referred to which would burden interstate commerce.

The proposed law is designed in such a way as to regulate price control in every phase of milk distribution. Very briefly, it provides for the establishment of a commission which in turn is delegated the authority to establishment of a commission which in turn is delegated the authority to establish marketing areas in which the wholesale price to be paid by the retailer to the distributor, and the retail price to be paid by the consumer to the retailer shall be set by the commission, and the marketing plans shall include the fixing of prices to be paid by the distributor to the producer. It is in this last phase, the fixing of prices to be paid to producers, that we find the prime constitutional objection to the plan.

In subsection (f), Section 62 of Article VII, we find that a distributor will be engaged in unfair practice if he pays a lesser price to *any* producer than the minimum price established by the commission. This would preclude a distributor from purchasing milk from an out of state supplier at a lesser price than that established by the Nevada commission. This would be unconstitutional.

This question was the subject of decision by the United States Supreme Court in *Baldwin v. Seelig*, 294 U.S. 511. Although the New York Milk Control Act there under discussion was more specific to the effect that milk purchased from producers outside of New York State at a lesser price than that fixed for milk produced within the state was unlawful, nonetheless the proposed Nevada law does in effect the same thing without detail. Moreover, we are inclined to this view even though the proposed Nevada law in Section 17 states that nothing in this Act shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or cream. In *Baldwin v. Seelig*, *supra*, New York asserted that it had the power to restrain the sale of milk in New York if the price paid to the producers in Vermont was less than that required to be paid to the producers in New York. The Supreme Court after declaring that New York has no power to project its legislation into Vermont by regulating the price to be paid in that state for milk acquired there and that New York is equally without power to prohibit the introduction within her territory of milk of wholesome quality acquired in Vermont, whether at high or low prices, held that such power if exerted would in effect set up a tariff barrier between the states which is a direct burden upon interstate commerce, and violative of Article I, Section 8, Clause 3, of the Federal Constitution, which commits control of interstate commerce to Congress. The court points out that to permit such power to the state, upon the excuse that public necessity of the state requires it, would be to invite a speedy end to our national solidarity.

In the case of *Highland Farms Dairy v. Agnew*, 300 U.S. 608, the same court dealt with a statute similar to the Nevada proposed law. However, that statute contained a specific provision that none of its provisions shall apply to foreign or interstate commerce nor was there any direct provision permitting control over out of state purchases. Rather the Act was designed to control the price at the retail level only within the marketing area.

We are of the opinion that subsection (e) of Section 62 is open to the same objection as that found in subsection (f). Moreover, there are other sections of the Act open to the same objection.

There is a further point to be considered. Section 66 of the proposed law provides that the price fixing plan may apply to milk received within the marketing areas which is destined to be shipped out of the State of Nevada. There may well be a serious question of whether this would be considered such a direct burden upon interstate commerce as to preclude the state power to so legislate. We think that the percentage of out of state shipments of milk produced in Nevada would be an important factor to be considered in determining this point. See, in this connection, *Milk Control Bd. v. Eisenberg Farm Products*, 306 U.S. 346.

While we are aware of the plight of the Nevada milk producers, we are at the same time of the opinion that any state legislation which would directly impede the free flow of milk supply from sister states would be determined to be unconstitutional and therefore void. Inasmuch as the states have by the Federal Constitution committed the control of interstate commerce to Congress, it is our thought that the regulations fixing the price of milk in interstate commerce, if necessary, can only be provided by the Federal Government under the Federal Statutes designed for that purpose, and leaving the matter of intrastate control to legislation such as the type here under discussion.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-21. Court may refuse to accept bail bond issued by a surety company licensed to do business in Nevada.

CARSON CITY, March 15, 1955.

MR. PAUL HAMMEL, *Insurance Commissioner, Carson City, Nevada*.

DEAR MR. HAMMEL: This is in reply to your letter of March 14, 1955, in which you ask me the following question:

May a Court refuse to accept a bail bond issued by a surety company duly licensed and authorized to issue bail bonds in the State of Nevada?

STATEMENT

Under Sections 11106 through and including 11145 N.C.L. 1929 as amended, and particularly Section 11127 N.C.L. 1929, the bail must be approved by the court or magistrate.

There is a reason for this broad discretionary power. The court may, in its inquiry, determine that despite the licensing of the surety company, factors are present, or have arisen, which make the acceptance of the bond undesirable. It is the prime consideration of the court that the State be protected, and being in the best position to determine whether under the circumstances it will be protected, its decision as to the acceptance or refusal of the bond will not be disturbed.

OPINION

For the reason heretofore stated it is the opinion of this office that a court may refuse to accept a bail bond issued by a surety company licensed and authorized to issue bail bonds in the State of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-22. Food—Food, Drug and Cosmetic Act not superseded by Chapter 116, 1943 Statutes of Nevada.

CARSON CITY, March 16, 1955.

MR. E. L. RANDALL, *Commissioner, Public Service Division, University of Nevada, P.O. Box 719, Reno, Nevada*.

DEAR MR. RANDALL: This will acknowledge receipt of your letter of February 4, 1955, in which you request the opinion of this office as to whether the Nevada Food, Drug, and Cosmetic Act, Chapter 177, 1939 Statutes of Nevada, which is administered by your department, has been in any way superseded or otherwise affected by Chapter 116, 1943 Statutes of Nevada, an Act requiring the State Health Department to inspect food and drink establishments.

OPINION

A literal reading of the two Acts in question indicates not only that both Acts relate in certain respects to the same general subject matter, namely, food, but that there appears to be a duplication of the functions to be performed by the two departments charged with the administration of them. If the question were pursued no further, it could be held that those provisions of the Food, Drug, and Cosmetic Act which relate to the same subject matter and which are inconsistent or in conflict with the provisions of the later Act, have been repealed by implication. Repeal by implication being a factor for consideration since the later Act does not contain an express repeal of the earlier Act or any part thereof. However, one of the well established rules of statutory construction is to the effect that two statutes relating to the same subject matter are to be read and construed together, with a view to harmonizing them, if possible, to give effect to both, unless the later Act expressly repeals the earlier, or is so repugnant to it as to repeal it by necessary implication, repugnancy being inconsistency or conflict with something else. See *Presson v. Presson*, 38 Nev. 203.

With the above-stated rule in mind we inquired further into the matter, and through discussions with yourself and with the State Health Officer found that the functions of the two departments under their respective Acts are technically different from and not inconsistent with each other. Each serves a necessary and useful purpose, and although closely related in some respects, do not necessarily interfere with each other.

It is the considered opinion of this office that Chapter 116, 1943 Statutes, does not supersede or repeal any of the provisions of the Nevada Food, Drug, and Cosmetic Act, Chapter 177, 1939 Statutes.

Although there appears to be some jurisdictional overlapping as between the two departments and their respective Acts, we do not think that any duplication of effort was intended or exists. We do not express any opinion at this time as to the jurisdiction of either department, but rather feel that such can and should be worked out on a cooperative basis by the heads of the two departments. Should it become apparent that any differences of opinion cannot be settled satisfactorily, then a more precise delineation of functions and duties by the Legislature will probably be the only solution.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1955-23. Fish and Game—Mines and Mining—A fisherman or hunter entered upon land located as a mining claim without the permission of the locator is in the statue of a trespasser.

CARSON CITY, March 17, 1955.

MR. FRANK W. GROVES, *Director, Fish and Game Commission, 51 Grove Street, Reno Nevada.*

DEAR MR. GROVES: The following opinion is in answer to your letter dated January 25, 1955 posing the following questions for answer.

QUESTION

1. May an angler fish along a stream or river which runs through a posted mining claim?
2. May a hunter walk over a mining claim on public domain or national forest lands?
3. Is it legitimate for the owner of a claim (not patented land) to post such areas against trespass?

OPINION

Questions 1 and 2 are answered in the negative. Question 3 is answered in the affirmative.

Section 10447, N.C.L. 1929, provides that it shall be a misdemeanor to enter upon the land of another after being warned not to trespass thereon, and that signs properly posted shall constitute sufficient warning against trespass.

The foregoing section provides criminal liability for the unauthorized entry upon the land of another when such land is properly posted.

The common law action of trespass permits civil remedy for damages for the unauthorized entry upon the land of another.

Trespass is a disturbance to the possession. That is to say, the remedy of trespass is available not only to those who hold legal title to land and are in possession, but to those, also, who hold a possessory right or are in possession of the land even though they do not in fact hold the legal title to the land. This is elementary in the law. Likewise, the statute referred to above is designed for the purpose of preventing the disturbance of one's possession of the land.

Now, if the locator of a mining claim has the possessory right to the surface of the claimed land, he is in the position of one whom the law, referred to above, is designed to protect.

Mining claims located on the Federally owned public domain in Nevada must be located in accordance with the Federal mining laws and in accordance with those Nevada mining laws not in conflict with the Federal laws. Likewise, the rights of a locator thereon are governed by the Federal law on the subject.

The Federal mining law contained in 30 U.S.C., Section 26, provides, in part, as follows:

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the 10th day of May, 1872, so long as they comply with the laws of the United States, and with the 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 locations, * * ** (Italics added.)

The Federal law, therefore, grants to the locator the exclusive right of possession and enjoyment to the surface of the land within the confines of the claim.

The import of this Federal law has received interpretation in many cases; which are all to the effect that the locator of an unpatented mining claim holds the exclusive possessory rights thereto. The citation of a few cases will suffice.

In *Aurora Hill Mining Co. v. Eighty-five Mining Co.*, 34 F. 515, a case decided in the Federal Circuit Court for the District of Nevada, the court held that as against a trespasser prior possession will support the action of ejectment, and as to mining claims, possessory title is sufficient. In *Black v. Elkhorn Mining Co.*, 163 U.S. 445, it was held that a locator of an unpatented mining claim has the possessory rights conferred by the Federal statute. In *Forbes v. Gracey*, 94 U.S. 762, it was held that a mining claim is property in the fullest sense of the word and may be made the subject of a lien for taxes and sold to enforce the lien.

Thus, we see that the claimant of an unpatented mining claim has such a possessory interest as will warrant the exclusion, if he so chooses, of persons entering upon his land.

What of mining claims located upon land selected by the State from Federal land grants; title to which is held by the State of Nevada?

Section 4154, N.C.L. 1929, provides that the Federal Government reserved the mineral rights in such lands and that the location of mining claims can be made thereon notwithstanding the State's selection of the land, and that the title to such claims must be obtained under the laws of Congress.

We see, therefore, that in such instance the Federal law is again controlling, and we are of the opinion that the rights incident to such claims under the Federal law again attach. The claimant has, therefore, a full possessory right to the surface of the claimed land.

Finally, what of those locations made upon privately owned lands in Nevada?

Section 4157, N.C.L. 1929, in consideration of the paramount importance of mining in the State, provides that the location of mining claims can be made upon the unfenced, unimproved land in private ownership if done in accordance with the laws of the United States and in accordance with the procedure provided by the Nevada law. Here again we have the incidents of the Federal law attaching, and it is our opinion that such locator would have full possessory rights, if once perfected, to the surface of the claim.

There remains only one point to be clarified. If the stream or river running through a mining claim is one declared to be navigable, will that fact provide the means of fishing the stream from its banks upon the claimed land without the necessity of obtaining permission from the claim owner? This fact of the declaration of navigability has no effect upon the locator's possessory rights. So long as the fisherman is entered or standing upon the claimant's land and not in the bed, or that which is declared to be the bed, of the navigable stream, he is, if without permit from the claimant, in the status of a trespasser.

It may be added that this opinion deals purely with the technical legal aspects of the subject, and we think that even with the present acceleration of mining claim locations in this State, it should be borne in mind that there have been very few disputes, if any, in the past between locators and hunters or fishermen in this State.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-24. State employees entitled to lump sum payment for accumulated annual leave upon termination of employment by reasons other than death.

CARSON CITY, March 17, 1955.

MR. WORTH MCCLURE, JR., *Personnel Director, Nevada State Personnel Department, Heroes Memorial Building, Carson City, Nevada.*

DEAR MR. MCCLURE: This is in reply to your letter of March 10, 1955, requesting an opinion as to whether accrual of leave is a part of the employment contract under Section 42, Chapter 251, 1953 Statutes of Nevada, entitling state employees separating from state service, for reason other than death, to a lump sum payment for accumulated annual leave.

STATEMENT

I am familiar with the opinion issuing from this office on February 19, 1954, wherein my distinguished predecessor in this office ruled that termination of service extinguishes accumulated leave, but with this ruling I disagree. While the rulings and opinion of former Attorneys General should be afforded the greatest weight and consideration, and should in most instances be followed, yet there are occasions and instances when former edicts must bow to a more liberal and reasonable interpretation of the law. This is especially true where the rights of employees of our State are concerned.

In enacting the legislation creating a State Department of Personnel, The Legislature set forth the purposes of the Act in Section 1, Chapter 351 of the 1953 Statutes:

The legislature declares that the purpose of this 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 the governmental departments and agencies by the improvement of methods of personnel administration.

It is to be noted that one of the purposes set forth is “* * * to establish conditions of service which will attract officers and employees of character and ability * * *.” One of the conditions of service which tends to achieve this purpose is that found in Section 42 of the Act:

All employees, in the public service, whether in the classified or unclassified service, shall be entitled to annual 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 thirty working days. * * *

I disagree that a liberal and reasonable interpretation of Section 42 of the Act might be construed to apply to Section 43 of the same Act, which provides for sick and disability leave. The accumulation of vacation time arises as a result of steady and oftentimes arduous work which necessitates a cessation from labor and a quest for diversion removed from the everyday pressure of a person's job. This is earned by a conscientious attention to duty and is, in addition to a necessary release from duty, a reward. Disability or sick leave, on the other hand, are contingent benefits which might not arise, or be used, and are dependent on health and well-being of the employee. If a person is terminated from state service without having been ill enough, or sufficiently disabled, to have used accumulated sick or disability leave, the State cannot project such leave into the future.

Earned vacation time stands on a different footing. Many times the increased and unforeseen volume of office business necessitates the postponement of a vacation for certain employees. Is it reasonable to hold that because necessity defers a vacation for some, while others more fortunate have a vacation period, that those in the first category should be denied the earned rest and

recreation merely because their services are terminated by other than death? We think that to so hold would be a strained construction of the law, and one not in keeping with the intent of the Legislature.

This in no way affects our interpretation and opinion of the termination of accumulated leave upon death, as set forth in OPINION NO. 199, dated February 8, 1955.

OPINION

It is the opinion of this office that state employees separated from state service, for reasons other than death, are entitled to compensation for accumulated annual leave not to exceed 30 working days, under their contract of employment.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-25. Salary of Executive Secretary of Public Employees Retirement Board frozen by Chapter 295, Statutes of 1953, until further legislative action.

CARSON CITY, March 18, 1955.

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

DEAR MR. BUCK: You have requested an opinion from this office as to whether an amendment to the Public Employees Retirement Act, passed at this session of the Legislature, wherein reimbursement for expenses is to be met from Public Employees *Administrative* Retirement Fund, rather than from the Public Employees Retirement Fund, would have the effect of superseding Section 4(3) of the Act, and thus give the Public Employees Retirement Board the right to fix the salary of the Executive Secretary, despite the salary set by Chapter 295 of the 1953 Statutes of Nevada.

STATEMENT

Section 4(3) of the Act, prior to the amendment by this session of the Legislature, and after such amendment, provides that the board shall employ an Executive Secretary “* * * and in accord with the adopted pay plan of the state, shall fix the salaries of all persons employed for the purpose of administering the system * * *.”

Since the Legislature, under Chapter 295 of the 1953 Statutes, adopted a pay plan for certain elective and other officers of the State Government, including the office of Executive Secretary of the Public Employees Retirement System (Sec. 38), and since the Legislature has not changed or altered that plan, the plan remains the adopted pay plan of the State as referred to in the Act as amended.

OPINION

It is the opinion of this office that the amendment of the Public Employees Retirement Act by the 1955 Legislature does not effect a superseding of the provisions of the amended Act so as to give the Public Employees Retirement Board the right to fix the Executive Secretary's salary at a figure other than the \$6,600 per annum provided for in Chapter 295 of the 1953 Statutes of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-26. Fish and Game—Residence—Bona fide resident as used in the Fish and Game Law for the purpose of obtaining a resident license is one who makes Nevada his domicile.

CARSON CITY, March 21, 1955.

MR. H. SHIRL COLEMAN, *Acting Director, Fish and Game Commission, P. O. Box 678, Reno, Nevada.*

DEAR MR. COLEMAN: This office is in receipt of your letter dated March 15, 1955, concerning the interpretation of Section 50, Nevada Fish and Game Laws.

It appears that a resident of New Mexico has been cited for furnishing false information to obtain a resident fishing license. It further appears that this man is in and out of Nevada, and while in Nevada, is here in his capacity of an officer employed by the Federal Government in the furtherance of its atomic energy project in Nevada. The man claims that he is entitled to a resident fishing license for the reason that, for that purpose, he is a resident of Nevada. He claims such residence on the basis that inasmuch as the time in which he has been in Nevada, in the aggregate, amounts to a period of more than six months required. He claims that inasmuch as the provision of the law contains no provision for continuity of residence, his statement of residence and purchase of a resident license is true and valid.

OPINION

Section 50 of the Nevada Fish and Game Code provides, in part, as follows:

The licenses shall be issued at the following prices: First—To any citizen of the United States, who has been a bona fide resident of the State of Nevada for six months, upon the payment of \$3.50 for a fishing license, \$3.50 for a hunting license
* * *

While it is true that the foregoing does not say that the person is required to have been actually and physically present in the State for a period of six months next preceding his purchase of the license, nonetheless it does require that a person be a bona fide resident of Nevada.

A person has but to look at the various cases defining the word “resident” or “residence” to know that its definition is extremely elusive, and it becomes readily apparent that its definition is to be derived from the context of the statute or wording wherein the word is used. Now, in the above-quoted statute, not only is the word “resident” qualified and narrowed by the adjectives “bona fide” which surely must connote that type of residence which is more than the mere temporary presence of a person in a particular locality, but it is obvious that it was the intention of the Legislature to give a preference to those persons who do in fact make their home in Nevada, who do in fact support and are interested in the Nevada wildlife conservation programs, and whose public funds are appropriated to such programs when needed. It has been and is their responsibility to require and provide for the administration of the excellent wildlife conservation program in this State. The Legislature has seen fit to place such persons in a preferred class insofar as the fee required to obtain a license is concerned.

We are, therefore, of the opinion that the wording “bona fide resident” as used in the above-quoted statute is synonymous with the word “domiciliary” or one who makes his domicile or home in Nevada.

We are supported in this conclusion by the few cases which have defined the term “bona fide residence” which hold that such term means residence with domiciliary intent. Although such cases deal with the residence requirements in divorce proceedings, nonetheless, in light of the context of our statute, as above quoted, we feel they are applicable. See, for example, *Starr v Starr*, 78 Pa. Super. 579.

Of greater importance, we are supported in this conclusion by Section 6405, Nevada Compiled Laws 1929, which provides as follows:

The legal residence of a person with reference to his or her right of suffrage, eligibility to office, right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he or she shall have been actually, physically and corporeally present within the state or county, as the case may be, during all of the period for which residence is claimed by him or her; provided, however, should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered his residence, the time of such absence shall not be considered in determining the fact of such residence.

The inclusion of the reference to the right of suffrage in this statute is, in itself, sufficient to conclude that the Legislature, in using the term “legal residence,” was using the term as synonymous with “domicile”; for it would be rather startling to conclude that any person other than a resident with domiciliary intent could exercise his right to vote in Nevada. It is almost axiomatic in the law that the term residence for the purpose of voting is synonymous with the term domicile.

What then is the significance of the fact that the term “bona fide resident,” as used in the Fish and Game Law, is to be taken as synonymous with the term “domiciliary” or one who has his domicile in Nevada?

The significance is this: A person may have more than one temporary residence, but he can have only domicile. This is elementary in the law. In order to establish domicile, one must be actually present in the place coupled with the intention in good faith to make that place his permanent abode insofar as his present intention is concerned. If he never had that intention, he has not established a domicile in that place.

Thus, if the man from New Mexico, regardless of how many times he has been in Nevada and for whatever lengths of time, has at no time come to Nevada with the intention to make this his permanent home, he has not become a domiciliary of Nevada nor a legal or bona fide resident as contemplated by the above-quoted statutes. If such be the case, he does not qualify to obtain a resident fishing license. If, however, he has established his domicile in Nevada for a six-month period, the fact that he may have left the State at different times during that period does not mean that he has lost or given up his Nevada domicile so long as he has had the intention to return to Nevada as his home. In such case he would be entitled to the resident license.

It may be added that intention in this regard is a matter of proof. Where the man votes, where he pays his taxes, where he maintains his home with his family, where he maintains the bulk of his property, etc., are all factors contributing to the proof of his intention.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-27. Clark County—Assembly Districts—Elections—Specific provision required for election of Assemblyman by district rather than by county at large.

CARSON CITY, March 21, 1955.

MISS MAUDE FRAZIER, *Assemblywoman, Clark County, State Capitol Building, Carson City, Nevada*.

DEAR MISS FRAZIER: In response to your telephonic request of March 21, 1955, for the opinion of this office regarding S.B. 85 and lines 17 through 22, page 5 of S.B. 233, please be advised as follows:

The questions you have asked may be stated as follows:

1. Do the provisions contained in lines 17 through 22, page 5, of S.B. 233 duplicate and make unnecessary the provisions of S.B. 85?
2. If the answer to question No. 1 is in the negative, need S.B. 85 provide for anything more than the establishment of assembly districts?

OPINION

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

S.B. 85 seeks to amend Chapter 189, 1947 Statutes of Nevada, as last amended by Chapter 290, 1951 Statutes of Nevada, by providing that Clark County shall be divided into four assembly districts (rather than three) and that the "assemblymen shall be elected at large from within the district wherein they reside by the qualified electors residing in that district." The bill then goes on to provide for the establishment by the County Commissioners of election precincts so that each precinct shall be wholly within some one of the assembly districts.

S.B. 233, which is an amendment to the 1917 General Election Law, provides in lines 17 through 22, page 5, as follows:

However, candidates for township and assembly district offices shall be listed respectively on the ballots issued to the townships' and assembly districts' electorates entitled to vote on such officers or offices particularly, with care exercised that no electorate of one township or assembly district shall have the opportunity to vote on the officers or offices of another township or assembly district.

You will note that the word "particularly" is used in line 20. We are of the opinion that the above-quoted proposed amendment will apply, insofar as Assemblymen are concerned, only to those counties in which the law otherwise provides for election of members of the assembly within and by the electorates of established assembly districts. S.B. 85 is apparently intended to qualify Clark County for election of Assemblymen by district rather than by the county at large.

In answer to question No. 2, it is the opinion of this office, based upon the foregoing, that S.B. 85 must provide that Assemblymen be elected from within the district in which they reside by qualified electors residing in those districts, if such is intended to be accomplished.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1955-28. Fish and Game—Terms of office of members of State Board of Fish and Game Commission.

CARSON CITY, March 28, 1955.

MR. FRANK W. GROVES, *Director, Fish and Game Commission, 51 Grove Street, Reno Nevada.*

DEAR MR. GROVES: This will acknowledge receipt of your letter of March 3, 1955, requesting the opinion of this office regarding the terms of office of the members of the State Board of Fish and Game Commissioners from the counties of Lincoln and Douglas, and in which you request the further opinion as to when the term of a newly elected member of the Commission should commence.

STATEMENT

The term of office of Verne Steven of Lincoln County as a member of the State Board of Fish and Game Commissioners expired in 1950. There was apparently no one elected in 1950 to fill the office and Owen Walker was appointed. In 1952 Mr. Walker was elected to and certified for a 4-year term which will expire in 1956.

In Douglas County, Charles Gilbert was elected in 1948 for a 4-year term; he resigned in 1949 and Alex Glock was appointed. In 1950 Mr. Glock was elected for a 4-year term, and in 1954 was reelected for another 4-year term.

In your letter you have observed that Mr. Walker of Lincoln County should have been on the ballot and certified in 1952 for a 2-year term rather than a 4-year term.

You have further observed that Mr. Glock of Douglas County should have been on the ballot in 1950 for a 2-year rather than a 4-year term.

OPINION

The creation of the State Board of Fish and Game Commissioners, together with all matters concerning the election and appointment of members of the board, is provided in Section 3035.09, 1929 N.C.L. 1943-1949 Supp., as follows:

There is hereby created the state board of "Fish and Game Commissioners" which shall consist of seventeen members, one from each of the counties of the state, and each of whom shall be a citizen of the State of Nevada, and an actual and bona fide resident of the county from which he or she is selected as herein provided. Upon the effective date of this act, the governor shall appoint the members of said commission to serve until their successors shall be elected and qualify. At the general election in 1948, there shall be elected in each county of the state on a nonpartisan ballot, one person as state fish and game commissioner who

shall serve without salary, but who shall be allowed the actual and necessary expenses of his office. The term of office of each such commissioner, first elected at the 1948 general election, shall be: from the counties of Elko, Lincoln, Nye, Esmeralda, Lyon, Eureka, Pershing, and Washoe, two years; from the counties of White Pine, Clark, Mineral, Douglas, Lander, Churchill, Ormsby, Humboldt, and Storey, four years; provided, that the term of office of each commissioner, after the expiration of the aforesaid terms, shall be four years.

* * * * *

In the event of a vacancy on the commission caused by death, resignation, failure of election, or a change of residence to a county other than that which the member was elected to represent, or other cause, the governor shall, within thirty (30) days, appoint an actual and bona fide resident within the county affected by the vacancy until the vacancy can be filled by election.

It will be noted that the statute divides the 17 counties into two specific groups in such a way that the terms of the members of one group do not coincide with the terms of the other group. We think the obvious intention of the Legislature was to stagger the terms of office as between the two groups and thereby avoid ever having the board consist entirely of new members.

In the group which includes Lincoln County the first election of board members should have been and apparently was, held in 1948 for a 2-year term, with succeeding elections for a 4-year term to be held in the years 1950, 1954, 1958, etc. Mr. Walker, having been appointed in 1950, should have appeared on the ballot in 1952 for the two years remaining in the regular term, and should thereafter have appeared on the ballot in 1954 for election to the regular 4-year term. See the Constitution of Nevada, Article XVII, Section 22, which provides as follows:

In case the office of any justice of the supreme court, district judge, or other state officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the governor, until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

Also see Section 4812, N.C.L. 1929, which provides as follows:

Whenever any vacancy shall occur in the office of justice of the supreme court or district judge, or any state officer, the governor shall fill the same by granting a commission, which shall expire at the next general election by the people and upon the qualification of his successor, at which election such officers shall be chosen for the balance of the unexpired term.

We think there can be no doubt but that the members of the State Board of Fish and Game Commissioners are state officers within the meaning of the law above quoted.

Applying the same law and reasoning to the case of the board member from Douglas County, we find that a situation similar to that in Lincoln County exists. In the group which includes Douglas County the first election was properly held in 1948 for a 4-year term, with succeeding elections for a 4-year term to be held in the years 1952, 1956, 1960, etc. Mr. Glock, having been appointed in 1949, should have appeared on the ballot and been elected in 1950 for the balance of the unexpired term, rather than for a 4-year term. He should have appeared on the ballot again in 1952 for a 4-year term.

As the situation now exists the terms of office of the board member from Lincoln and Douglas Counties are not in accordance with the provisions of Section 3035.09, N.C.L. 1943-1949 Supp., such members having in effect changed places in the groups to which their respective counties are assigned by statute.

We suggest that these two discrepancies be corrected at the 1956 general election by the election of a board member from Lincoln County for a 2-year term and the board member from Douglas County for a 4-year term.

While it is possible that someone might challenge the right of the subject board members to hold their respective offices, we do not think that such a challenge, even if successful, would invalidate any official act of either of said members, since both can certainly be considered as being at least de facto officers.

In answer to your further request as to when a commissioner's term of office expires and when the term of a newly elected commissioner becomes effective, please be advised as follows:

No specific date for the commencing and ending of terms of offices of Fish and Game Commissioners is provided by Section 3035.09, N.C.L. 1943-1949 Supp. The section does provide, however, that the first members of the board appointed by the Governor shall "serve until their successors shall be elected and qualify."

Attorney General's Opinion No. 350(a), dated December 1, 1954, being supplemental to Opinion No. 350, dealt with a similar question concerning the term of office of United States Senator-elect Alan Bible following the 1954 general election. In that opinion the then Attorney General, W.T. Mathews, advised the Governor that Senator Bible, having been elected to fill the vacancy created by the death of Senator McCarran, was qualified to assume his duties in the United State Senate as of the date of the opinion. In so advising, General Mathews cited Section 2593, N.C.L. 1929, pertaining to the office of United States Senator, which section contains the language: "and until his successor shall be elected and qualified."

Following Opinion No. 350(a), we are of the opinion that commissioner's term expires and a newly elected commissioner's term commences upon the election and qualification of the new commissioner. Allowing the necessary time after election for canvass of the votes and certification, a newly elected commissioner should be able to take his oath of office and qualify sometime in the month of November of the election year.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1955-29. Secretary of State—Corporations—University of Nevada—The corporate name of the University of Nevada, or a name so similar as to mislead the public, is not subject to use by any other corporation established for educational purposes.

CARSON CITY, March 29, 1955.

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

Dear Mr. Koontz: We are in receipt of your letter dated March 15, 1955 requesting an opinion of the following facts and question:

Articles of incorporation of a proposed nonprofit corporation have been submitted to the Secretary of State for filing. The name of the proposed corporation as shown by the articles is "The University of Southern Nevada." The Secretary of State intends to refuse to file the present articles upon the ground of the similarity of the proposed name to that of the State university, the University of Nevada. He requests the opinion of this office as to the propriety of his intended refusal.

OPINION

It is within the discretion of the Secretary of State to determine whether the articles of incorporation submitted to him comply, on their face, with the statutory requirements. *State v. Brodigan*, 44 Nev. 213. One of the requirements being that the name of the corporation shall be distinguishable from that of any other corporation formed in Nevada. Such requirement is readily complied with, insofar as the Secretary of State is concerned, by an examination of the face of the articles.

The proposed corporation must use such a name as will distinguish it from the University of Nevada.

The University of Nevada, although not specifically incorporated by statute, is nonetheless a corporation or corporate entity. It is, properly speaking, a public corporation as distinguished from a private one. It is a legal entity or body politic created by law which has an existence separate and distinct from the individuals delegated to carry out its purposes, and that existence is a continuing one regardless of the various changes made in its personnel from time to time. Moreover, its purposes can only be carried forward by its activity in a corporate capacity. The cases on this point are not numerous, but those that have dealt with the subject are in accord that State Universities are bodies corporate even though not expressly declared so by statute. See *State ex rel. Little v. University of Kansas*, 55 Kan. 389, 40 P. 656. For a good collection of cases on the subject see 29 L.R.A. 380-383. Section 7725, N.C.L. 1929, is an Act to fix the name of the State university of Nevada and provides as follows: "The legal and corporate name of the State university shall be the University of Nevada."

Although the proposed corporation here under discussion is being incorporated under Chapter 242, 1949 Statutes, which is an Act authorizing the formation of nonprofit corporations for the purpose of engaging in activities for the advancement of civic, commercial, industrial and agricultural interests of the State of Nevada, nonetheless such a corporation is subject to those provisions of the General Incorporation Law not inconsistent with the special Act under which the corporation is being formed.

Section 1 of the General Corporation Law, Chapter 177, 1925 Statutes, p. 287, as amended by Chapter 124, 1945 Statutes, provides, in part, as follows:

Section 1. The provisions of this act shall apply to corporations hereafter organized in this state except such corporations as are expressly excluded by the provisions of this act; * * * subject, however, to special provisions concerning any class of corporations inconsistent with the provisions of this act, in which case such special provisions shall continue to apply.

Section 4. of the same Act, as amended by Chapter 121, 1949 Statutes, provides, in part, as follows:

Section 4. The certificate or articles of incorporation shall set forth:

1. The name of the corporation * * * shall be such as to distinguish it from the name of any other corporation formed or incorporated in this state, or engaged in the same business, or promoting or carrying on the same objects or purposes in this state.

The Act under which the proposed corporation is being formed, with regard to the corporate name, provides only that the certificate shall state the name or title by which such corporation shall be known in law.

The requirements of the General Corporation Law, regarding name, are in nowise inconsistent with the special Act under which the proposed corporation is being formed. Such requirements are, therefore, a part of the law with which the formation of the proposed corporation must comply, and it must be given a name distinguishable from any other corporation.

Although the provision of our General Corporation Law is not as specific, with regard to the choice of name, as that generally found in other states wherein the usual provision forbids the adoption of a name so nearly resembling the name of another corporation as to be calculated to deceive or mislead, nonetheless, the reason for the rule is the same regardless of the wording used, and the reason for the rule requires the same end result. The test to be employed is whether there is sufficient similarity of names as to mislead or produce confusion. The primary reason for the rule is to protect the public and prevent deception as well as to prevent unfair trade practices between corporations. For an excellent reference and collection of cases on this point see the annotations in 66 A.L.R. beginning at page 948. While the cases deal primarily with private corporations, the rule is even more applicable to the use of a name by a private corporation similar to that of a public corporation sanctioned by the State Government.

The words constituting the name "University of Southern Nevada" taken separately would probably not, in and of themselves, be considered words admitting of exclusive appropriation. They are generic or geographically descriptive words which are not usually considered appropriable. See 66, A.L.R., p. 957. However, these words taken in combination clearly take on a meaning which leads to confusion as to whether such an institution is a part or branch of the University of Nevada. The title "University of Nevada" is one which has taken on a secondary meaning; that of an institution established and sanctioned by the State. The title "University of Southern Nevada" may well partake of that secondary meaning and mislead the public in the thought that such institution is a branch of the state institution. Witness the confusion that exists in the minds of many people with regard to the University of Southern California. Moreover, the State of Nevada is now in contemplation of establishing a southern branch of the University of Nevada in Clark County, Nevada. Under such circumstance the confusion would be complete.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-30. Nevada State Welfare Department has no legal authority to pay for general medical treatment, not connected with blindness, for recipients of aid to the blind under the state program.

CARSON CITY, March 30, 1955.

MRS. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department, Carson City, Nevada*.

DEAR MRS. COUGHLAN: You have made inquiry of this office as to whether the Nevada State Welfare Department has the legal authority to pay for general medical treatment, not connected with the treatment of blindness, for recipients of aid to the blind under the state program.

STATEMENT

Under Section 1 of Chapter 369 of the Statutes of 1953, the purpose of the Act providing for aid to the blind is stated as follows:

The purpose of the provisions of this 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.

The treatment that may be provided for blind persons under the Act is set forth in Section 28. Under this section diagnosis and treatment or operation to prevent blindness, or restore vision, to applicants for, or recipients of, aid to the blind may be provided upon written application to your department. In addition to the foregoing, guide service, maintenance of the patient while away from home, transportation to the doctor or hospital and return, and nursing care in the home may be provided by the Department.

The federal law under which payments are made to the states, and particularly Section 1206 of Chapter 7, Title 42, U.S.C. A., defines the term "aid to the blind" as follows:

For the purpose of this subchapter the term "aid to the blind" means money payments to, or medical care in behalf of or any type of remedial care recognized by the state law in behalf of, blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) * * *.

It is apparent that the federal Act in its definition gave the states the latitude that would enable them to provide medical care for blind persons other than blindness, but the medical or remedial care provided for in the definition is restricted to that recognized by state law.

The budget for your Department was prepared in accordance with needs prescribed by Section 28 of Chapter 369 of the 1953 Statutes, and rightfully so.

OPINION

It is the opinion of this office that the Nevada State Welfare Department is restricted by law from disbursing funds, budgeted for aid to the blind, for medical care other than that connected with blindness.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-31. Employer—Employee. Female employees cannot work more than six days in any calendar week except in certain emergencies.

CARSON CITY, March 30, 1955.

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

DEAR MR. EVERETT: This will acknowledge receipt of your letter of March 9, 1955, in which you request the opinion of this office as to whether a woman would be permitted to work seven days a week providing she did not work more than 48 hours in any one week. You state that the specific case you have in mind is a drive-in where the women employees may work eight hours a day on some days and four hours a day on the remaining days in the week, but not exceeding 48 hours for the seven days.

OPINION

Section 2825.41, Nevada Compiled Laws, 1943-1949 Supp., as amended by Chapter 194, 1953 Statutes of Nevada, provides, in part, as follows:

That with respect to the employment of females in private employment in this state it is the sense of the legislature that the health and welfare of female persons required to earn their livings by their own endeavors require certain safe-guards as to hours of service and compensation therefor. The health and welfare of the female workers of this state are of concern to the state and the wisdom of the ages dictates that reasonable hours, not to exceed eight (8) in any one day, and six (6) days in any calendar week, so as to provide a day of rest and recreation in each calendar week are necessary to such health and welfare, and, further, that compensation for the work and labor of female workers must be sufficient to maintain that health and welfare. The policy of this state is hereby declared to be that eight (8) hours in any one thirteen (13) hour period and not more than forty-eight (48) hours in any one calendar week, and not more than six (6) days in any calendar week is the maximum number of hours and days female workers shall be employed in private employment with certain exceptions in emergencies * * *.

Succeeding sections provide, among other things, for the "certain exceptions in emergencies," none of which provisions are pertinent to your inquiry, and further provides in substance that it shall be unlawful for any employer to employ, cause to be employed, or permit to be employed any female for periods in excess of those above set forth.

Since the language of the above-quoted section of the law is clear and unambiguous, it is not subject to interpretation and means exactly what it says. As applied to your question, it is the opinion of this office that the law prohibits the employment of any female for more than six days in any calendar week except in certain emergencies, and it does not appear that any such emergency exists.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: JOHN W. BARRETT, *Deputy Attorney General*.

OPINION NO. 1955-32. County Commissioners not legally responsible for support of child at Nevada State Children's Home until hearing by court to determine parent's ability to pay.

CARSON CITY, April 4, 1955.

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

MY DEAR MR. WILKES: You have written this office requesting an opinion based on the following facts:

On January 13, 1954, the Seventh Judicial District Court of the State of Nevada, in and for the County of Lincoln, committed four Munfrada children to the State Children's Home at Carson City, and ordered the father, Charles Munfrada, to pay fifty (\$50) dollars per month to the Home for each child.

The father failed to abide by the court order and as a result the amount that the father is now in default is \$2,866.80.

You also set forth that the mother of the children is a patient at Washoe County General Hospital as a tuberculosis patient and that Lincoln County has paid for her care and medical expenses the sum of \$4,320.80, and that the commissioners of Lincoln County feel that in view of the fact that they have relieved Mr. Munfrada of the burden of supporting his wife that he can no longer be classed as an indigent and that therefore the county should not pay to the State Children's Home the amount owed by Mr. Munfrada.

With this factual background you have two questions:

1. Is Lincoln County legally responsible for the expense of the care of the Munfrada children at the Nevada State Children's Home for the time of their commitment to the present date?
2. Will Lincoln County be responsible for the expense of the care of the Munfrada children at the Nevada State Children's Home from and after the effective date of S.B. 235 which is Chapter 209 of the 1955 Statutes of Nevada, when it is considered that the commitment occurred previous to the amendment?

STATEMENT

In 1953 the State Legislature amended Section 13 of the Act for the government and maintenance of the State Orphans' Home, said Section being Section 7592, N.C.L. 1929, by providing that the court order committing dependent or neglected children to the Nevada State Children's Home shall require the parent or parents of the child to pay to the Home the sum of fifty (\$50) dollars per month for the care and support of each child committed. The Act then goes on to protect the parent, the county and the Home, by providing that when it appears to the court that the parent cannot pay the fifty (\$50) dollars per month the court can make an order requiring the payment of such lesser amount as may be found to be reasonable, and the county is then required to pay the difference between the lesser amount and the fifty (\$50) dollars. The Act provides that if it shall appear to the court that the parent cannot pay anything then the county becomes liable for the entire fifty (\$50) dollars.

The Act provides that failure to pay the amount ordered for a period of three years constitutes prima facie proof that the child has been abandoned by the parents.

Under this amendment to the law it becomes clear that the court must decide the amount to be paid. Therefore, when Munfrada either refused to pay, or could not pay, as the case may be, it was incumbent on either the State Children's Home or the County Commissioners of Lincoln County to bring Munfrada before the committing court so that said court could determine whether Munfrada was in contempt of the court's order, or whether his financial situation was such that the original order should be reduced or cancelled.

The 1955 Legislature has again amended Section 13 of the Act (Sec. 7592, N.C.L. 1929) by further providing that if the parent or parents shall fail or refuse to comply with the court order the board of the Children's Home shall notify the commissioners of the county from which said

child was committed and that the county shall pay to the board the amount ordered paid, and that the county shall then be entitled to recover said amount by appropriate legal action from the defaulting parent, with interest thereon at the rate of 7 percent per annum.

OPINION

It is the opinion of this office that Chapter 209 of the 1955 Statutes does not remedy the requirement for court action prior to a determination of the amount to be paid. The requirements of the 1953 Statute have not been rescinded or repealed, but merely precede the 1955 amendment. Therefore the provisions of the 1953 Act which give the court the right to determine whether a lesser amount than that first ordered should be paid by the parent, or whether the parent is unable to pay anything, is still the law.

The only thing accomplished by the 1955 amendment is the right given to the county to institute legal action to recover from the parent, the amount ordered paid, when the parent refuses or fails to make the payments.

It would be unfair and illegal under the existing law to require the county to pay 50 dollars per month for each child, when a court might determine that the parent is able to pay 25 dollars, thus leaving the county's payment for the child's support at 25 dollars. Should the parent not pay or refuse to pay after the court hearing, then the board could notify the County Commissioners and they in turn, after paying the full amount of 50 dollars, could recover from the parent by appropriate legal action the 25 dollars per month that the parent was in default, together with interest as provided in the Act.

Your first question is answered as follows: Lincoln County is legally responsible to pay to the Nevada State Children's Home for the support of the Munfrada children, after an appropriate court hearing, the difference between the amount that the court determines Munfrada is able to pay per month and the sum of 50 dollars, effective as of the date of the hearing.

The Nevada Children's Home having taken no steps to secure a hearing to determine the amount that Munfrada could pay, it is the opinion of this office that the County Commissioners are not liable for payments in arrears.

Your second question is answered by the opinion hereinbefore set forth, as to the proportionate share to be paid by the county, after due hearing, with the right reserved to the County Commissioners under the new Act, to sue Munfrada for any deficiency as to his payments as ordered by the court.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-33. Fish and Game—Under Fish and Game Law, alien, regardless of residence, is, insofar as cost of license fee is concerned, in same status as a nonresident citizen.

CARSON CITY, April 4, 1955.

MR. H. SHIRL COLEMAN, *Acting Director, Fish and Game Commission, 51 Grove Street, Reno, Nevada.*

DEAR MR. COLEMAN: We are in receipt of your letter dated March 16, 1955, requesting the opinion of this office on the following facts and question:

STATEMENT OF FACTS

A Canadian citizen who has apparently resided in Lander County, Nevada, for longer than six months has been cited by one of the wildlife conservation officers for furnishing false information to obtain what the Fish and Game Commission terms a "resident fishing license." Doubt has arisen concerning the propriety of prosecuting a resident-alien under Section 50 of the Fish and Game Law. Some of the District Attorneys feel that prosecution is not feasible because of the ambiguity of the section.

QUESTION

Is an alien required to purchase that type of license authorized under Section 50, subparagraph 2, and pay the fee therein set forth?

OPINION

This office is of the opinion that an alien, whether he is a bona fide resident of Nevada or not, is required to pay the fee set forth in the second subparagraph which is the same fee required of nonresident citizens.

Section 50 of the Fish and Game Law as amended by Chapter 357, 1953 Statutes, provides, in part, as follows:

SEC. 50 The licenses shall be issued at the following prices:

First—To any citizen of the United States, who has been a bona fide resident of the State of Nevada for six months, upon the payment of \$3.50 for a fishing license, \$3.50 for a hunting license, and \$1 for trapper's license; provided, that fishing and hunting licenses and deer tags shall be furnished free of charge to all citizens of the State of Nevada who have attained the age of sixty-five years or upwards.

Second—To any alien or to any citizen of the United States, not a bona fide resident of the State of Nevada, regardless of age, upon the payment of \$5 for a fishing license, or \$3.50 for a five day permit to fish, \$25 for a hunting license, or \$10 for a trapper's license.

Third—To any resident-citizen over 18 years of age who intends to or does trap any mink or muskrat, a special license to trap such animals upon payment of the sum of \$10 in addition to the foregoing trapper's license fee. To any nonresident or alien over 16 years of age \$100.

Fourth—All sums received from the sale of hunting, fishing, and trapper's licenses shall be paid into the state treasury to the credit of the state fish and game fund.

Now, the confusion as to what type of license and fee to be obtained and paid by an alien stems from the punctuation of the wording in the second subparagraph. That subparagraph as it stands, and if it could be divorced from the rest of the section, indicates that only those aliens who are not bona fide residents of the State of Nevada are required to pay the fees set forth therein.

To say that a person is an alien is not to say that, for that reason, he cannot be a bona fide resident. Residence and citizenship are not synonymous. An alien can be a bona fide resident. He has but to have the intention to make a particular place his home, and to be present in that place for the required length of time (in this case six months) in order to establish himself as a bona fide resident. See 17 Am.Jur., p. 612.

However, if we are to say that an alien who is a bona fide resident is, because of his residence, not required to pay the fees set forth in the second subparagraph, we immediately run into confusion and ambiguity for the reason that it is obvious that the Legislature intended to place all person in some category as to the fees they are to pay. By the first subparagraph it is clear that it was intended that citizen-residents of Nevada are to pay the fees therein set forth; that citizens who are nonresidents of Nevada are by the second subparagraph to pay a larger fee. What fee then is prescribed for the alien who is a bona fide resident of six months? We cannot say that he is to fall into the category prescribed by the first subparagraph, because that section is clear and exclusive to the effect that only the citizen-resident is to be in that preferred class; moreover, that subparagraph makes no reference to aliens as does the second subparagraph. If we follow the ambiguity of the second subparagraph, the resident-alien would not be required to pay the fee set forth therein, and we are left with the conclusion that there is no provision for that type of person. It would be equally foolish to say that he is not entitled to a license when, in fact, the legislature indicates that he shall be entitled to one. What, then, is the solution?

The matter of the interpretation of the second subparagraph is easily resolved by the application of the proper rules of statutory construction.

The first rule to be observed is that the intent of the Legislature is paramount. *Ex Parte Smith*, 33 Nev. 466.

The second rule is that the second subparagraph cannot be divorced from the rest of the section. It must be read in connection with the whole of Section 50 in order to arrive at the legislative intent. *State v. Eggers*, 36 Nev. 364.

It being the intention of the Legislature to place the resident alien in some category, and because of the clear wording in the first subsection, he cannot be placed in that preferred class, he must therefore be placed in the category set forth in the second subsection wherein he is mentioned, and wherein it is clear that the Legislature intended to place him.

It remains therefore to deal with the punctuation of the second subparagraph. Had the first comma in that subparagraph been placed after the word "alien" rather than after the words "United States," it would have been clear that any alien regardless of residence is required to pay the fee therein prescribed. This would have made the meaning of that subparagraph clear and consonant with the whole of Section 50.

That this replacement of the comma is warranted as a matter of interpretation is clear, for otherwise we are left without provision concerning the resident alien.

This brings us to the third rule of statutory construction to be observed. That rule is this:

In construing statutes which are rendered in doubt or uncertain by punctuation marks, courts should and do properly regard punctuation marks only as an aid in arriving at the correct meaning of the words of the statutes, and gleaning the true legislative intent, and for this reason, punctuation marks cannot be given a controlling influence. Courts should not hesitate to repunctuate a statute where it is necessary to arrive at the true legislative intent, or where it is manifest that the punctuation or omission thereof is caused by clerical error, inadvertence, or

mistake, or where it is evident that the punctuation gives to the statute an absurd or meaningless interpretation. *State v. Brodigan*, 34 Nev. 486.

It is to be observed that in the third subparagraph the alien, regardless of residence, is placed in the same category as the nonresident, and is required to pay the larger fee when obtaining a license to trap mink or muskrat. This indicates, again, the intention of the Legislature throughout the whole section to require the same fees of the alien, regardless of residence, as that required of the nonresident citizen.

In the opinion of this office, therefore, the second subparagraph of Section 50 must be read as though the first comma follows the word "alien" instead of the words "United States." This results in the requirement that all aliens regardless of their length of residence in Nevada are required to pay the fees set forth in that subparagraph, and are not permitted to obtain the license at a lesser fee reserved to those residents of Nevada whom the Legislature, under the first subparagraph, has seen fit to place in a preferred position because they are citizens of the United States as well as residents of Nevada.

The foregoing opinion is confined solely to the legal effect and interpretation of Section 50. As a practical matter, we have a very different problem concerning the enforceability of the provision when it is taken in connection with the wording of the license issued to a resident-citizen. That license has printed across its top the word "Resident. It also contains the wording "at least (6) six months resident required to obtain a resident license." Following this is the wording in red type: "I am a bona fide resident of and have lived in the State of Nevada for a period ofyears.....months.....owner's signature,"

It is small wonder that an alien who has resided in the State for over six months and intends to stay here as long as he can feels qualified to sign his name to such a statement when in fact he is, under the law, a bona fide resident.

The only wording on the license which might lead the person to think he may not be entitled to this so-called "resident license" is in small black type, "I am entitled to this license under the laws of the State of Nevada." This appears to us a rather slim point on which to prosecute for furnishing false information to obtain a license, if such be a valid criminal charge.

For this reason, this office is also of the opinion that prosecution is not feasible. The license should conform to the statute in this respect, and the statute should be amended to clarify the second subparagraph of Section 50.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-34. Money appropriated in a lump sum by the Legislature for the construction or improvement of State buildings without specifying the amount to be expended on each of two or more structures, leaves the amount to be expended on each building within the discretion of the administrative agency controlling the appropriation.

CARSON CITY, April 5, 1955.

MR. A. N. MACKENZIE, *Secretary, State Planning Board, Carson City, Nevada*.

DEAR MR. MACKENZIE: This will acknowledge receipt of your letter of April 4, 1955, wherein you advise that Senate Bill 223, as originally presented to the Legislature, provided for an appropriation for the construction, reconstruction, remodeling, furnishing and equipping of the Agricultural Extension *or* Hatch buildings.

It is my understanding from your letter that the Legislature substituted the word “and for the word “or” so as to make the appropriation of \$470,000 available to the Agricultural Extension *and* the Hatch buildings.

Your specific inquiry is as to the amount of appropriated funds that must be spent on each building.

OPINION

Where the Legislature makes an appropriation in a lump sum for the construction, etc., of two or more buildings, without specifically stating the amount to be expended on each building, the expenditure is within the discretion of the administrative agency receiving the appropriation, so long as some of the appropriated money is spent on each building. The amount to be expended on each building is entirely discretionary in this instance with your board.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-35. Nevada School of Industry—State Department of Personnel—State Department of Personnel has authority to deduct from wages of employees at Nevada School of Industry for board and room. Minimum Wage Law for women has no application to state employment.

CARSON CITY, April 6, 1955.

MR. WARD SWAIN, *Superintendent, Nevada School of Industry, P.O. Box 469, Elko, Nevada*.

DEAR MR. SWAIN: This will acknowledge receipt of your letter of March 28, 1955, in which you point out that there is dissatisfaction and a constant turnover of employees at the Nevada School of Industry, largely because of a deduction from wages of employees, for board and room furnished to each such employees, by reason of an order or ruling of the State Department of Personnel. The deduction for this item is \$30 per month.

You also mention the long hours of work of such employees, stating that the average is 81 hours per week, contrasted with the usual number of hours of work of state employees of 48 hours. You also mention that there is a stand-by service of 24 hours per day. By this we understand that you mean that they are subject to call, in an emergency at all hours.

Two questions are posed, viz:

1. Does the law allow a deduction from wages for board and room by reason of board and room supplied at the Nevada School of Industry? and
2. May a state agency pay less than the statutory minimum wage?

The Nevada School of Industry was created by legislative Act of 1913. See: Statutes of Nevada 1913, Chapter 254, page 384.

An exhaustive study of all statutes subsequent to that date appertaining to the Nevada School of Industry, fails to disclose that board and room was ever specifically granted by statutory law to such employees.

The Legislature in 1953 exhaustively covered the administration of the Nevada School of Industry. See: Statutes of Nevada 1953, Chapter 197, page 229.

Section 2 of this Act created the advisory board and defined their duties.

Section 6 provided for the manner of appointment of the superintendent and defined his duties. Under this enumeration of duties, subparagraph (3), it is provided:

To be responsible for and to supervise the fiscal affairs and responsibilities of the school, and to purchase such supplies and equipment as may be necessary from time to time.

This statute (1953, p. 229) repeals the Act of 1913. Although the statute of 1953 spells out with particularity of the duties of the officers of the institution, it is silent on the question of the supplying of board and room to employees.

The State Department of Personnel Act also was passed by the Legislature of 1953. See: Statutes of Nevada 1953, Chapter 351, page 645.

Section 1 of the said Act provides:

SECTION 1. The legislature declares that the purpose of this 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 the governmental departments and agencies by the improvement of methods of personnel administration. The legislature further declares its intention that to establish effective personnel management it is necessary that a survey of all state departments be conducted by a firm skilled in public administration, finance and personnel management to form a sound framework from which to build. The legislature further declares that, in its considered judgment, the proper administration of our state government requires the enactment of this measure.

Section 3 of the Act provides for a survey of the State Government, by a skilled and qualified firm to the end of adoption of a uniform system of job classifications, "salary advancements promotions or demotions."

Information from the State Department of Personnel office reveals that such a qualified firm did survey the State Government in the manner and for the purposes outlined in the Act creating such department.

Among others, job classifications and corresponding recommended salaries were worked out by this agency, and substantially were adopted by the department.

This firm in considering the employees at the Nevada School of Industry, and in making recommendations for their titles and wages, did keep in mind that the normal hours of work of such employees were in the neighborhood of 80 hours per week.

Since the rating as to salary was based upon hours and the type of work compared to others of similar occupation, it was then considered and deemed proper that a reduction from wages be taken by reason of the fact that the school does supply board and room.

The question of authority to make such a deduction from salary is therefore one of statutory construction.

In construing a statute, words must be given such reasonable construction as will carry out the intention of the Legislature. *King v. Board of Regents*, 65 Nev. 533, 200 P.2d 221.

A statute must be given that construction which will "effect its purpose." 57 C.J., Sec. 571, p. 961.

Implications and inferences may be resorted to, to ascertain the legislative intent and to carry into effect implied powers, when in harmony with the general purpose of the statute. 59 C.J., Art. 575, p. 972.

General provisions in statutes must give way to more specific provisions. 59 C.J., p. 1000.

Although, in the absence of a more specific act the provisions formerly quoted authorizing the superintendent of the Nevada School of Industry to supervise the fiscal affairs of such school would probably authorize such officer to allow board and room, without charge as formerly was the custom, it is the opinion that the matter is more specifically covered by the authority to regulate such matters being conferred upon the State Department of Personnel.

Question No. 1. is therefore answered in the affirmative, that the State Department of Personnel may authorize a deduction of \$30 per month for such services for each employee of the institution that receives board and room.

The Minimum Wage Law, Statutes of Nevada 1953, Chapter 194, p. 225, applies to private employment only. It has no application to state employment.

Incidentally, if the State Department of Personnel could be persuaded to refrain from the established practice of deducting for board and room, they could then compensate for it and carry out the spirit of the Act (1953, p. 645) by recommending and effecting a reduction in wages, or delay increases in wages to the employees of the Nevada School of Industry.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-36. Labor—Constitutional Law—Minimum wage for women prescribed by 1955 Legislature supersedes provisions of wage contracts made prior to the enactment of the legislation—Valid exercise of police power impairing obligation of contract.

CARSON CITY, April 6, 1955.

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

DEAR MR. EVERETT: We are in receipt of your letter dated April 6, 1955.

It appears that state legislation passed last month, Chapter 369, 1955 Statutes, which raises the minimum wage for women, has raised the following question:

QUESTION

What effect has the new Act upon existing contracts and bargaining agreements where the wage in these contracts and bargaining agreement is less than the new minimum wage prescribed by the 1955 Act? Does the new law supersede these contracts and agreements, and must the employer now comply with the new minimum wage prescribed by law rather than the wage set forth in these contracts?

OPINION

This 1955 Statute was effective upon passage and approval and is now effective law, having been approved March 28, 1955. The employers must now comply with the minimum wage for women prescribed in the new Act.

The problem poses the question of whether or not the State can pass legislation impairing the obligation of contracts.

The Federal Constitution provides that no state shall pass legislation impairing the obligation of contracts, Art. I, Sec. 10, U.S. Constitution. Similarly, Art. I, Sec. 15, Nevada Constitution.

Nevertheless, these constitutional clauses prohibiting the impairment of the obligation of contract are subject to the police power of the State to enact legislation for the benefit of health, morals and welfare of the people of the State. As set out in *Home Bldg. and Loan Assoc. V. Blaisdell*, 290 U.S. at pages 434, 435, all contracts made with reference to any matter that is subject to regulation under the police power must be understood as made in reference to the possible exercise of that power.

That legislation setting minimum wages for women is a valid exercise of the police power for the protection of health and welfare of the community has long since been settled by the Supreme Court of the United States. See *West Coast Hotel Co. v. Parrish*, 300 U.S. 379.

The Nevada statute here under consideration is clearly an exercise of the police power of the State for the safeguard of the health and welfare of female workers in this State, and the statute so specifically provides. The Legislature has determined that under the present cost of living any wage less than that prescribed by the statute tends to a condition which would be so detrimental to the health and welfare of such workers as to affect the welfare of the people of the State of Nevada. To this end the new wage scale is designed to be effective immediately regardless of wage prescribed by contract.

It appears from your letter that in some instances agreement is made between the employer and employee that the wage shall be \$6.50 per 8-hour day plus three meals valued at \$1. You ask the question as to whether the meals, valued at \$1, can be added to the \$6.50 to make up the minimum wage. This office is of the opinion that this cannot be done. The meals insofar as the statute is concerned are no part of the wages. So long as the minimum wage is \$7 per 8-hour day, the parties can make whatever arrangement they desire concerning meals.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-37. State Controller authorized to transfer funds from General Fund to Revolving Fund of State Purchasing Department under S.B. 48, Chapter 408, 1955 Statutes.

CARSON CITY, April 7, 1955.

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

MY DEAR MR. MERIALDO: This acknowledges receipt of your letter of April 4, 1955, in which you point out that the Legislature passed Senate Bill No. 48, amending an Act entitled "An Act creating a state department of purchasing, defining powers and duties, making an appropriation, repealing certain acts and parts of acts in conflict therewith, and other matters relating thereto," approved March 24, 1951, and advising that the Legislature failed to make the necessary appropriation for said bill in the General Appropriation Bill.

You inquire whether your office may legally transfer funds provided for in the bill to the State Purchasing Department Revolving Fund from the General Fund of the treasury.

STATEMENT

Section 19 of Article IV of the Constitution of Nevada provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law. * * *."

In the case of *State v. LaGrave*, 23 Nev. 25, it was pointed out:

To constitute an appropriation there must be money placed in the fund applicable to the designated purpose. The word appropriate means to allot, assign, set apart or apply to a particular use or purpose. An appropriation on the sense of the constitution means the setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose if the intention to appropriate is plainly manifested.

In *McCauley v. Brooks*, 16 Cal. 28, cited in the case above, the court points out that to constitute an appropriation within the meaning of the Constitution nothing more is required than a designation of the amount and the fund out of which it is to be paid.

In the construction of statutes it is the legislative intent manifested in the statute that is important. It is not within the province of this department in the course of construction of a statute to make or supervise legislation. A construction should be avoided which would operate to impair, pervert, frustrate, thwart, nullify or defeat the object of the statute.

In the enactment of a statute it may be presumed that the Legislature did not act blindly or arbitrarily, but that it had a reasonable and practicable plan or scheme for the accomplishment of its purpose. Such a plan or scheme must be taken into consideration in the interpretation of the statute.

It is true that no claim can be enforced where there is no appropriation, but it is also true that the appropriation need not be made in a particular form or in express terms. It is sufficient if the intent to make the appropriation is clearly evinced by the language employed in the statute upon the subject, and if it is evident that no effect can possibly be given to a statute unless it be construed as making the necessary appropriation.

Our Supreme Court in the case of *State v. Eggers*, 29 Nev. 469, laid down a rule which is applicable in this case:

Under our advanced, protective system, no officer or individual has control of the public moneys. The provision that no moneys shall be drawn from the treasury but in consequence of appropriations made by law requires that their expenditure shall first be authorized by the legislature, which stands as the representative of the people. No particular words are essential so long as the will of the law-making body is apparent. It has been held in a number of decisions that the word "appropriate" is not indispensable. *It is not necessary that all expenditures be authorized by the general appropriation bill.* The language in any act which fixes the amount and indicates the fund, is sufficient. * * *. (Italics ours.)

Senate Bill No. 48 clearly expresses the will of the Legislature and indicates their desire to increase the Purchasing Department Revolving Fund from \$70,000 to \$200,000. It is beyond contradiction that the Legislature, having passed Senate Bill No. 48, had its provisions in mind when drafting, and enacting legislation to provide revenue for the operation of the Executive Department of our State Government. The oversight of the Legislature in not providing for the amount set forth in Senate Bill No. 48, in the General Appropriation Bill, should not construed so as to interfere with the operation of the State Purchasing Department for the next biennium, especially in view of the fact that the money is appropriated to a revolving fund which is constantly replenished by reimbursements from state agencies.

OPINION

It is the opinion of this office that Senate Bill No. 48 clearly implies an intent on the part of the Legislature to appropriate such sums as are necessary to increase the Revolving Fund of the State Purchasing Department from \$70,000 to \$200,000, effective as of July 1, 1955, and that the State Controller is empowered under the provisions thereof to transfer such funds as are necessary to give legal effect to the Act from the General Fund of the State.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-38. Constitutional Law—Highway Patrol—Schools—Chapter 160, 1955 Statutes, requiring the transfer of Highway Patrol cars to school districts for driver training programs is unconstitutional.

CARSON CITY, April 12, 1955.

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

DEAR MR. ALLEN: We are in receipt of your letter dated April 7, 1955 requesting the opinion of this office upon the constitutionality of Chapter 160, 1955 Statutes (Assembly Bill 211).

Chapter 160, 1955 Statutes, provides that when the motor vehicles of the Nevada Highway Patrol become no longer usable as patrol cars they are to be transferred, with title of legal ownership, to various school districts for driver training purposes.

These patrol cars are purchased initially with funds derived from motor vehicle license and registration fees. Heretofore such cars, when no longer usable for high-speed patrol work, have been turned in as partial payment for new patrol cars.

The Nevada Constitution, Article IX, Section 5, provides as follows:

SEC. 5. The proceeds from the imposition of any license or registration fee and other charge with respect to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other motor vehicle fuel shall, except costs of administration, be used exclusively for the construction, maintenance, and repair of the public highways of this state.

QUESTION

Does Chapter 160, 1955 Statutes, violate Article IX, Section 5 of the Nevada Constitution?

OPINION

The answer is yes. The people of the State of Nevada have seen fit to place in their organic law the provision that the proceeds from motor license and registration fees, and gasoline tax are to be used exclusively for the construction, maintenance, and repair of the public highways.

If, therefore, such funds are used for any other purpose than the construction, maintenance, and repair of the highways, such use is a violation of that constitutional mandate.

At the outset, we are of the opinion that there is no question but that the action authorized under Chapter 160, 1955 Statutes, is a diversion of the funds reserved under the Constitution exclusively for highway purposes. It is made no less a diversion simply because valuable property, which is readily convertible into money, is transferred rather than the Highway Fund money itself. The more difficult question to be determined is whether or not such diversion or use of the highway funds for driver training purposes is authorized under Article IX, Section 5 of the Nevada Constitution.

We are confronted, then, with the problem of construing the meaning of the word "maintenance" as used in the constitutional provision. Can the use of such funds in the public schools for driver training purposes be said to be closely enough connected to the maintenance of the public highways as to be authorized under the constitutional provision?

The Nevada Legislature has, heretofore, in Chapter 184, 1941 Statutes, page 409, declared the policy of the State with reference to the use of the highway funds, and has, by that chapter, construed the meaning of the word "maintenance" in connection therewith. That chapter reads in part as follows:

WHEREAS, The people amended the constitution of this state at the November election, 1940, by adding a new section to article IX thereof in and by which expenditures out of the state highway fund, derived from the excise tax on gasoline and other motor vehicle fuels and from registration and motor carrier license fees on automobiles and other motor vehicles, are limited to the costs and expenses of construction and maintenance of the highways of this state and of administration connected therewith; and the words "construction," "maintenance," and "administration" contemplate construction and maintenance of said highways in a manner which will be safe to the traveling public * * * and for the state, therefore, to exercise supervision and control over the use of such highways in the interest of safety and of economical maintenance thereof, and to the end that the traffic units operating over said highways be not larger and heavier than the roadbeds, bridges, culverts, and overpasses of said highways were constructed to carry, and also to the end that the speed, care and safety with which drivers of motor vehicles used said

highways be supervised and regulated in the interest of the public and public safety
* * *.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. It is hereby declared to be the public policy of the State of Nevada to construe the meaning of the words "construction," "maintenance," and "administration" used in said constitutional amendment as broad enough to include and as contemplating such construction, maintenance, and administration in a manner which will be safe to the traveling public * * *.

It is clear that the evil which people attempt to correct by the constitutional amendment is the diversion of these funds into other uses not connected with the construction and maintenance of the highways. Moreover, as a full reading of the statute above quoted will bear out, the State is under an obligation to the other states through the Federal Government to see that Nevada bears its burden of highway construction and maintenance to the best of its ability inasmuch as most of our funds for highway purposes come from the Federal Government. To this end also, then, the need for the protection of such funds is recognized.

Now, while a driver training program may undoubtedly have the effect reducing the accident rate upon the highways and thereby make the highways more safe for the traveling public, nevertheless, unlike the operation of the Nevada Highway Patrol, it has no connection with the maintenance of the highways. If it can be said that a driver training program is also designed for the maintenance of the highways then it can also be said that teaching a child to read in school is a part of the maintenance of the highways; for he will be, thereby, able to read the highway traffic signs when he learns to drive, and if this be true then the highway funds can be diverted to pay our school teachers. We do not think that any such diversions were contemplated by the constitutional amendment. Rather, we are of the opinion that the constitutional amendment was designed to prevent just such inroads into the highway fund.

We are therefore of the opinion that Chapter 160, 1955 Statutes, is unconstitutional.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-39. Watershed Protection and Flood Prevention District Act of 1955—Board of Forestry and Fire Control. State Forester Fire Warden—Attorney General's Opinion No. 554, December 23, 1947—Forest Practice Act of 1955—Taxation.

CARSON CITY, April 12, 1955.

HONORABLE LOUIS D. FERRARI, *Surveyor General and State Forester Firewarden, Carson City, Nevada*.

DEAR MR. FERRARI: We acknowledge receipt of your letter of March 21, 1955, written by the Assistant State Forester Firewarden, Mr. George Zappettini. Your letter presents two questions for our determination, namely:

1. Which department administers the duties imposed by Assembly Bill No. 373, a legislative Act of the year 1955?

2. May a special tax be imposed under the provisions of Assembly Bill No. 373, closely related as it is in function to Assembly Bill No. 348, a legislative Act of 1955, amendatory to an Act of 1945, as amended?

It is the opinion of this department that the Surveyor General, as ex officio State Forester Firewarden, is empowered to administer the Act. (A.B. No. 373.)

It is also our opinion that the Act is not assailable taxwise.

Assembly Bill No. 348 is an amendment to a portion of an Act of 1945, Chapter 149, p. 235, as amended. The Act of 1945 is "An Act to promote and encourage the protection of forest and other lands from fire * * *." It created the position of State Forester Firewarden and attached the position to the office of Surveyor General in an ex officio capacity.

On December 18, 1947, Honorable Wayne McLeod, then Surveyor General and ex officio State Forester Firewarden addressed a letter to the office of Attorney General asking for a ruling of this office upon two matters, namely:

1. A clarification of his duties as State Forester Firewarden, with respect to his authority to enforce state fire laws. (The reference was to the provisions of Sections 3164, 3165 and 3166, N.C.L. 1929.)

2. An inquiry of whether or not the State Forester Firewarden and/or his assistants have the legal right to apprehend any person believed guilty of violating state fire laws.

The opinion, No. 554, dated December 23, 1947, written by Honorable W.T. Mathews, Special Assistant Attorney General, was to the effect that in the absence of a specific grant of such power by the Legislature (such a grant of authority being not included in the statute) the State Forester Firewarden and/or his deputies did not have power of peace officers. He then outlined the statutory law, Section 10752, N.C.L. 1929, under which a private person may make an arrest without a warrant. The opinion further stated that although no direct administrative authority is provided with reference to the administration of the Timbered Land Act, the Act in question gives reasonable powers of administration thereof "in view of the fact that such Act was intended to preserve the water supply of the State in watershed areas and be coordinated with your other forest fire control work."

The Legislature of 1949 amended Section 4 of the Act of 1945, appertaining to the duties of the State Forester Firewarden to provide that the appointment of firewardens by him, when needed, were subject to the approval of the Board or Boards of County Commissioners of the counties concerned and that "said firewardens should have only the police powers necessary to enforce the provisions of such laws." The Act of 1945 was further amended by adding Sections 5(a), 5(b), 5(c), and 5(d) having application to Federal aid under the Clark-McNary Act of Congress, with reference to the creating and administration of fire protection districts. These added sections have no application to the questions here presented.

It is clear by an analysis of the content of the amendment of 1949 that the Legislature knew of the construction placed upon the law of 1945, by the opinion of Attorney General's Office, and approved that construction as to the legislative intent to declare that conservation of water supply and prevention of forest fires were closely related and that the administration of such laws should be in one officer.

The Legislature of 1955 enacted Assembly Bill No. 349, designed principally as a measure to regulate forest practices, to the end that there be effective control and prevention of forest fires and "to promote the sustained productivity of the forests of the Sierra Nevada Mountains in Nevada; and to preserve the natural water supply of the state in the interests of the economic welfare of the state." The Act is significant here in that it reflects the legislative knowledge of the interrelationship of fire prevention and water supply. The State Forester Firewarden is designated to administer the Act.

As stated, Assembly Bill No. 348 is an amendment to an Act of 1945. The provision of the sections amended, although substantial, are not pertinent to the questions here presented, except that they do show an intention on the part of the Legislature of 1955 to combine functionally the forestry and watershed work, including fire control upon the forest and other lands of the State.

Section 4 reads in part as follows: "The duties of the state forester firewarden or his assistant shall be to supervise or coordinate all forestry and watershed work, including fire control, in Nevada."

Assembly Bill No. 373 has for its purpose the "organization and operation of watershed protection and flood prevention districts in the state * * *." Although the Act is silent as to designation of the office that is to administer it, the laws of nature in this respect are clear to every thinking person, that flood control, conservation of water and protection of the forests from devastating fires are so closely related as to be one and the same problem, and the Legislature has spoken in a manner to indicate that it recognizes the unity of these objectives, and has intended that they be coordinated and administered by one office.

TAXATION

The Constitution provides that taxes shall be uniform and equal. Article 10, Constitution of Nevada, Section 145, N.C.L. 1929. The application of this is of course to the general property tax. It has no application to other taxes that have been or may be imposed, such as sales, state income, tobacco, gasoline and use taxes, etc.

A careful examination of the Constitution, statutes, and cases decide thereunder, does not reveal any constitutional or statutory impediment to the effective operation of the tax provisions contained in Assembly Bill No. 373 or Assembly Bill No. 348, or any tax conflict between the two Acts. We have no constitutional prohibition against double taxation even if it existed in this instance and it is our opinion that it does not so exist in the construction of the Acts in question. "In the absence of any express or implied constitutional prohibition against double taxation it is held that there is nothing to prevent the imposition of more than one tax on property within the jurisdiction." 61 C.J., Art. 70, p. 137.

"To constitute double taxation in the prohibited sense the second tax must be imposed upon the same property, for the same purpose, by the same state or government, during the same taxing period, and must be a burden imposed by the state. * * *." 61 C.J., Art. 69, p. 137. Assembly Bill No. 373 is set up for an operation or function upon a county basis to support a watershed protection and flood prevention district by a local tax; whereas, the statutory law as amended by Assembly Bill No. 348, is upon a state basis of financial support and for the purpose of protecting forest lands and other lands from fire. The purposes being entirely different it could not be regarded as double taxation.

"The State Legislature possesses legislative power unlimited except by the Federal Constitution, and such restrictions as are expressly placed upon it by the State Constitution * * *." Gibson v. Mason, 5 Nev. 283.

“So far as the extent of taxation is concerned, or the purposes for which taxes may be levied, provided such purposes are public in their nature, there is no limit or restriction placed upon the legislative power.” *Gibson v. Mason*, 5 Nev. 283.

The total of the general tax levies of course must be kept within the constitutional maximum of five cents on one dollar of assessed valuation for a given year. Section 14501, N.C.L. 1931-1941 Supplement.

It is therefore our opinion that the tax provisions of Assembly Bill No. 373 are valid, being not violative of constitutional provisions, and being within the power of the legislative body to enact.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-40. Nevada State Hospital—Procedure for release of insane persons clearly set out by Chapter 331, 1951 Statutes, Chapter 365, 1953 Statutes, and Chapter 292, 1955 Statutes of Nevada.

CARSON CITY, April 13, 1955.

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

MY DEAR DR. TILLIM: This opinion is in reply to your letters to this office under dates of March 29 and April 9, 1955. I also have copies of correspondence exchanged between your institution and the District Attorneys of Clark and Ormsby Counties.

The difficulty seems to arise as a result of a conscientious difference in your interpretation of the Act concerning the mentally ill of Nevada, as opposed to the interpretation given such Act by several Nevada courts and the District Attorneys serving them.

According to your contention a District Court does not have the right, under our statutes, to commit a person to the Nevada State Hospital with the addendage “until further order of this Court” or words of similar import. You feel strongly that the period of commitment is dependent upon a medical or psychiatric determination by you, or by someone connected with your institution, that a person so committed has been restored to sanity, and that such condition is not one to be judicially determined.

Your sole question to this office is “What is the procedure of this institution to be in cases of this kind?”

OPINION

The cases in point, and to which you refer in your correspondence, involve one Timothy Sullivan, charged in Clark County with lewd and lascivious conduct with a child under the age of 14 years, and one Wayde Burt, committed under the civil provisions for commitment of those mentally ill.

Sullivan was committed by Judge Ryland Taylor of Department No. 3 of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, after an

examination by two physicians convinced the court that Sullivan was mentally ill. The procedure, according to the District Attorney of Clark County, was that prescribed in Sections 21 and 39, Chapter 331, 1951 Statutes of Nevada.

It may be pointed out at this point that Sections 21 and 39 of the 1951 Act are to be read together. In other words, if the commitment under section 21 is of a person charged with a criminal offense, and under Section 39 of the committed person cannot be released without the order of the court having criminal jurisdiction arising out of the criminal offense, then the words "until the further order of this Court," or words of similar import, are surplusage and unnecessary. Under the law of 1951, the release from your institution of one charged with a criminal offense is dependent upon the order of the court committing him.

But in 1953, by Section 21.5(2) of Chapter 365, the Legislature went even further. The court, in cases where persons charged with a felony, other than homicide, were believed to be mentally ill, could order their temporary commitment for examination and report, without abiding by the provisions of Section 21 of the 1951 Statute. The law clearly states "* * * which commitment shall continue until the further order of the Court."

The provision in Section 39 of the 1951 Statute, "provided, however, that nothing herein contained shall authorize the release of any person held upon an order of a Court or Judge having criminal jurisdiction arising out of a criminal offense," remains in Section 39 of the 1953 Act.

The words "charged with a felony * * *" must be construed to mean charged by the responsible authority, in the Sullivan case the District Attorney of Clark County, at the time when the hearing was held before the court.

There can be no question that the court, in the Sullivan case, had the authority to commit Sullivan to the Nevada State Hospital under the statutes, nor can there be any doubt that under the same statutes the addendage "until the further order of this Court," or words of similar import, was not improper.

Objection has been made that the order of the court is indefinite as to time. The incarceration is to continue until the further order of the court. The order conforms to the statute in that particular. No time is specified in the statute for the duration of the incarceration. In the nature of the subject treated by the statute this must be so. It was the undoubted intention of the Legislature that the incarceration should not continue after the restoration of sanity, and that the court should so retain control of its order in the premises that it might afterward modify it to suit changed conditions of mind or body as they might be made to appear. Such an order is analogous to one disposing of the custody of children in a divorce proceeding, which is made subject to the further order of the court, and subject to modification with changed conditions.

It is not to be presumed that once the committed person has become sane that the court committing him can arbitrarily withhold the necessary order for release, whether that release be for the purpose of restoring the inmate to society, or of returning him to the court of his commitment for trial, but the procedure to be followed by the Superintendent of the Nevada State Hospital in such cases is clearly set forth by statute. The procedure in criminal cases has been clarified by Chapter 292 of the 1955 Statutes of Nevada.

In the case of Timothy Sullivan, inasmuch as he was committed under Section 21 of Chapter 331 of the 1951 Statutes of Nevada, and inasmuch as he was committed while charged with a crime, the provisions of Section 39 of said Act applying, notice should be given to the appropriate authorities in Clark County at such time as Timothy Sullivan has been determined to be sane, in order that the District Court of that county may make such further order as is amenable to the situation and in keeping with constitutional guarantees.

In the Burt case, from the circumstances attending his commitment, the provisions of that portion of Section 39 of the 1951 and 1953 Acts which pertain to release of a person charged with a crime, do not apply. The regular form of civil commitment should be secured from the committing judge.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-41. Labor—Constitutional Law—Under the Minimum Wage Law for Women, meals may be made a part of the wage. This in modification of Opinion No. 36 released April 6, 1955.

CARSON CITY, April 13, 1955.

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

DEAR MR. EVERETT: The following is supplemental to and in modification of Opinion No. 36 released by this office and delivered to you on April 6, 1955.

The last paragraph of Opinion No. 36 deals with the question of whether or not agreement may be entered into between employer and employee whereby meals can be made a part of the minimum wage.

Section 4(b) of the Minimum Wage Law for Women, being Chapter 369, 1955 Statutes, provides in part as follows:

A part of such wages or compensation may, if mutually agreed upon by the female and her employer in the contract of employment, but not otherwise, consist of food and lodging or food or lodging. In no case shall the value of the food and lodging be computed at more than \$2 per day; and in no case shall the value of the meals consumed by such female employee if lodging facilities are not accorded to her, but meals only are purchased, be computed or valued at more than 35 cents for each breakfast actually consumed, 45 cents for each lunch actually consumed, and 75 cents for each dinner actually consumed * * *.

This office is, therefore, of the opinion that, as prescribed by the above-quoted section, the meals can be made a part of the minimum wage so long as the meals, only for the purpose of determining the amount of money payment to be made, are valued at no more than \$1.55 for the three meals as above prescribed, and the money payment combined with the meals shall amount in value to as least \$7 per 8-hour day for women of the age of 18 years or older.

The foregoing is in modification of the last paragraph only of Opinion No. 36. The balance of Opinion No. 36 remains the opinion of this office.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-42. Corporations—Secretary of State—Secretary of State vested with legal authority to reject names of proposed corporations which are the same as, or deceptively similar to, the name of any other corporation incorporated in this State.

CARSON CITY, April 14, 1955.

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

DEAR MR. KOONTZ: We acknowledge receipt of your letter dated April 7, 1955, requesting an opinion of this department upon facts stated hereinafter.

You have advised that there is of record in your office a domestic corporation in good standing bearing the name "Harry Hoefler Realty, Redwood City, Inc."

You also advise that recently and since the passage and approval of Senate Bill No. 199 which became Chapter 246, Statutes 1955, amending paragraph 1 of Section 4 of our General Corporation Law related to the names of proposed corporations which are the same as, or deceptively similar to, the name of any other corporation (presumably in good standing) incorporated in this State, your office has received articles for two other corporations bearing the following names: "Harry Hoefler Realty—San Mateo, Inc." and "Harry Hoefler Realty—Los Altos, Inc." and that you have informed the parties submitting the proposed articles that you could not file them due to the fact that you believe, the proposed names to be deceptively similar to that of the present existing corporation above referred to; also, that since refusal to file you have been requested by the parties submitting the proposed articles to request an opinion from this department relative to your refusal. By inference you inquire if the rejection was proper.

OPINION

First, let us observe that the names of the proposed corporations differ from the name of the present existing corporation, in the substitution of dash (—) for comma (,) and the substitution of the name for another city located in the State of California for that of Redwood City. For all practical purposes and effect it may be said that the titles or names are the same, except for the change to another California city.

Under the statute a discretion is vested in the office of Secretary of State to determine whether or not a deceptive similarity exists in the name of the existing corporation and the names of proposed corporations. This decision is in effect final and reviewable only in the courts.

Statutes of this type are not peculiar to Nevada. They are more or less common among the states. An exhaustive search has not been made but the ordinary test is as to whether there is such similarity of names as will mislead or cause confusion. New York forbids the filing of articles adopting a corporate name the same as "or a name so nearly resembling it as to be calculated to deceive." Washington requires the Secretary of State to refuse to file articles of a corporation adopting the name of a corporation theretofore organized under the laws of the state, "nor one so nearly resembling the name of such other corporation as to be misleading." The English statute provides that "a company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive" except, then follows consent, etc.

No provision for waiver or consent is included in the Nevada statute. The Act of 1955, Chapter 246, Statutes 1955, is amendatory of Section 4 of the General Corporation Law, being Section 1603, 1929 N.C.L. 1941 Supp., as last amended by Chapter 121, Statutes 1949, p. 158.

The altered paragraph states that the articles must contain or set forth the name of the corporation which must end with one of many designated words, such as Corporation, Inc., Company, etc., and then deletes the following, “shall be such as to distinguish it from the name of any other corporation formed or incorporated in this state, or engaged in the same business, or promoting or carrying on the same object or purposes in this state, or from” and substitutes in lieu thereof the following: “shall not be the same as, or deceptively similar to, the name of any other corporation founded or incorporated in this state or of any foreign corporation authorized to transact business within this state or” a name reserved for the use of any other proposed corporation as provided in Section 4a of this Act. It will be observed that the present law of rejection or refusal of articles is based entirely upon sameness of name or deceptive similarity of names. Formerly the name was required to distinguish it from corporation existing, etc., or from corporations “engaged in the same business, or promoting or carrying on the same objects or purposes” in this State. The latter part quoted of old law could well have been questioned. But it is no longer the law. The wording was faulty. Now the test is name sameness or deceptive similarity.

The term “deceptively similar” as used in the statute is intriguing. It might well be urged that there is no attempt or intent to deceive, and that it is intended that one man, whose name is used, is proposed to head all three corporations. This leads us to the purpose of the law.

DECEPTIVE SIMILARITY

An examination of the many cases under the exhaustive annotation found in 66 A.L.R. beginning at page 948, discloses the need of this type of legislation. Usually the right to equitable relief, by injunction, exists for infringement of the exclusive right to use a corporate name, in the absence of such statutes, and the cases showing a pursuit of such right are very extensive and diverse. See also: 13 Am.Jur., Art. 132, p. 269. There is authority to the effect that when a corporation is formed in violation of the provisions of a statute similar to ours, it is sufficient for the plaintiff to prove a violation of the statute. *Grand Rapids Furniture Co. v. Grand Rapids Furniture Shops*, 221 Mich. 548, 191 N.W. 939. If this be true the formation of corporations of similar names (one of which may be lost by sale or loss of control) is to invite litigation and injury and might very readily, from a retrospective view, be regarded as bad judgment.

The suits are normally brought by the injured corporation to enjoin the use of a similar corporate name, and for good reason, the interest being commercial. However, the public also is to be protected. “To authorize injunctive relief, circumstances must show plaintiff’s business will suffer from deceptive use of its name or that public will be imposed on.” *Federal Securities Co. v. Federal Securities Corporation*, 276 P. 1100.

Such statutes are designed in a degree to reduce the court load. “We assume that the statutes referred to were intended to prevent, to some extent, the conditions which, in such cases, make a resort to the courts necessary.” 66 A.L.R., p. 952.

Intent to mislead the public is not an element and courts of equity may enjoin the use of a deceptively similar name even though no intent to mislead is proven. 13 Am.Jur., Art. 132, p. 269.

From the foregoing it is clear that the purpose of the statute is threefold, viz:

1. To protect artificial persons with vested rights in the exclusive use of a name.
2. To protect the general public from deception and confusion.

3. To protect the judiciary from the birth of corporation, which by reason of name similarity will inevitably increase litigation.

It is also clear, since intent to mislead is not an element, that the “deceptive similarity” referred to in the statute, has reference only to a deception of the general public.

In arriving at a conclusion as to whether or not there is or is not a “deceptive similarity” in the name of a proposed corporation to one already existing, the Secretary of State would not be authorized to consider information as to the unity of ownership of the present and projected corporation, or unity of proposed management. As a practical matter he knows from a cursory examination of the face of the articles of the proposed corporation, whether or not it is a commercial corporation as distinguished from a nonprofit corporation. If he determines a proposed corporation to be commercial from an examination of these articles, he knows that normally, being commercial it can be purchased and as a result the directive management and policies may change. He also knows that corporations are normally designed to be perpetual, whereas humans are mortal and that the corporation may outlive its creators. He is not authorized to consider any such information. The statute is intended to prevent the spawning of such entities that may or are likely to create mischief, or confusion.

The duties of the Secretary of State are clear. As to the filing or rejecting of articles of incorporation he is not to go beyond the face of the articles. *State v. Brodigan*, 44 Nev. 212, 192 P. 263.

GENERAL

We have considered but rejected the thought of digesting the law here as to the use of an individual's name as part of a corporate name, also a digest of the law as regards the use of a geographic description as a part of the corporate name, for the reason that sameness or deceptive similarity of names has been made the sole test upon which you are authorized in your office to accept or reject the proposed articles. To alert your office to the many tests that are applied by the courts would be an invitation to your office to apply, consciously or unconsciously, some or all of those tests. Such an application is not authorized.

There is a dearth [dearth] of authority on the legal effect of refusal to file proposed articles of incorporation, by secretaries of state, perhaps for the reason that the availability of suitable corporate names is almost limitless. Perhaps, under statutes such as ours, when refusal to file has followed the presentation of articles of a proposed corporation, the incorporators have elected to use another name.

An examination of the name of the present existing corporation and of the proposed names of the proposed corporations discloses that they are all obviously designed to function in a more or less limited area of the State of California. However, the statutes under examination do not enlarge or diminish the scrutiny that is to be given the articles by reason of the inference that a corporation may be set up to function in a sister state. The present existing corporation and the two that are projected could all conceivably function actively, although perhaps awkwardly (considering the names) within the State of Nevada. The duty to reject articles is not more or less by reason of probable local or foreign operation. If the deceptive similarity of names exists the duty is clear.

We entertain no doubt about the power of the Legislature to enact the provisions now contained in the statutory law under examination. We entertain no doubt but that the Legislature believed that there was need for such legislation for a threefold purpose formerly mentioned. We entertain no doubt but under the statute the power and duty has been vested in the Secretary of State to accept or reject in his discretion, upon the sole question of sameness or deceptive

similarity of the corporate name as proposed to that of a present existing domestic corporation, or foreign corporation duly registered or to a corporate name reserved as by law provided. We entertain no doubt but that this discretion cannot include reflections of economic policy or economic wisdom. Such is entirely a legislative function.

Since this could well be a recurring problem in the office of the Secretary of State, we have given it a great deal of study, and with a view to assisting your office in the future.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-43. Corporations—Corporations organized under General Corporation Law cannot amend articles so as to change to nonprofit corporation without consent of all of the stockholders.

CARSON CITY, April 14, 1955.

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

MY DEAR MR. KOONTZ: Your letter of March 25, 1955, enclosing the amended articles of incorporation of the Alpine Land and Reservoir Company, has been received and the contents have been carefully studied, with the idea in view of rendering an opinion to your office as to the acceptability of the amended articles, which purport to change the entity of the corporation from a regular corporation to a nonprofit corporation.

STATEMENT

That the Legislature clearly distinguished between profit and nonprofit corporations is revealed by referring to the Statutes of Nevada. Under Chapter 177 of the 1925 Statutes as amended and particularly paragraph 9 of Section 4, provision is made whereby articles of incorporation may provide for the distribution or division of profits of the corporation, indicating the construction placed on the Act by the Legislature. But to go even further, the Legislative Branch of our government enacted two nonprofit corporation statutes. Chapter 236 of the 1921 Statutes as amended provides for the organization, management and conduct of nonprofit cooperative corporations, and Chapter 115 of the 1945 Statutes as amended authorizes and provides for the formation on nonprofit corporations for the purpose of engaging in charitable and eleemosynary activities.

The reason that the objects and purposes are required to be stated in the articles of incorporation is so that the stockholders may know the nature of the business in which capital is being invested. Certainly persons investing in a profit-sharing corporation would not expect to have their investment endangered by an amendment which changed the corporation to a nonprofit organization.

A party purchasing stock has the right at the time of the purchase to determine the kind of business in which he will invest his money. Unless he has agreed that the business may be changed to a different kind, he is entitled to have his investment remain in the kind of business in which he originally placed it. Unless authorized to do so by all, other stockholders cannot, by amendment of the articles, transfer money invested in one kind to a different kind of business without violating contractual rights of the parties.

In other words, if the amendment accomplishes fundamental and radical changes by entirely changing the nature and scope of the corporation, it is not permitted. Articles of incorporation constitute a contract between the incorporators and the State and between the incorporators and the stockholders, and there is a strong probability that the change of a stockholder's stock from that from which a profit may be derived to that from which he may expect no profit would involve a violation of the due process provisions of the Constitution.

OPINION

It is the opinion of this office that a corporation organized under the General Corporation Law of Nevada contemplates operation for profit, and that the articles of such corporation cannot be amended to change such corporation to a nonprofit corporation, unless all of the stockholders consent thereto.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-44. Surety Bonds—Applicant for surety bond under Bond Trust Fund Act of 1937 should be of legal age.

CARSON CITY, April 15, 1955.

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

MY DEAR MR. KOONTZ: This is in answer to your letter of April 15, 1955, requesting an answer as to two questions:

1. May a bond be issued under the Bond Trust Fund Act to a person who has not reached majority?
2. Whether a person who has reached his twentieth birthday may be legally considered as twenty-one years of age.

OPINION

While the Bond Trust Fund Act of 1937 as amended does not restrict the granting of a surety bond to one of legal age, it is to be remembered that a surety bond is a contract wherein the principal and the State as surety are contracting parties.

While a contract entered into with a minor is not void, it is voidable insofar as the minor is concerned, up to the time that he becomes of age.

It is, therefore, the opinion of this office that while a surety bond application by a minor could be approved by a District Judge of the jurisdiction in which the applicant lives, that to do so would be extremely hazardous and unwise, as affording no protection for the State in an action to recover on such bond, if the minor should deny liability based upon his minority at the time the contract was entered into.

The second question is answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-45. Public Employees Retirement System—"Administrative Capacity" as used in Chapter 407, Acts of 1955 construed.

CARSON CITY, April 19, 1955.

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

DEAR MR. BUCK: We acknowledged receipt of your letter of April 8, 1955 asking that this office place a construction upon Senate Bill No. 212, Chapter 407, Statutes of 1955.

Specifically you ask the following questions:

1. What is the meaning of the phrase, "in an administrative capacity" as distinguished from service in another capacity such as "employee?"

2. What is the meaning of the phrase "who have remained in an administrative capacity in full-time employment, without any break in service?"

(a) Does "have remained" apply to service subsequent to service with the enumerated agencies, or does it apply solely to service with the enumerated agencies?

(b) If it applies to subsequent service with agencies other than those enumerated would subsequent service in a nonadministrative capacity, or a break in service, cancel out service with the enumerated agencies?

(c) What would constitute a "break in service" within the meaning of this section?

OPINION

The entire statute reads as follows:

SECTION 1. The above-entitled act, being chapter 181, Statutes of Nevada 1947, at page 623, is hereby amended by adding thereto a new section designated section 2.5, which shall immediately follow section 2 and shall read as follows:

SEC. 2.5 Service in the State of Nevada in the agencies formerly known as the Nevada Emergency Relief Administration, the Civil Works Administration, the Federal Emergency Relief Administration, the Works Progress Administration and the Public Works Administration shall be considered as service accreditable toward retirement under the provisions of this act.

Employees of any or all of the agencies specified in this section, who have remained in an administrative capacity in full-time employment, without any break in service, shall be considered to qualify for retirement credit under the provisions of this act. In order to determine the qualifications of such employees, the board may require documentary evidence, or affidavits sworn to by two responsible persons having direct knowledge of such employees' service.

SEC. 2. This act shall become effective upon passage and approval.

First it is pertinent to note that this statute is in theory at variance with the extensive statutory law formerly in force and the constructions placed upon that statutory law by this department in that it permits the inclusion or counting of employment time in which the employer was the United States rather than the State of Nevada.

It will be noted that the first paragraph under Section 2.5 appears to include all workers who served in the enumerated Federal agencies. However, the second paragraph appears to limit the number and class of workers who are to be considered under the first paragraph.

It is a cardinal rule of construction of statutes that effect must be given if possible to the whole statute and every part thereof. 59 C.J., Sec. 595, p. 995.

A close examination of the statute and of the Attorney General's opinions construing it gives little if any light as to the questions here propounded. We are convinced, however, that the use of the words in an "administrative capacity" preceded by the words "have remained," is to limit the number of person that may be held to qualify under the wording of the first paragraph.

We feel impelled to give to this entire statute a strict construction for a number of reasons, viz:

1. It is at variance in theory to the formerly existing statutory law, as formerly mentioned.
2. Little damage or injury can be done to the established system by strict construction of the statute to the end that if there are errors committed it will be errors of exclusion rather than errors of inclusion.
3. The error of misunderstanding the intent of the Legislature by including too many might well be partially irreparable while an error of including too few could quickly be corrected by an amendment more carefully drafted.

ADMINISTRATIVE CAPACITY

The word "administrative" in Words and Phrases, Vol. 1, is in a number of the annotations broken down as synonymous with executive, as distinguished from legislative and judicial. This is clearly not the meaning given to the word in the statute under study.

Webster's New International Dictionary, Second Edition, gives the following definition that appears to satisfy the language of the statute: Administration—"The managing or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like; as, the administration of a college, a factory, or an army."

We therefore construe the words, "in an administrative capacity," as used in the statute and as applied to the enumerated Federal agencies, to be limited to persons who worked in an office capacity, and to be further limited to persons who had under their supervision and direction other office worker employees, as employed by one or a number of the enumerated agencies. To be entirely clear, we mean the test as set out in this paragraph to be applied to the service record of employees with the enumerated agencies and in an individual's case to determine whether or not he may receive credit for work done with one or a number of the enumerated agencies.

We construe the phrase "who have remained in an administrative capacity in full-time employment without any break in service." The words "have remained" are construed prospectively, and therefore apply to services rendered since the services with the enumerated agencies ceased. The language employed also leads us to the belief that the subsequent service

must have been in an administrative capacity and of course that service must have been performed for the State or a state agency or political subdivision thereof as determined by the statutory law, and construction placed thereon by this office, prior to the enactment of the 1955 amendment under study. Here, however, as applied to services rendered subsequent to that of the enumerated agencies, we feel that "administrative" work should be more liberally construed for here the service has been to the State or a State agency or a political subdivision thereof. Here the test, that the work must have been administrative, in order that work with the enumerated agencies may be counted, still holds, but in considering whether or not it has been "administrative" a more liberal view should be taken than formerly set out. Here we feel the general definition of what constitutes administration should be applied. Should the services of an employee subsequent to that performed for the enumerated agencies or any of them be not administrative, within the meaning of the construction that we have placed upon the Act, but be such as to qualify under the provisions in force before the enactment of the 1955 Act, this opinion, as to such person, would merely mean that his services to the enumerated agencies could not be included in his retirement service record.

The phrase "break in service" as used in the Statute of 1955, we feel is a reference to Section 16(4) and is determined by the 5-year provision there contained.

This Statute of 1955 is very ambiguous, indefinite and uncertain. The construction under such circumstances must be such as may be compatible with the remainder of the Act, and in harmony with the constructions formerly placed upon the Act by this department; also such as may do no evidence to the established rules, agencies and institutions.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-46. State Inspector of Mines—Mines and Mining—Outlines manner of correcting error when recording has been in wrong county.

CARSON CITY, April 19, 1955.

HONORABLE MERVIN J. GALLAGHER, *State Inspector of Mines, Carson City, Nevada*.

DEAR MR. GALLAGHER: We acknowledge receipt of your letter of April 6, 1955, and with it a copy of a letter written to you on March 22, 1955, by Mr. R.B. Clemmons of Wadsworth, Nevada.

Mr. Clemmons states the following facts in his letter:

In 1942, Bill Dingee & E. Smoot located this claim, the Jay Bird, and they thought it was in Pershing County, so located it as in Pershing County and I have done the work & recorded it as Pershing Co., first under a lease from them, later under a quit claim deed from them which is recorded in Pershing Co. I have done the work every year and moved hundreds of tons of ore off this claim. Am moving ore now. Found out lately that this claim is located in just across the line in Churchill County. What should I do to change this from Pershing to Churchill County and do it legally?

Clearly, Mr. Clemmons would not be fully protected by merely recording in the County of Churchill from this date those things that require recordation. We refer to proof of annual assessment work and things of that nature.

If there is now no doubt in the mind of Mr. Clemmons that the claim in question is located completely in Churchill County, his recording of all matters requiring recordation, affecting his claim, should as to the future be recorded in the Office of the Recorder of Churchill County. If there is a substantial doubt or uncertainty as to which county the claim is located in, to be safe he should record in both counties. This is a reference to future events and recordings of the same.

We now clear the matter as to the mistake in the recordings in an improper county preceding this date:

It is most desirable in order that Mr. Clemmons, owner of the mine, be fully protected, that the record of Churchill County show all of the recordings of Pershing County with reference to the mine, both as to content and date. Such a showing, in the event of a controversy would make it possible for him to show that upon the discovery of his error as to place of recording, he immediately has placed the record in the proper county in a manner to show that the error was made, also to show that a proper recording was made as to its content but not as to the place.

Section 2136, N.C.L. 1929, provides for the recording of instruments relating to mining claims, in the counties in which the mining claims, in the counties in which the mining properties are located, and that such recording shall impart notice to all persons of the contents thereof.

Section 2137, N.C.L. 1929, provides that copies of such records duly certified by the County Recorder of the county where recorded may be read in evidence in a proper case. It is certain that if such records may be read in evidence, they may be recorded in the county in which the mining property is actually located.

The recommendation is: That Mr. Clemmons direct the County Recorder of Pershing County to prepare certified copies of his records that apply to the "Jay Bird" mine, and that he take these certified copies to Churchill County and file for record in the same chronological order in which they were recorded in Pershing County. Also, that all further recordings with reference to the "Jay Bird" mine then be in Churchill County.

This method will, we feel, permit Mr. Clemmons to protect his rights in the mine, to the same extent as if his original recordings had been in Churchill County.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-47. Schools—School districts not authorized to contract for purchase of school sites other than on a cash basis.

CARSON CITY, April 22, 1955.

HONORABLE GLENN A. DUNCAN, *Superintendent of Public Instruction, Carson City, Nevada*.

DEAR MR. DUNCAN: We are in receipt of your letter dated April 7, 1955, requesting the opinion of this office upon the following statement and question as quoted from your letter:

I request an opinion as to whether or not a school board may purchase a site for a school, making a down payment of approximately 29 percent of the total purchase price and three equal payments on the balance in each of three succeeding years. Under the requested agreement, the seller would receive interest equal to the interest which will be paid on a contemplated bond issue to cover the construction costs of a school.

This transaction, as it is above stated, involves the immediate transfer of title to the land to the school district, and the creation of an obligation upon the school district to pay 71 percent of the purchase price in three equal payments over a period of three years. The district will thereby incur a debt.

Upon additional information furnished by the school district, this office understands that this question involves the purchase of a school site within the Carson City school district for the erection of a district high school. Moreover, the funds for this project will be available at the outset, under Chapter 329, 1955 Statutes.

It is our further understanding that the sole reason for the method of purchase, as proposed in your letter, is that the seller of the land, for taxation purposes, will sell at a considerably lower price if the sale can be made in the manner proposed rather than upon the outright payment of the entire purchase price.

OPINION

It is the opinion of this office that the proposed transaction is not authorized.

The specific question to be determined is whether the school board is authorized to place the school district under an obligation to retire a debt in the manner proposed.

Because the proposed method of purchase would result in a considerable saving to the district, and also to the State inasmuch as it will be the entire State that will supply the funds for this school, we have carefully examined the law to the end that we might find authorization for the proposed method of purchase. That examination discloses the following:

The scheme of fiscal management of the public schools is much the same as that of the other political subdivisions of the State. Chapter 335, 1953 Statutes, sets forth the bulk of that method of management. Section 1 of that chapter provides as follows:

The business of every county and other political subdivisions in this state on and after the approval of this act shall be transacted upon a cash basis and in accordance with the terms of this act.

The school districts are designated as agencies of the State under this Act. The Act requires the submission of a budget declaring the estimated receipts for the next fiscal year, the estimated expenditures and the amount of taxation required for the next fiscal year. Section 5 of this Act requires that no expenditures be contracted by the school districts unless the money for payment has been specially set aside for payment by the budget. Sections 9 and 10 of the same Act provides for the borrowing of money upon the issuance of short-time bonds in extreme emergencies; the maturity dates of which shall be no more than two and one-half years from date of issuance.

Section 206 of the 1947 School Code, as amended, permits the borrowing of money upon the issuance of bonds maturing within 20 years. The purpose of allowing such bonded indebtedness is to provide a method of obtaining large amounts of money in order that the business of the

districts can be transacted upon a cash basis, and so that the debt thereby acquired can be retired over a period of years without the necessity of extra burdensome taxation.

Thus the law is clear to the effect that it is designed for the purpose of requiring the political subdivisions of the State to retire their obligations currently, and within the fiscal year according to the budgetary plan. The term "cash basis" has had very little interpretation in the cases. However, the term appeared in the original Article IX of the Nevada Constitution dealing with state finance and debt. This original Article IX provided for annual taxation to be required to defray the estimated expense for each fiscal year. Thereafter followed the provision that, for the purpose of enabling the State to transact its business upon a cash basis, bonded indebtedness was to be allowed. The Nevada Supreme Court in *Klein v. Kinkead*, 16 Nev. at page 205, in construing this original provision had this to say: "the object in authorizing a bonded indebtedness was to enable the state to maintain its business upon a cash basis, notwithstanding financial exigencies, without resorting to onerous taxation."

While we are aware that the framers of the Constitution and also the Legislature in the use of the term cash basis were concerned with seeing to it that no expenditures were made which were not properly covered by available funds, and while we are also aware that in the transaction proposed in your letter the funds will be available, nevertheless, the result of the concern, and the law laid down, was the directive that the entire obligations of the political subdivisions, including the school districts, are to be retired upon a current or yearly basis, and not retired over a period of years.

Thus, it is the opinion of this office that the school districts cannot enter into a contract obligating themselves for a period of three years as proposed, even though the money will be surely available. Moreover, under present circumstances, it appears that this somewhat peculiar case may well arise repeatedly in the future. In such event, if the obvious advantage is to be gleaned from a transaction such as that proposed, the authorization for it should come from future legislation. As we view the law, such authorization is not now present, and it is a clear proposition of law that the school districts are empowered to do only those things which are specifically or by necessary implication authorized by statute. 47 Am.Jur. 307, and cases cited therein; *McCulloch v. Bianchini*, 53 Nev. 101, 292 P. 617.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-48. Superintendent of Public Instruction—"Adjacent territory" as used in Section 249, 3(a), Chapter 402, Statutes of 1955, construed.

CARSON CITY, April 25, 1955.

HONORABLE GLENN A. DUNCAN, *Superintendent of Public Instruction, Carson City, Nevada*.

DEAR MR. DUNCAN: We have your letter of April 22, 1955, asking this department to construe the phrase "or adjacent territory" as it appears in Section 294, paragraph 3(a), of Chapter 402, Statutes of 1955.

The section in question provides that:

1. On May 2, 1955, the trustees of each school board having legal existence under the provisions of chapter 63, Statues of Nevada 1947, shall meet at the county seat of the county in which the districts are contained. The place of meeting

shall be designated by the president of the board of the district in which the county seat is located. Notice of time and the place of the meeting shall be given by registered mail to each of the trustees in the county by the clerk of the board of the district in which the county seat is located, which notice shall be mailed at least 14 days prior to the meeting.

2. The purpose of the meeting of all trustees to be held on May 2, 1955, shall be to select, from among their number in the manner hereinafter provided, a county school board to serve until the first Monday in January, 1957.

3. In school districts having less than 7,000 school children enrolled on May 2 1955, five trustees shall be elected as follows:

(a) Two residents of the county seat or adjacent territory.

The section then proceeds to limit the portion of the county from which each of the other three members of the county school board shall come, i.e., defining the place of residence of such other members to be selected.

We find no Nevada law to assist in the construction of the phrase “or adjacent territory.”

It is clear that the purpose of the provision calling for wide dispersal (as to place of residence) of the members of the county school board is to make the board when selected truly county representative, rather than to permit the board when constituted to reside in one part of a county and thereby to be prone to neglect the needs of the other schools and other portions of the county.

We understand that the phrase “or adjacent territory” was inserted near the end of the legislative session with persons and places in mind. These cannot be considered for the construction to be placed upon the words in question are to apply to all counties within the State.

Counties vary in size from the very small in area, such as Ormsby or Storey, to the very large, such as Elko or Nye. “Adjacent” then must be understood to be a relative term to be relatively applied depending principally upon the size of the county. A place of residence a given number of miles from Elko or Tonopah might be held to be within “adjacent territory.” While if the same number of miles be measured from Carson City or Virginia City, such location might be near the limits of the county, or beyond it limits.

“Adjacent” is defined by a Webster Standard Dictionary as lying near, close or contiguous; neighboring, bordering on; as a field adjacent to the highway.

In *People v. Keechler*, 62 N.E. 525, 527, 194 Ill. 235, we find “The word ‘adjacent’ is defined by Webster and other lexicographers to mean ‘to lie near’; ‘close or contiguous.’ It is sometimes said to be synonymous with ‘adjoining,’ ‘near,’ ‘contiguous.’ In some decisions courts have held it to mean ‘in the neighborhood or vicinity of’; in others ‘adjoining or contiguous to’.”

See *Words and Phrases*, Vol. 2, page 379. Here many decisions and definitions are to the same effect.

We are of the opinion, keeping in mind the purposes of the subdivisions (a), (b), (c), and (d), as we have formerly expressed it here that a trustee lives in “adjacent territory” to the county seat within the meaning of the statute if his interest in the welfare of the school or schools conducted at the county seat is great in comparison to the interest that he has in the welfare of other schools

dispersed here or there about the county. This test must also be qualified by the requirement that he live within a relatively short and accessible distance for the county seat.

If his primary interest is not the progress and welfare of the school or schools maintained at the county seat as distinguished from the schools located elsewhere within the county even though he may reside immediately beyond the city limits, then he does not reside in “adjacent territory” within the meaning of the statute.

If he resides at a great distance from the county seat, even though his primary interest may be the progress and welfare of the school or schools maintained at the county seat, his residence is not maintained in “adjacent territory” within the meaning of the statute.

A school trustee in order to qualify under subdivision 3(a) of the statute to be elected to the county school board must:

1. Be primarily interested in the school or schools conducted and maintained at the county seat as distinguished from other school or schools within the county, and
2. Must maintain his residence reasonably near to such county seat, and within the county in question.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-49. Insurance—Lender can demand insurance of his choice as security for loan.

CARSON CITY, April 26, 1955.

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

MY DEAR MR. HAMMEL: You have requested an opinion from this office covering your Department Ruling 1-55 dated April, 1951, in which you ask three questions:

1. May a financial institution, such as a bank, building and loan, small loan finance company, etc., require, as a condition to making a loan, that the borrower provide the mortgagee with insurance from a specific insurance company or through a specific insurance agency or brokerage;
2. May such a financial institution insist upon insurance through a specific agency or brokerage when the financial institution or one of its officers or directors has a financial interest in the agency or brokerage;
3. May such a financial institution refuse to accept as proper and adequate insurance a policy issued by a licensed mutual insurance company whether the policy is assessable or not.

OPINION

In answer to question one the opinion of this office is that a lender may require, as a condition to making a loan, that the borrower provide the mortgagee with specified insurance. The reason

for this is clear. There is a risk to loaning money that places the lender in a vulnerable position which can be minimized or eliminated only by proper security. What is, or is not proper security, is a matter for the lender to determine. If the borrower is dissatisfied with the demand of the lender, he can seek the loan elsewhere. There is no compulsion which denies him the right to seek other avenues for financial assistance.

Question two is a question of morality rather than of practicality, and has been answered by the reply to question one. If there is any impropriety in the channeling of insurance which results in exorbitant [exorbitant] rates and illegal insurance profits, then clearly the matter is one that calls for an investigation by the Insurance Commissioner. If such channeling results in insurance at legal rates and with sufficient protection from a licensed company, then only an ethical and not a legal question is involved.

Question three is answered by the reply to question one in that the lender may refuse to accept security offered by the borrower and demand, as a condition to making the loan, that security of his choice be made available.

Section 49D of the Nevada Insurance Code governs only the conduct of insurance persons as defined in Section 3656.48b of N.C.L. 1943-1949 Supp., and cannot be interpreted as in any way affecting the regulation of financial institutions. This function is delegated by law to the superintendent of Banks.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-50. Corporations—Foreign corporations of finance in conjunction with domestic lender: 1. Not required to file articles. 2. Not required to publish or advise assessors of last years business. 3. Not required to incorporate as banks or trust companies. 4. Not permitted to serve as executors, administrators, etc. 5. Not required to obtain license from Superintendent of Banks. 6. Permitted to institute and defend suits. 7. Must file list of officers and directors and pay fee as a condition precedent. 8. Must file list of officers and directors on or before June 30 thereafter and pay statutory fee.

CARSON CITY, April 26, 1955.

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

DEAR MR. KOONTZ: We acknowledge receipt of your letter of April 22, 1955, referring to Chapter 228, Statutes 1955, also to the opinion of the Attorney General's Office, No. 343, of date August 2, 1954. We are asked to construe the statute and make more clear the procedure to be followed in your office in three particulars, viz:

1. What is the procedure required to be taken under the provisions of said act by a foreign corporation availing itself of its privileges before actually engaging in the business in this State purchasing mortgages, etc.; i.e, must the corporation notify the Secretary of State, or anyone else, upon or before transacting such business therein.

2. Is such a corporation required to file the subject list of officers and directors on only June 30th of each year, irrespective of the time or the date upon which they actually engage in the subject business. In other words, may a corporation engage

in said business, say, on and after July 15th, 1955, and not be required to file the subject list before June 30th, 1956?

3. After approval of Chapter 228, Statutes of 1955, is the Attorney General's Opinion No. 343, of August 2, 1954, still effective?

OPINION

The Act is an original Act as distinguished from an amendment to existing law. Omitting the title and the enacting clause the statute reads as follows:

SECTION 1. Any corporation or insurance association organized under the laws of any other state, district or territory of the United States, or foreign government, which does not maintain an office in this state for the transaction of business, may carry on any one or more of the following activities:

1. The acquisition of loans, notes or other evidences of indebtedness secured by mortgages, deeds, or deeds of trust on real property situated in this state, by purchase or assignment, or by participation with a domestic lender, pursuant to the commitment agreement or arrangement made prior to or following the origination, creation or execution of such loans, notes or other evidences of indebtedness.

2. The ownership, modification, renewal, extension or transfer of such loans, notes, or other evidences of indebtedness, the foreclosure of such mortgages or deeds of trust, or the acceptance of additional obligors thereon.

3. The maintaining or defending of any action or suit relative to such loans, notes, mortgages or deeds of trust.

4. The maintaining of bank accounts in Nevada banks in connection with the collection or securing of such loans.

5. The making, collection or servicing of such loans.

6. The acquisition of title to property under foreclosure sale or from owners in lieu of foreclosure, and the management, rental, maintenance, sale or otherwise dealing or disposing of such real property.

7. The physical inspection and appraisal of all property in Nevada which is to be given as security for such loans and negotiations for the purchase of such loans.

SEC. 2. Any corporation or association carrying on the activities enumerated in section 1 of this act shall, for the purpose of this act, be deemed to have appointed the secretary of state as its agent for all purposes for which corporate resident agents are required under the general corporation laws of this state and shall, on or before June 30 of each year, file a list of officers and directors and shall pay a fee of \$50 for filing the list of officers and directors and the fee shall be in lieu of any fees or charges otherwise imposed on corporations under the laws of this state. The filing of such annual list shall not constitute the maintenance of an office for the transaction of business within this state for the purposes of section 1 of this act.

At the time of the rendition of the said Opinion No. 343 this Department was advised that a mutual savings bank of New York contemplated the purchase of mortgages or deeds of trust

secured by real property situated in this State, and desired to extend into Nevada only its investment activities through the services and cooperation of a foreign corporation agent qualified to do business in this State.

The question was presented: Would such foreign mutual savings bank be doing business in this State in such a manner as to obligate it, if possible, to qualify in this State under the provisions of the Nevada statutes requiring foreign corporations to qualify before carrying on business in this State?

That opinion answers the question in the affirmative for certain reasons there assigned as follows:

1. That Chapter 228, Statutes of 1949, page 503, amendatory of the former law, required foreign corporations to qualify in the specific manner there set out before carrying on business in this State. It was pointed out that the statute made such due qualification a condition precedent to doing business in this State.

2. That Section 747.46 N.C.L. 1931-1941 Supp. (Stats. 1935, page 323) provided that except for banks chartered under the laws of the United States, that all persons, firms or companies before entering into the banking business in this State would be required to obtain from the Superintendent of Banks a license authorizing such entity to use the name and transact the business of a bank. (The statute in question sets up license fees by a graduated scale for such institutions.)

3. That Section 3 of the Act, requiring the qualification of foreign corporations to qualify as a condition precedent to doing business, provides a monetary penalty for failure to so qualify and a penalty by a disability in maintaining or defending an action in the courts of this State.

4. That Chapter 63, Statutes of 1943, provides that no banking, or other corporation, unless organized under the laws of and has its principal place of business in this State, or is a national banking association the principal place of business of which is located within this State, or any officer * * * acting in its behalf, shall hereafter be appointed to act as executor, administrator, guardian of infants or estates, receiver, depository, or trustee under appointment of any court or by authority of any law of this State.

The opinion then states that the term "doing business" is not defined by statute. It cites authority for the judicially defined meaning of "doing business" and concludes that a foreign corporation to function in the manner proposed would be doing business in the State and would be required to qualify as a condition precedent.

It is clear from an examination of the present statute that it has been enacted to permit certain foreign corporations, in the limited functions declared by the statute, to do business, as an exception to the law previously applicable to such corporations. The statute is a result of the construction set forth in the said Attorney General's Opinion No. 343.

Two qualifications or limitations upon such foreign corporations that seek to be classified as entities entitled to receive the benefits and privileges of the Act, and to thus become an exception to the application of the pertinent statutes that are so ably discussed in the said opinion, are apparent from the terms of the statute in question, viz:

1. In all cases the foreign corporation must associate a "domestic lender" for the purchase, assignment or participation in the evidences of indebtedness as designated in the Act. Such entities are not authorized to act upon their own, for there must be the domestic lender, who has complied with the law as set out in the Attorney General's Opinion No. 343.

2. The limits of functional authority of such corporation or other entity are delineated by a strict construction of the subparagraphs of Section 1, numbered 1 through 7. The corporations or other entities that can qualify under the Act are excused from the performance of several duties as enumerated in the said Attorney General's opinion in the performance of certain functions. The grant of powers or functions must, therefore, be strictly construed, allowing no enlargement thereof, except such as may be necessary to carry into operation the powers there enumerated.

Section 2 provides that any corporation or association carrying on the activities enumerated in Section 1 of the Act shall, for the purposes of the Act, be deemed to have appointed the Secretary of State as its agent for all purposes for which corporate resident agents are required under the general corporation laws and shall file on or before June 30th of each year a list of officers and directors and shall pay an annual fee of \$50, etc. The purpose of this section, read in the light of the entire statute, is to set up a system of authority and notice to the foreign corporation of matters falling normally in the duties of resident agents, and

Secondly: To provide some revenue to the State of Nevada.

If such a corporation or entity were not required to file the list of officers and directors before entering into business in the limited field provided, it could, as you have suggested in the question, operate many months without the protection being set up, both as to itself in resident agent duties and as to the public in the service of process, etc., upon a resident agent. Such a condition also would or could deprive the State of revenue. This view is also strengthened by the similarity to the provisions of the general corporation law as regards the filing annually of the list of officers and designation of the resident agent.

We are, therefore, of the opinion that a foreign corporation that seeks to avail itself of the privileges enumerated in Section 1 of the Act must first qualify as set out in Section 2 of the Act, by filing its list of officers and directors with the office of Secretary of State and by payment at the time of such filing of the sum of \$50. We are also of the opinion that upon so filing and paying the foreign corporation will remain in good standing for the limited purposes of the Act until June 30 following and that on or before this date annually there shall be a compliance with this section as regards filing the list of officers and directors and the payment of the fifty \$50 dollar fee. We believe that the requirement of filing and paying is a condition precedent to the right to carry on any of the functional privileges set forth in the Act. This appears to dispose of the uncertainty set forth in your questions numbered 1 and 2.

We now approach the question of the effect of the statute upon the opinion of the Attorney General, August 2, 1954, under No. 343.

The Act provides, Section 3, that corporations or entities that qualify thereunder shall not be required to comply with the provisions of Chapter 89, Statutes of 1907; Chapter 108, Statutes of 1901; or Chapter 190, Statutes of 1933.

Chapter 89, Statutes of 1907, as amended by Chapter 228, Statutes of 1949, applicable to foreign corporations as a condition precedent to doing business in Nevada, provides for the filing of a certified copy of the articles of incorporation in the office of Secretary of State, and the filing of a duly certified copy of same, certified by the Secretary of State of this State, in the office of the County Clerk where its principal place of business in this State is located. This requirement, in our opinion, as to this limited group of corporations or other entities, permitted under the limited terms of the Act to do business in Nevada, as limited in said Act, has been dispensed with.

Chapter 108, Statutes of 1901, provides that all foreign corporations doing business in Nevada shall, during the month of January, publish a statement of their last year's business in some daily newspaper in the State of Nevada for the period of one week. It also provides for filing same with the several Assessors of the State of Nevada. It also provides for failures and penalties. Corporations operating under the provisions of the Act in question are effectively excused from the provisions of this statute.

Chapter 190, Statutes of 1933, is an Act to provide for the incorporation of banks and trust companies. Corporations or legal entities that qualify under the Act under survey of 1955 are in no way required to comply with this statute of 1933. Such then is an enumeration of the statutes, expressly excluded as applicable to corporations authorized to do business in this State under the Act of 1955.

We are of the opinion that Section 747.46, 1929 N.C.L. 1931-1941 Supp., which provides for a license to be issued by the Superintendent of Banks, upon payment of fee, as a condition precedent to engaging in the banking business, has no application to the legal entities authorized to do business under the provisions of this Act. Financial institutions to operate under this Act must always be associated with a "domestic lender."

Section 3 of the Act requiring the qualification of foreign corporations (Section 1843, N.C.L. 1929) which precludes corporations that fail to qualify from maintaining or defending an action at law, has no application to a corporation qualifying under this Act. For Section 1(3) of the Act in question grants to such entities such power.

We are further of the opinion that no corporations authorized to do a restricted business in Nevada by a compliance with the provisions of the law of 1955 would be authorized to qualify under Chapter 63, Statutes of 1943, page 87. This portion of the Attorney General's opinion of August 2, 1954, under No. 343, remains unchanged and unaffected by the provisions of the Act of 1955.

We return herewith your correspondence, submitted for the purpose of our study and analysis.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-51. Planning Board—Limitation of \$440,000 for building of geriatric ward at Nevada State Hospital, applies to state funds and does not include federal funds made available.

CARSON CITY, April 28, 1955.

MR. A. M. MACKENZIE, *Secretary, State Planning Board, Carson City, Nevada*.

MY DEAR MR. MACKENZIE: You have made written inquiry of this office for an opinion construing certain provisions of A.B. 133 which has become Chapter 410 of the Nevada Statutes of 1955.

Your specific question is as to whether your board is limited to a total expenditure of \$440,000 including federal funds that might be made available.

OPINION

The act in question provides for the issuance of general obligation bonds of the State of Nevada in an amount not to exceed \$440,000 for the purpose of constructing, furnishing and equipping, at the Nevada State Hospital, a ward building unit of a capacity of 130 beds to house geriatrics, and including a service center and an infirmary unit.

The proceeds arising as a result of the sale of these bonds are to be deposited in the State Treasury, for the use of the State Planning Board in carrying out the provisions of this Act, in a fund to be known as the "Nevada State Hospital Geriatrics Ward Construction Fund."

Section 5 of the Act provides that the costs and expenses of the construction, equipment and furnishings, including supervision and inspection thereof and of all the work and materials provided for in this Act, shall not exceed the sum of \$440,000. It is apparent that the Legislature inserted this provision so that the cost would remain within the limits of the bond issue, and that the limitation of costs referred to costs to the State of Nevada.

Construing Section 5 in conjunction with Section 3.5, wherein provision is made for the deposit of federal funds made available to assist in carrying out the provisions of the Act, it is the opinion of this office that the federal funds may be used by your board in addition to the \$440,000 which you will receive from the sale of the bonds hereinbefore described, provided it is not necessary for your board to repay the federal funds made available.

We call your attention to Section 4 of the Act, however, which limits the use of funds, whether State or federal, to the construction equipping and furnishing of a ward building unit, including a service center and infirmary unit at the Nevada State Hospital.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-52. District Attorneys—Jurisdiction of court to determine criminal action not impaired by fact that arresting officer after arrest in Nevada took defendant across state line, by only accessible course to return him to Nevada magistrate. False arrest would not lie against arresting officer.

CARSON CITY, April 28, 1955.

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

DEAR MR. BEKO: We are in receipt of your letter of April 23, 1955 containing a statement of facts and query as follows:

STATEMENT OF FACTS

A Conservation Officer of the Nevada Fish and Game Commission arrests a person for a violation of the Fish and Game Laws of the State of Nevada. The violation and arrest occurs within the State of Nevada, at a point which can be reached by only one road which travels into and out of an adjoining state. Because of the locality and the route necessarily traveled, it is necessary for the officer to transport the suspect in and out of the adjoining state in order to bring the suspect before the nearest magistrate or justice of the peace. In returning the suspect, as soon as the officer has crossed the state line into the adjoining state, the suspect

demands his release and refuses to accompany the officer back into the State of Nevada.

QUERY

Is the officer exceeding his authority in returning the suspect across the state line involuntarily, despite the fact that the law requires an arresting officer to take the person arrested to the nearest magistrate without unnecessary delay?

OPINION

At first we were not entirely clear on the meaning of the question submitted but construed from the statement of facts we believe the question may be interpreted or clarified to mean this:

Is the officer exceeding his authority in returning the suspect across the state line involuntarily, when in doing so he is making an effort to comply with the law which requires an arresting officer to take the person arrested before the nearest magistrate without unnecessary delay?

In the question of whether or not there has been an abuse of authority we shall analyze the situation in two particulars, viz:

1. As impairing the jurisdiction of the Court to hear and determine the crime involved.
2. As rendering the arresting officer liable in a civil action of false arrest.

The Fish and Game Law is found in Chapter 101, Statutes of 1947, p. 349. Same has been amended in certain particulars. Section 39, p. 362, provides for the enforcement of the Act. No question has been presented as to the authority of the officer to make the arrest which occurred in Nevada. Nothing is said about the officer arresting with a warrant and we therefore presume that there was no warrant but rather the discovery by the officer of the Commission of a crime in his presence, such as fishing without a license, or with improper and unauthorized equipment at forbidden hours or something of the sort.

An observation as to the duty of the officer to take the defendant before the most convenient magistrate, although not directly pertinent here, is, we feel, in view of the fact that it has been mentioned proper here.

Section 10738, N.C.L. 1929, provides that if the offense charged is bailable and the defendant is arrested in another county "the officer must, *upon being required so to do by the defendant* take him before the most convenient magistrate * * *." (Italics ours.) Demand to be taken before a magistrate is fixed as a part of the law and is essential. *Lemel v. Smith*, 64 Nev. 545; 187 P.2d 169. Section 10744, N.C.L. 1929, provides: "The defendant must, in all cases, be taken before the magistrate without unnecessary delay." The former section cited is specific and the latter section cited, general. The former would therefore control insofar as it is applicable to a state of facts.

EFFECT OF STATE LINE

Defendant was arrested in Nevada, under Fish and Game Law violation. It is quite likely defendant had his own car and the officer had his car, and also likely (the crime being minor) that officer agrees to permit defendant to drive his car. Both parties leave together, each driving his own car. The only available road to return to county seat of county in which crime occurred takes parties into another state (California). There defendant refuses to accompany the officer in

driving his car to county seat. Officer then takes defendant into his car and drives across state line into Nevada to county seat and the nearest magistrate. (We assume certain facts here and if slightly in error, i.e., as regards two cars, it would not change the opinion here expressed.)

There is a lack of authority of the effect of an arrest in a state, and then taking of defendant into another state as a means of taking defendant to a magistrate in arresting state in order that he may be charged, admitted to bail, etc. There is no question, however, that defendant was legally under arrest from the time the arrest was made in Nevada. The fact that a certain amount of liberty and, freedom of movement within limits, was given to defendant, after arrest, in no way changes the fact of arrest. Such was a matter of discretion and judgment exercised by the officer the crime being minor.

Even if defendant had been arrested by the Nevada officer in the State of California for crime committed in Nevada (a totally unauthorized act) and had without extradition proceedings returned the defendant to Nevada, the Nevada court would nevertheless have had jurisdiction to hear, try and determine the matter. 14 Am.Jur., Art. 217, p. 919; 22 C.J.S., Art. 146, p. 242; 18 A.L.R., p. 513; and cases cited thereunder. See also: Brandt v. Hudspeth, 178 P2d 227; People v. Regan, 72 N.E.2d 311; Jackson v. Olson, 22 N.W.2d 124, syllabus 8.

The case under investigation is much stronger for the State, and the jurisdiction of the Nevada court to hear, try and determine the matter, the arrest being properly made in Nevada than it would be if the facts were as in the cases cited.

We therefore conclude that the circumstances of crossing a state line, the defendant having been properly arrested in Nevada, in no way gave freedom to defendant, and his forced detention to recross the state line in returning defendant to Nevada, in no way impaired the jurisdiction of the Nevada court to hear, try and determine the crime with which defendant was charged, subsequently, and for which he had been arrested.

No civil action based upon unlawful arrest could be maintained against the arresting officer, for the arrest occurred in Nevada. The fact that more force was required to effectively hold defendant after the parties reached another state than before, could not and does not alter the conclusion reached, for defendant was in custody from the time the arrest was made.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-53. Sales Tax—Combustible gas, liquid or material of class, grade or sort used in an internal or combustion or diesel engine exempt from tax under Sales and Use Tax Act, Chapter 397, 1955 Statutes.

CARSON CITY, April 29, 1955.

MR. NORMAN W. CLAY, *Administrator, Sale and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

MY DEAR MR. CLAY: You have asked this office to give you an opinion concerning the construction of certain phrases contained in Section 55 of Chapter 397 of the 1955 Statutes.

Section 55 reads as follows:

There are exempted from the taxes imposed by this act the gross receipts from the sale and distribution of, and the storage, use or other consumption in this state of, any combustible gas, liquid, or material of a kind used in an internal or combustion or diesel engine for the generation of power to propel a motor vehicle on the highways.

Your query requests an interpretation of the exemptions set forth in the above-quoted section.

OPINION

There would be no questions as to the clear meaning of the statute if the combustible gas, liquid or material therein designated were defined solely as that used in an internal or combustion or diesel engine for the generation of power to propel a motor vehicle on the highways. But the law does not so read.

The exact phrasing of the Legislature is “* * * any combustible gas, liquid, or material *of a kind* used in an internal or combustion or diesel engine for the generation of power to propel a motor vehicle on the highways.” (Italics ours.) Black’s Law Dictionary, 4th Edition, at page 1009, defines “kind” as class, grade or sort, and it was so defined in the cases of *St. Louis v. James Braudis Coal Co.*, 137 S.W. 2d, 668.

Therefore, any combustible gas, liquid or material of the same class, grade or sort, as that used to propel a motor vehicle on the highways, is exempt under the Act from the taxes therein imposed, whether or not such combustible gas, liquid or other material is used to propel a motor vehicle on the highway.

If it should be determined at a later date that it was the intent of the Legislature to exempt such fuel from tax only where used to propel a motor vehicle on the highway, then the remedy lies in legislative action to amend the Act.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-54. Sales Tax—Interpretation of word “domestic” as used in Section 59.1 of Chapter 397, Statutes of 1955.

CARSON CITY, April 29, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: You have requested an opinion of this office interpreting the word “domestic” as used in Section 59.1 of Chapter 397, 1955 Statutes of Nevada. Section 59.1 reads as follows:

There are exempted from the taxes imposed by this act the gross receipts from the sales, furnishing or service of, and the storage, use or other consumption in this state of, any matter used to produce domestic heat by burning, including, without limitation, wood, coal, petroleum and gas.

Specifically you are interested in what type of homes, buildings or institutions, may be determined to fall within a category that would exempt them from the sales tax provision of the Act under said Section 59.1.

OPINION

It is the opinion of this office that the word "domestic" as used in Section 59.1 applies only to fuel used or consumed in a home. The word "domestic" as defined by Webster's International Dictionary means "of or pertaining to one's house or home, or one's household or family; relating to home life."

In the case of *Henderson v. Shreveport Gas, Electric Light and Power Co.*, 63 S. 616, the court defined "domestic" as meaning a thing of or pertaining to one's house or home, or one's household or family, and excluding the idea of business, unless one pursued his vocation or calling within his home.

In Kentucky the court, in the case of *Barres v. Watterson Hotel Co.*, 244 S.W. 308, held that "a maid working at a large hotel is 'engaged in industry' and not in 'domestic employment' within the Workmen's Compensation Act exempting such employment, from the operation of the act, the term 'domestic' pertaining to one's home or household."

While it is true that the word "domestic" has a widely varying meaning, significance must always be determined with reference to the subject matter and the relation in which it appears. In the instant Act it is clear the Legislature intended the word "domestic" to be limited to homes or households. While it is true that hotels have permanent guests, yet they are engaged in a business venture primarily catering to transients.

The case of *Acheson v. Johnson*, cited in your letter, is to be differentiated from the present problem in that the law of Maine restricted the use of the word "domestic" as it applied to hotels to use for guests occupying rooms four months or longer. Our law makes no concession to hotels in this regard.

It is to be remembered that the Legislature, faced with a serious revenue raising problem, explored the field subject to taxation with the idea in mind of securing revenue wherever possible in conformity with justice. It would be possible under an excessively liberal interpretation of the law to stretch the exemption clauses of the Act to the breaking point, and thus defeat the intent of the Legislature and the efficacy and purpose of the law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-55. Nevada Tax Commission. Fact that one person may be fuel dealer (gasoline) and special fuel dealer (diesel and L.P.G.) and special fuel user does not dispense with necessity of a bond for each function. Statutes of 1935, Chapter 74, p. 161; 1939, Chapter 149, p. 193; 1953, Chapter 364, p. 683.

CARSON CITY, May 3, 1955.

MR. WILLIAM H. SCHMIDT, *Supervisor, Fuels Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. SCHMIDT: We acknowledge receipt of your letter of April 13, 1955 asking a construction of Chapter 74, Statutes of Nevada 1935, p. 161, and Chapter 364, Statutes of Nevada 1953, p. 683.

You have enclosed three forms of bond heretofore used and ask the question:

Do any of the three bond forms enclosed cover more than one operation? That is, should we require for the same individual engaging in business as a Special Fuel User, a Special Fuel Dealer, and a Motor Vehicle Fuel Dealer all three bonds?

OPINION

Do any of the three bond forms enclosed cover more than one operation? The answer is in the negative. Although the form of surety bond for "Special Fuel Dealer" and "Special Fuel User" are very similar, they are not identical. The separate terms or names appear on the separate forms. It is true that both terms are very similar, they are not identical. The separate terms or names appear on the separate forms. It is true that both terms appear in the same statute, the Statutes of 1953, Chapter 364, p. 683, but the definitions clearly indicate that there is a distinction functionally as follows:

Section 2(4) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tanks of a motor vehicle not then owned or controlled by him. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

Section 2(5) "Special fuel user" means any person who consumes in this State special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this State.

Every "Special fuel dealer" shall be licensed (Section 6-1) and shall give bond (Section 6-3). The total amount of such bond is fixed by the Nevada Tax Commission at twice the amount of the estimated tax, and may be increased or decreased at the discretion of the commission.

Every "Special fuel user" shall obtain a license issued by the commission (Section 5-1), and may require a bond as provided in Section 5-3(c). The bond of the "Special fuel dealer" is mandatory and of the "Special fuel user" is discretionary with the commission.

The amount of the bond of the "Special fuel dealer" is fixed by law. The amount of the bond of the "Special fuel user" when required, is discretionary with the commission. A bond as to the former will protect the State from loss of its lawful income derived for sale, while the bond as to the latter, when required, will protect the State from loss of its lawful income derived from use. If both functions are combined in a single individual and if the commission in its discretion requires a bond for use of special fuel, then both bonds must be required to cover both risks or contingencies.

The statute as to sale of "Motor vehicle fuel" is found in the Statutes of 1935, Chapter 74, p. 161. The bond under this statute is mandatory. (Sec. 4, p. 164).

It follows that when a dealer sells "Motor vehicle fuel" (gasoline) he must comply with the Statutes of 1935, to afford the State protection against loss of revenue from the sale of this commodity. If he (the same man or company) also sells "Special fuel" (diesel fuel or L.P.G.) he must give bond to cover the liability as to payment of taxes exacted for the sale of these commodities. If he (the same man or company) also uses "Special fuel" he must, if required by the commission, give bond for this.

The fact that the Statute of 1935 covers only one type of fuel and the Statute of 1939, Chapter 149, p. 193, followed by Statute of 1953, Chapter 364, p. 683, is descriptive of the other types of fuel only, the latter by its terms excluding the coverage of the former law, is compatible with the opinion heretofore expressed.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-56. Insurance Commissioner—Securities required to be deposited with Commissioner are of specific types and kinds enumerated and strict construction will not permit any diminution as to quality.

CARSON CITY, May 10, 1955.

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

DEAR MR. HAMMEL: We acknowledge receipt of your inquiry of April 27, 1955 upon a statement of facts which we quote from your letter:

QUERY

Prior to March 23, 1955 the minimum capital requirements for the formation, or admission, of an insurance company to do a life and accident and health business in Nevada was \$125,000. Chapter 190 of the 1955 statutes increased this capital requirement to \$200,000 and this chapter does not contain a "grandfather clause."

This Department has been asked if we could, and would, accept an "irrevocable assignment" of \$50,000 from the surplus of a foreign company with \$150,000 of capital currently licensed to do both a life and an accident and health business in Nevada in lieu of the additional capital requirement until such time as the company could, without difficulty, increase its capital to \$300,000 which it has planned to do by the end of 1956.

OPINION

Chapter 190 of the Statutes of 1955, approved March 23, 1955, is amendatory of Section 13 of the law previously existing. The General Insurance Law was enacted in 1941, Chapter 189, p. 451 (N.C.L 1931-1941 Supp., Sections 3655.01-3655.03).

Section 5 of the Act clarifies insurance. Under Class 1 there are two subclassifications, viz: (a) Life and (b) Accident and Health. Each type is there defined for purposes of the Act.

Section 13(1) of the Act prior to the amendment provided that:

A Stock company organized under this article shall have and at all times maintain a paid-up capital of the amount set forth in its articles of incorporation, which amount shall not be less than the minimum capital requirement applicable to the class and clause or clauses of section 5 describing the kind or kinds of insurance which it is authorized to write, as set forth in the following table:

Life, Accident and Health

(a) Class 1 (a) or (b) one hundred thousand (\$100,000) dollars.

(b) Class 1 (a) and (b) one hundred twenty-five thousand (\$125,000) dollars * *

*,

We understand that the Commercial Travelers Ins. Co. is a stock company. The portion of the section above quoted has been changed by the Act of 1955 by deleting the words "one hundred twenty-five thousand (\$125,000) dollars and substituting in lieu thereof the words "two hundred thousand (\$200,000) dollars."

Section 51 of the Act provides that a domestic company may invest in certain enumerated securities, as follows:

(a) Bonds of the United States.

(b) Bonds of any state of the United States.

(c) Bonds evidencing an indebtedness of any county, city, town, village, school district, sanitary district, part (park) district of any municipal corporation of any state of the United States or District of Columbia.

(d) Bonds of a public utility if state or municipally owned.

(e) First mortgages on improved unencumbered real estate located within this state, if the mortgages otherwise qualify under the specific, exacting test of the statute.

(f) Bonds or evidences of indebtedness of a railroad corporation, if issuing corporation otherwise qualifies under the specific, exacting tests provided in the statute.

(g) Bonds or evidences of indebtedness of a solvent public utility corporation, if the issuing corporation otherwise qualifies under the specific, exacting tests provided in the statute.

(h) Bonds or evidences of indebtedness issued by any solvent corporation, if the issuing corporation can meet the specific, exacting tests provided in the statute.

In certain of the above investments the insurance corporation is limited to a maximum percent of its admitted assets.

Section 14 provides in part as follows: "Sec. 14, Deposit. (1) In case of a stock company a deposit of cash or securities which are authorized investments under section 51, in an amount equal to the minimum capital required by section 13, shall be made and maintained with the commissioner for the protection of all policyholders and creditors of the company."

It is clear from the amendment to Section 13, which became effective on March 23, 1955, that the deposit that is required with the commissioner for a stock company engaged in life insurance and accident and health insurance has been increased from \$125,000 to \$200,000, effective upon that date. Unquestionably a reasonable time to comply should be allowed. The amendment of 1955 contains no "grandfather clause" by which we have understood you to mean that there is no provision to exempt the established and previously licensed corporations, from the requirement

of compliance with the new provision. This statute then effectively regulates the amount of the deposit required by the Act.

Section 51 regulates the quality of the securities which may be accepted as required under Section 14. The enumeration is specific and is exclusive. It is subject to strict construction. We do not find in that enumeration of acceptable securities any security or evidence of indebtedness similar to that which is suggested, namely, "An irrevocable assignment of \$50,000 from the surplus of a foreign company."

We therefore conclude that an acceptance of such an instrument could not and does not meet the provisions of Section 14(1) of the statute. The money or the securities which qualify under Section 51 are to be deposited.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-57. Superintendent of Public Instruction—The term "adjacent territory" as used in Section 249-3(a), Chapter 402, Statutes of 1955, is a term of inclusion, as a basis for qualification.

CARSON CITY, May 5, 1955.

HONORABLE GLEN A. DUNCAN, *Superintendent of Public Instruction, Carson City, Nevada*.

DEAR MR. DUNCAN: We acknowledge receipt of your letter of May 3, 1955.

You have referred to Chapter 402, Statutes of 1955, and to Section 249-3, (a), (b), (c) and (d). You have advised us of certain facts as follows:

On May 2d the trustees of Lyon County met in Yerington according to the recently enacted law and selected from their membership two board members from Yerington under Section (a) 3, on page 28 of Senate Bill 267; one board member from Smith Valley under (b); one board member from Fernley under (c); and one member from Weed Heights under (d).

Weed Heights is 3 1/2 miles away from Yerington. It maintains its own post office.

QUERY

Was the school board member who resides in Weed Heights, legally elected under the provisions of (d) even though Weed Heights is only three and one-half miles from Yerington?

OPINION

The answer to the question is in the affirmative.

The portion of the statute in question reads as follows:

3. In school districts having less than 7,000 school children enrolled on May 2, 1955, five trustees shall be elected as follows:

- (a) Two residents of the county seat or adjacent territory.
- (b) One nonresident of the county seat who is not a resident of any incorporated city within the county.
- (c) One nonresident of the county seat.
- (d) One resident of the county at large not a resident of the county seat, unless at least 80 percent of the residents of the county are residents of the county seat.

The term “adjacent territory” as used in Section 249-3(a), Chapter 402, Statutes of 1955, are words of inclusion not exclusion. In effect this subdivision (a) means that no school trustee of the county will be eligible as a candidate for the county school board under the provisions of subdivision (a) unless he is a resident of the county seat or adjacent territory. This is entirely different from stating that all trustees that reside in adjacent territory to the county seat, if they are to become candidates for the county school board must do so under the provisions of subdivision (a).

It is unquestioned, we believe, that less than 80 percent of the residents of Lyon County reside in Yerington. This being true we are of the opinion that a school trustee of Lyon County, legally in office before May 2, 1955, a resident of Weed Heights could properly be considered a candidate for the county school board, under Section 249-3(d), of the statute in question. Assuming that such election was legally conducted, then it would follow that the candidate was legally elected to the county school board.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-58. Genoa Fort Monument Appropriation—Unexpended portion of \$500 earmarked for each year of 1953-1955 biennium reverts to State.

CARSON CITY, May 6, 1955.

MR. C. A. CARLSON, JR., *Budget Director, Office of the Governor, Carson City, Nevada.*

MY DEAR MR. CARSON: You have requested that this office place a construction on Chapter 327 of the 1953 Statutes of Nevada.

You point out that Section 1 of the Act appropriates \$1,000 for the support, maintenance and general improvement of the Genoa Fort Monument, and that Section 2 provides that \$500 is expended during each year of the biennium.

Your inquiry is in effect: “If less than \$500 is expended during the first year, can the unexpended balance carry over into the next fiscal year?”

OPINION

The word “may” indicates an exercise of discretion under ordinary circumstances, but in Black’s Law Dictionary, Fourth Edition, at page 1131, it is pointed out that Courts frequently construe the word “may” as “shall” or “must” to the end that justice may not be the slave of

grammar. See *Minor v. Mechanics Bank*, 7 L.Ed. 47, *Appeal of Burnap*, 94. Conn. 286, 108 A. 802, *Stapler v. El Dora Oil Company*, 27 Cal.App. 516, 150 p. 643.

That the Legislature intended to limit the expenditure in any one year is clear from a study of the Act in question. If such were not their intention, then what need would there have been for Section 2? Sections 1 and 3 would have allowed the disbursing authorities under the Act to expend the \$1,000 appropriation at their discretion during the two year period.

Therefore, any portion of the \$500 remaining unexpended during the first year, July 1, 1953, to June 30, 1954, reverts to the State. The same is true of any unexpended portion of the \$550 earmarked for the second year.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-59. Constitutional Law—Employment with school district by Assemblyman during term of office prohibited.

CARSON CITY, May 9, 1955.

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

DEAR MR. BLAISDELL: This is in answer to your letter dated April 18, 1955.

We quote from your letter the facts involved in this problem.

An employee of the Hawthorne Elementary School District No. 7 in the capacity of inspector and maintenance man for the elementary school is also a member of the Nevada Assembly having been elected in 1952 and reelected in 1954. He has served as inspector and maintenance man for two years last past on a monthly salary basis, except for a period of time from January 15, 1955, when he resigned—to March 28, 1955, when he resumed said employment. During the interim he served as Assemblyman.

QUESTION

We quote your question as follows:

Is it legal for a Board of Trustees of a school district to employ with remunerations an elected member of the Nevada State Legislature during the time the Nevada State Legislature is not actually in session?

OPINION

The answer is in the negative.

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 powers properly belonging to one of these departments

shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

An assemblyman is not only an assemblyman during the legislative session but also during his entire elective term of office. He is charged during that term, with the exercise of powers properly belonging to the legislative branch of our State Government. He is subject to special session duty during his term of office and may and oftentimes does serve on interim committee or commission activity all during his two year term.

The school districts are political subdivisions of our State Government and a part of its executive branch. An employee of the school district is exercising a function appertaining to the executive branch. If that employee is at the same time an assemblyman, the activity is in conflict with the above-quoted constitutional provision.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-60. Wages—Interpretation of Sections 2775 et seq., 2785 N.C. L. 1929. Penalty provisions of Sections 2775, 2785, N.C.L. 1929, do not contemplate inclusion of welfare, vacation, and travel pay.

CARSON CITY, May 16, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada*.
Attention: Mr. Arthur Olsen, Deputy.

DEAR MR. DICKERSON: Your office has requested an opinion interpreting the law regulating the payment of wages under Sections 2775 through 2787 N.C.L. 1929 and Acts amendatory thereof.

From the contents of your letter it appears that a workman after one day's work was fired. He demanded a day's salary or wage and the employer refused to pay. The employer did not tender the amount due until seventeen days had elapsed. The employee demands the amount of his daily wages or salary for the entire seventeen days, and in addition thereto a prorated amount for vacation, welfare and travel time.

Your inquiry is directed to the question as to whether a complaint filed by your office, on behalf of the employee, against the employer, should include other than wages due the employee at the time his employment was terminated.

OPINION

In order to cogently answer your inquiry it is necessary to study and to interpret the various sections of the Act which apply, especially Sections 2776 and 2785 N.C.L. 1929 and Acts amendatory thereof.

Our Supreme Court in the case of Doolittle v. District Court, 54 Nev. 319, has held that Section 2776 is the penal section of Chapter 71, Statutes of 1919, which deals with semi-monthly pay days, and it must therefore be construed with relation to Section 2775 N.C.L. 1929. Section 2775 was amended in 1937 and became Chapter 31 of the 1937 Statutes of Nevada. Said Section 2775 reads as follows:

SECTION 1. All wages or compensation of employees in private employments shall be due and payable semimonthly, that is to say, all such wages or compensation earned and unpaid prior to the first day of any month, shall be due and payable not later than 8 o'clock A. M. the fifteenth day of the month following that in which such wages or compensation were earned; and all wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than 8 o'clock A. M. the last day of the same month; but nothing contained herein shall be construed as prohibiting the contracting for the payment or of the payment of wages at more frequent periods than semimonthly. Every agreement made in violation of this section, except as hereinafter provided, shall be null and void; except any employee shall be entitled to payment of such wages or compensation for the period during which the same were earned.

The words "private employments" used in this act, shall mean all employments other than those under the direction, management, supervision, and control of this state or any county, city, or town therein, or any office or department thereof.

It is to be noted that Section 2775 as amended refers to "All wages or compensation or *employees in private employment * * **," while Section 2785, which was passed March 21, 1925, as Chapter 139 of the 1925 Statutes, makes reference to an employment of *labor* "by the hour, day, week or month." It is clear therefore that the Legislature in enacting the two separate and distinct Acts meant to differentiate between the two, Chapter 71 of the Statutes of 1919, which became Section 2775 of the Nevada Compiled Laws, and which was amended by Chapter 31 of the 1937 Statutes, provides, "** * * all such wages or compensation earned and unpaid prior to the first day of any month, shall be due and payable not later than 8 o'clock A. M. the fifteenth day of the month following in which such wages or compensation were earned; and all wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than 8 o'clock A. M. the last day of the same month * * **."

It is clear then that the contract for employment must be the governing factor in determining when the penal provisions of the Act come into being. If the employment is under Section 2775 N.C.L. 1929 as amended, the employer would have to pay, upon demand of a discharged employee, within three days of either the first or fifteenth day of the month following the earning period, depending on the period of the month in which the work was performed, or said employer would be liable for wages and compensation from the date of cessation of employment until payment was made.

On the other hand if the employment involved a laborer and the employer discharged or laid off the employee without first paying him the amount of any wage or salary then due, the provisions of Section 2785 N.C.L. 1929, which is Chapter 139 of the 1925 Statutes, would govern. In order to make the provisions of Section 2785 available to one referring to this opinion, we quote it in its entirety:

SEC. 1. Whenever an employer of labor shall hereafter discharge or lay off his or its employees without first paying them the amount of any wages or salary then due them, in cash, lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week or month, each of his or its employees may charge and collect wages in the sum agreed upon in the contract of employment for each day his employer is in default, until he is paid in full, without rendering any service therefor; provided, however, he shall cease to draw such wages or salary thirty days after such default.

SEC 2. Every employee shall have a lien as provided in an act entitled "An act to secure liens to mechanics and others, and repeal all acts in relation thereto," approved March 2, 1875, as amended by chapter 41, Statutes of 1919, and all other rights and remedies for the protection and enforcement of such salary or wages as he would have been entitled to had he rendered services therefor in manner as last employed.

The Supreme Court of our State in *Doolittle v. District Court*, 54 Nev. 319, answered the contention that the Legislature did not intend Section 2785 to apply to casual, odd job or emergency employment by pointing out in its opinion, "There is no merit in the contention, the language of the statute is clear, plain and simple and not open to construction. It provides that the provision shall apply to one employed 'by the hour, day or week.' Nothing could be clearer." The Supreme Court in this decision went on to differentiate between Section 2776 and Section 2785 by this language, "The 1925 Act (Sec. 2785) does not purport to be amendatory of the other acts or to repeal any portion of them. It is clearly an independent act intended to meet an entirely different situation than that contemplated by the act of 1919 (Sec. 2775 et sequitur). The penal provision of Section 2785 are sustained in *Bowers v. Charleston Hill Nat. Mines*, 50 Nev. 104."

Having thus ascertained the difference between the Act of 1919 (Sec. 2775 et seq.) and the Act of 1925 (Sec. 2785) it becomes a question of the contract of employment. The time the penalty accrues under Section 2776 has already been discussed. If the employment involves a laborer, working by the day, week or hour, and he is laid off or discharged the provisions of Section 2785 N.C.L. 1929 apply and the demand for pay due can be made immediately, and payment then becomes due from the employer to the employee for each day the employer is in default in making the payment.

It is equally clear from a study of Section 2775 et sequitur and Section 2785 N.C.L. 1929, as amended, do not contemplate the payment of vacation, welfare or travel time.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-61. Clarifies Opinion No. 53. Sales Tax—Combustible gas, liquid or material of class, grade or sort used in an internal or combustion or diesel engine exempt from tax under Sales and Use Tax Act, Chapter 397, 1955 Statutes, when used in internal combustion or diesel engine.

CARSON CITY, May 16, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: You have requested that this office clarify Opinion No. 53, dated April 29, 1955, in that the next to last paragraph of said opinion does not explain the use of the combustible gas, liquid or material therein defined.

Said opinion may be clarified so as to present the exact opinion of this office by placing a comma after the word "highway" at the end of the paragraph and adding the words, "when the same is used in an internal, combustion or diesel engine." The paragraph would then read:

Therefore, any combustible gas, liquid or material of the same class, grade or sort, as that used to propel a motor vehicle on the highways, is exempt under the act from the taxes therein imposed, whether or not such combustible gas, liquid or other material is used to propel a motor vehicle on on the highway, when the same is used in an internal, combustion or diesel engine.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-62. Constitution—Public Officer—One employed in nongovernmental capacity, and who exercises none of the sovereign [sovereign] functions of government, is not a public officer as contemplated by Section 8 of Article IV of the Constitution of Nevada.

Constitution—One who resigns one position in the Executive Department of the State Government is not precluded by Section I of Article III of the Constitution of Nevada from holding another position in the same or a different branch of the government.

Constitution—A Senator or Assemblyman who resigns is not precluded from holding a position in the same or a different department of the State Government, where the position was not created by the Legislature in which he served, or in which the emoluments were not increased during his term of office as Senator or Assemblyman.

CARSON CITY, May 17, 1955.

MR. KEITH MOUNT, *Assemblyman, Mineral County, Hawthorne, Nevada*.

MY DEAR MR. MOUNT: You have received Opinion No. 59 from this office in which it was pointed out that under Section 1 of Article III of the Constitution of Nevada, no person charged with the exercise of powers belonging to one of the three separate departments of government (the legislative, the executive and the judicial) shall exercise any functions appertaining to either of the others, except in cases expressly directed or permitted under said Constitution. You now inquire as to whether there is any prohibition, constitutional or otherwise, which would prevent you from holding the position of maintenance engineer and building inspector for the Hawthorne Elementary Schools, in the event you resign as Assemblyman from Mineral County.

OPINION

The only prohibition which could effect your right to hold a position with the executive branch of the government, once you have resigned as Assemblyman from Mineral County, is found in Section 8 of Article IV of the Constitution of Nevada, which reads as follows:

No senator or member of assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state which shall have been created, or the emoluments of which shall have been increased, during such term, except such office as may be filled by elections by the people.

It is clear that in order for this section of the Constitution to act as a barrier to your serving as maintenance engineer and building inspector for the Hawthorne Elementary Schools, these factors must appear: (1) your position must be classified as a civil office for profit, (2) the office, if a civil office for profit, must have been created during your term as Assemblyman from

Mineral County, or within one year thereafter, and/or (3) the emoluments of said office, if a civil office for profit, must have been increased during your term as assemblyman.

Our State Supreme Court in the case of *State v. Cole*, 38 Nev. 215, defined a civil office for profit as a public office. Citing numerous cases the Court established certain criteria for determining whether or not an office is a public office as contemplated by Section 8 of Article IV of the Constitution of Nevada.

A digest of the authorities cited leads this office to believe that the following tests must be met to qualify one as a public officer as contemplated by the constitutional prohibition.

1. The office must be brought into existence either under the terms of the Constitution, by legislative enactment, or by some municipal body, pursuant to authority delegated to it.
2. The individual appointed must be invested with some portion of the sovereign [sovereign] functions of government.
3. The warrant to exercise powers must be conferred, not by contract, but by law.
4. The taking of an oath is an indication that the office is a public office. Section 2 of Article XV of the Constitution provides that all officers shall take an oath.

In the case of *Baltimore v. Lyman*, cited by our Supreme Court, which dealt with the definition of a school superintendent as a public officer, the court pointed out, "He takes no official oath, gives no official bond, has no commission issued to him, and has no fixed tenure of office, but is appointed at the pleasure of the school board. It also appears from an examination of the charter that all the executive power relating to educational matters is vested in a department known as 'the department of education,' and this department is composed of the board of school commissioners. The superintendent of public instruction exercises no power except what is derived from and through the board. He is simply, then, an employee or the agent of the school board, and not a municipal official within the meaning of the charter."

It would seem that the position of maintenance engineer and building inspector for the Hawthorne Elementary Schools falls within the category defined in the foregoing opinion, and would not therefore be classed as a public office, but as an employment. As pointed out by our Supreme Court in the *Cole* case herein cited, an employment differs from both an office and a position in that its duties, which are nongovernmental, are neither certain nor permanent.

But even were the office determined to be a public office the constitutional prohibition of Section 8 of Article IV of the Constitution would not apply for the reason that the office was not created during your term of office as Assemblyman from Mineral County, nor were the emoluments of such office increased during your term.

It is therefore the opinion of this office that there is no legal barrier or prohibition, constitutional or otherwise, which would prevent you from holding the position of maintenance engineer and building inspector for the Hawthorne Elementary Schools, once you have resigned as Assemblyman from Mineral County.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-63. Schools—School Bonds—County School Board members elected May 2, 1955, have no power under Chapter 402, 1955 Statutes, to call for bond election until July 1, 1956.

CARSON CITY, May 17, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada.*
Attention: Arthur Olsen, Deputy.

DEAR MR. DICKERSON: Your office has requested an opinion of this office as to whether the newly elected County School Board has the express authority to direct the County Commissioners of Clark County to hold a bond election on or about July 1, 1955, as set forth in Section 207 of Senate Bill 267, which became Chapter 402 of the 1955 Statutes.

OPINION

Section 70 of Chapter 402 of the 1955 Statutes provides as follows:

All sections of this act shall become effective upon July 1, 1956, except section 69 hereof which shall become effective on passage and approval of this act, and section 44, 45, 46 and 69.1 hereof which shall become effective May 1, 1955.

Section 25 of Chapter 402, Statutes of 1955, which amends Section 207 of "An Act concerning public schools * * *" approved March 15, 1947, provides in part:

On or after July 1, 1955, the newly elected county board, as provided in section 249, is hereby expressly authorized to hold a bond election as provided in this act. Should such bond election be approved by the voters, the county board of education is hereby authorized to sell such bonds, for the purpose or purposes named in the notice of election and to create a bond interest and redemption fund and to determine a tax levy therefor, which shall become effective with other regular county tax levies on July 1, 1956.

Now it is clear that Section 25 is not one of the excepted sections under Section 70 of Chapter 402 of the 1955 Statutes. Therefore, said section does not become effective until July 1, 1956. If the section does not become effective until July 1, 1956, how may a board elected on May 2, 1955, call for a bond election or after July 1, 1955, a year prior to the validity of the provision? This is just one of the glaring inconsistencies encountered in a careful study of this Act.

It becomes apparent that the new boards are boards restricted in their powers to those delegated by the new Act and that all powers not delegated to the new boards are reserved to the old boards, whose members' terms of office do not terminate until July 1, 1956.

The new boards not having power to call for a bond election until July 1, 1956, any call for a bond election should be made by the old board. Section 207 of Chapter 63, of the 1947 Statutes as amended is not repealed by the new Act. The members of the old board have power to act until July 1, 1956, and the procedure is set forth in Sections 6084.216 et sequitur N.C.L. 1943-1949 Supplement.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-64. State Planning Board—A member of the State Planning Board is a “State Officer” within the meaning of Sections 4827-4828, N.C.L. One may be a “State Officer” despite the fact that he is appointed, works part time only and receives only his necessary expenses in lieu of compensation.

CARSON CITY, May 19, 1955.

MR. A. M. MACKENZIE, *Secretary, State Planning Board, Carson City, Nevada.*

DEAR MR. MACKENZIE: We acknowledge receipt of your letter of May 9, 1955. Your letter recites certain facts and poses a problem as follows:

FACTS

The State Planning Board now has and may be expected to have upon its membership men of the engineering and architectural professions.

These men receive certain expense money while engaged in the work of the State Planning Board but receive no salary or other compensation for such services.

A Legislative Act of 1955, Chapter 402, Section 274(2), under powers and duties of school trustees provides in part as follows: “The board of trustees shall first obtain the approval of any plans for the construction of any school building from the state planning board before construction is begun.” This portion of this Act becomes effective on July 1, 1956.

QUESTION

Is it proper and legal for a member of the State Planning Board now or after July 1, 1956, to serve as a paid consultant or to prepare or approve architectural or engineering plans for state agencies on such proposals as might later come before the State Planning Board for final approval?

OPINION

The State Planning Board was created by an Act of the Legislature of 1937 (Statutes of 1937, Chapter 102, p. 184). As then envisioned it was designed to plan economic and social development of the State, to promote and conserve public health, safety, convenience and general welfare.

In recent years many statutes have been passed in which the State Planning Board has become the administrative agency vested with the power and duty of construction and remodeling state buildings. This additional function was added to its legal status by Chapter 81, Statutes of 1947, p. 283.

Since 1947 the board has functioned in this manner in a number of cases. It is now authorized and empowered by reason of legislative acts of 1955, to expend \$1,860,000 in the construction and remodeling of four buildings during the biennium.

See: Chapter 424—State Office Building.

Chapter 392—Manzanita Hall Remodeling.

Chapter 410—Nevada State Hospital

Chapter 404—Agricultural Extension and Hatch Building

All of this background is recited to show the present functioning of the board and its scope of activity.

Up to this time we find all of the architectural and engineering participation or administration on the part of the State Planning Board, confined to state-owned projects as distinguished from municipal, county, or school district projects. There is an exception as to the construction of a fire house and procuring of fire engine at Sparks and providing funds to assist in obtaining these facilities. This was based upon the accompanying obligation contained in the Act of care and protection from fire to the Nevada State Hospital. See: Chapter 308, Statutes of 1953, p. 519. The Act of 1955 quoted under “facts” is another exception to the rule that participation of the board is upon a state level. See: Chapter 402, Section 274(2) Statutes of 1955. Just how far the participation by the board with projects other than those that may be state owned, may be authorized in the future, is a matter of conjecture, but it should be kept in mind that the scope of the activities of the board tends to increase, not diminish, and that this is important in applying the rules and principles here set forth.

As we have previously stated this provision of the school law requiring approval of plans by the board before construction of school buildings is begun, becomes effective on July 1, 1956. The participation by the board (when it becomes effective) is a participation in approval of plans, before construction begins. It is not contemplated that the board will approve a building after erection, rather that it will approve plans before construction begins. By limitations of the Act as to the effective date, this means that school buildings or school construction that begins after July 1, 1956, will require such board approval of plans before construction begins and those of earlier construction will not require such approval.

We now approach the question of conflict of interests. There is no question but that statutes which bear upon this question are based upon the axiomatic truth that no one can serve two masters, and that when there is a conflict of interest the service to one must yield and be neglected in favor of the service to the other.

Section 4827, N.C.L. 1929, provides as follows:

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

Section 4828, N.C.L. 1929, provides as follows:

76. It shall not be lawful for any town, city, county, or state officer, or member of the legislature, to be interested in any contract made by such officer, or legislature of which he is a member, or be a purchaser, or be interested in any purchase of a sale made by such officer in the discharge of his official duties.

Section 4830 N.C.L. 1929 provides as follows:

78. Any person violating the provisions of sections 75 and 76 (or either of them) of this act, directly or indirectly, shall forfeit his office, and shall be punished by fine, not less than five hundred nor more than five thousand dollars, or by imprisonment.

Section 4827 uses the phrase “officer of state.” Section 4828 uses “state officer.” The purpose and spirit of the laws above quoted are clear, but let us explore the letter of the law. Are members of the State Planning Board “state officers” within the meaning of the prohibitions contained in the statutes?

The Act creating the State Planning Board, Section 3, permits the members to receive actual and necessary expenses, from moneys appropriated for the board.

Section 24, Chapter 279, p. 416, Statutes of 1951 (the General Appropriation Act) appropriates \$15,000 for the State Planning Board.

Section 27, Chapter 294, at p. 460, Statutes of 1953, appropriates \$20,816 for the State Planning Board.

Chapter 270, Statutes of 1953, page 376, provides for travel allowance and uses the phrase, “district judge, state officer, commissioner, representative or other employee of the state.”

Considering all statutes and constructions placed thereon it appears clear that the term “state officer” within the prohibition contained in Sections 4827 and 4828 is not limited by:

- (a) the fact of appointment rather than election to office.
- (b) the fact of part time employment as distinguished from full time employment.
- (c) the fact that the service is rendered for expenses rather than compensation.

A recent opinion of the Attorney General numbered 62, dated May 17, 1955, bearing upon this question and not inconsistent herewith, is to the effect that in order to qualify as a “public officer” as contemplated by the constitutional prohibition, the individual must meet the following tests:

1. The office must be brought into existence either under the terms of the Constitution, by legislative enactment, or by some municipal body, pursuant to authority delegated to it.
2. The individual appointed must be invested with some portion of the sovereign functions of government.
3. The warrant to exercise powers must be conferred, not by contract, but by law.

We are therefore of the opinion that to serve as a member of the State Planning board is to be a “state officer” within the meaning of Sections 4827—4828 N.C.L. 1929.

From the conclusions reached it follows that no member of the State Planning Board may sell his professional services to the board in matters involving public buildings or public projects in which the board has an administrative or supervisory or approval responsibility. This particularly included the four projects heretofore mentioned, provided for in the Legislative Acts of 1955.

The Public School Act heretofore mentioned as Chapter 402, Section 274(2) Statutes of 1955, will as to this portion become effective on July 1, 1956. The function of the board under the

section will be to approve plans and specifications before construction begins. It therefore appears that as to those school buildings to be constructed during the interval closing July 1, 1956, no responsibility is placed upon the board and that there is no conflict of interests. As to those projects a member of the board would be without criticism in serving professionally and for compensation. In entering into such engagements, however, a member of the board should be particularly careful not to consider participating therein professionally and for compensation, unless it appears quite certain that the building project will be well along in progression at the passing of the effective date, namely, July 1, 1956.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-65. Sales Tax—Tangible person property purchased and used by contractors in the construction of public works is taxable under the Sales and Use Tax Act of Nevada on and after July, 1, 1955.

CARSON CITY, May 20, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: Your office has requested an opinion from this office as to whether Section 51 of the Sales and Use Tax Act of Nevada is in conflict with Section 60 of said Act, insofar as the two provisions apply to public works.

OPINION

Section 51 of Chapter 397, Statutes of 1955, reads as follows:

Notwithstanding any other provision of law the tax imposed under this act shall apply to the gross receipts from the sale of any tangible personal property to contractors purchasing such property either as agents of the United States or for their own account and subsequent resale to the United States for use in the performance of contracts with the United States for the construction of improvements on or to real property, not including, however, contractors qualified to issue and who do issue resale certificates to vendors for tangible personal property for subsequent incorporation into real property outside this state in the performance of a contract to improve the out-of-state realty.

It is apparent from the wording of this section that the Legislature clearly intended to levy the tax against tangible personal property purchased and used by contractors for the construction of improvements on or to real property under contracts with the United States.

The construction of public works for the United States would necessarily fall within the category defined in this section.

It is pointed out in American Jurisprudence in the section devoted to public works that a contractor constructing a building for the United States or in constructing other federal public improvements does not share any governmental immunity from state regulation.

A consideration of Section 60 of the Act will be aided by setting it forth at this point:

There are exempted from the taxes imposed by this act the gross receipts from the sale and the storage, use, or other consumption in this state of tangible personal property used for the performance of a contract on public works executed prior to July 1, 1955.

That there is no conflict between this section and Section 51 is readily ascertainable. Section 60 merely provides that the tax will not apply to tangible personal property used for the performance of a contract on public works *executed prior to July 1, 1955* which is the effective date of the Act. In other words, if a contract for the construction of public works is executed prior to July 1, 1955, whether such public works are federal, state or municipal, the material used in such construction is not taxable, even though the use of the material is made after July 1, 1955. The date of the contract is the guiding light.

On the other hand, Section 51 will become effective on July 1, 1955, and therefore, any contract executed on or after July 1, 1955, for the construction of improvements on or to real property for the Federal Government will subject the contractor to the 2 percent tax on the tangible personal property used in such construction, and this will apply whether construction is of public works or otherwise.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-66. Fish and Game Commission—No authority lodged in Fish and Game personnel to enter privately owned lands, with permission, solely for purpose of investigation and without reason to believe that violation of the law has been committed.

CARSON CITY, May 25, 1955.

MR. FRANK W. GROVES, *Director, Fish and Game Commission, Post Office Box 678, 51 Grove Street, Reno, Nevada.*
Attention: Mr. H. Shirl Coleman.

DEAR MR. GROVES: This is in answer to your request for the opinion of this office upon the following facts and questions which we quote from letter:

State game wardens have frequent occasion to make entry upon private lands in performance of their official duties. Such entry, while not made capriciously, is often effected without the landowner's permission. Some incidents have occurred whereby the officer has been threatened with eviction or court action for trespass if he did not leave the premises as ordered. Our specific query:

QUESTION

May state game wardens enter upon private land in performance of their official duties, without obtaining permission from the landowner?

OPINION

First, it should be pointed out that there is in Section 39 of the Fish and Game Code the specific authority for a warden to enter upon privately owned lands for the purpose of enforcing

the Fish and Game Laws of this State. However, this authority is confined to situations wherein the warden has reason to believe that there has been a taking or holding of fish or game in violation of the law. This, as we understand it from further information from your office, is not the situation here involved. You are specifically concerned with what we will term the investigation powers of the wardens. That is to say, the power of the wardens to enter upon privately owned land, without permission, solely for the purpose of investigating the premises or the persons thereon for the purpose of determining whether there has been a violation of the law. This without first a reason to believe that there has been a violation. This then involves purely and simply the question of a power to enter for the sole purpose of investigation. Further, you are interested in whether or not the fish and game personnel has authority to make such entry without permission of the owner of the premises for the purpose of determining matters concerning certain scientific surveys being conducted by the Commission.

We are of the opinion that with regard to these specific matters there is no such power lodged in the fish and game personnel. In the absence of specific statutory authority, of which we find none, the wardens do not have such power.

It is an elementary proposition of the law that public officers have only such powers as are specifically provided by law or necessarily implied from the terms of the law, and this only in the absence of a constitutional prohibition. See 43 American Jurisprudence, "Public Officers," Sections 249 and 250.

Now, it is also fundamental in our law that every citizen is protected by the law in the ownership of his private property. In the case of his privately owned lands, every unauthorized entry upon such lands constitutes, at least, a civil trespass.

In the opinion of this office, there is no authority either specifically or by implication empowering a Fish and Game Warden to enter privately owned premises without permission simply for purpose of making an investigation of the property or the persons thereon in the absence of a reason to believe that a violation of the law has been or is being committed. This is a matter which has been very jealously guarded by our system of jurisprudence since its inception. Nor is there authority for investigation for the purpose of scientific advancement in the absence of permission by the owner of the premises.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

OPINION NO. 1955-67. Highways—Bid for highway construction work must fully comply with terms of invitation to bid, and with statutes governing the same.

CARSON CITY, June 2, 1955.

MR. H. D. MILLS, *State Highway Engineer, Carson City, Nevada*.

DEAR MR. MILLS: This will acknowledge receipt of your letter of May 27, 1955, requesting an opinion of this office on the following question:

May the Board of Highway Directors waive as a minor technicality a contractor's failure to include the bid undertaking with the bid at the time of presenting the same?

OPINION

The answer is in the negative.

Section 5337, Nevada Compiled Laws 1931-1941 Supplement sets forth the procedure that the State Highway Engineer shall follow in advertising for bids, as well as the procedure the bidder shall follow in submitting the same. The statute provides, in part, as follows:

Every bid *shall* be accompanied by an undertaking executed by a corporate surety company authorized to do business in the State of Nevada, in the amount equal to 5% of his bid or in the alternative every bid *shall* be accompanied by cash or a certified check of the bidder in an amount equal to 5% of his bid.

The statute further provides, in part, as follows:

In awarding contract the Department of Highways *shall* make the award to the lowest responsible bidder *who has qualified and submitted his proposal in accordance with the procedure in this section provided.*

Your letter reflects that the bidder in the instant case failed to accompany his proposal by an undertaking or by cash or certified check in the amount required by the statute prior to the time the bids were opened and read.

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. 2d 299. Opinion of this office No. 232 dated February 9, 1953.

It is the opinion of this office that the Board of Highway Directors may not waive as minor technicalities the plain requirements of Section 5337, Nevada Compiled Laws 1931-1941 Supplement. The bid, therefore, must be rejected and the award made to the next lowest responsible bidder, unless all bids are rejected and the invitation to bid readvertised.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*
By: JOHN SQUIRE DRENDEL, *Deputy Attorney General.*

OPINION NO. 1955-68. School Code 1955—Salary of county superintendent and expenses attendant upon his office cannot be paid by County Boards of Education unless previously budgeted in view of provisions of Chapter 402 of 1955 Statutes.

CARSON CITY, June 8, 1955.

HONORABLE GLENN A. DUNCAN, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR MR. DUNCAN: Your office has asked this office for a further interpretation of certain provisions of Chapter 402 of the 1955 Statutes. The three points you wish clarified, as set forth in your letter of June 1, 1955, are as follows:

1. Can the salary of the county superintendent, clerical help for him, and office expense be considered as authorized under Section 249(6), Chapter 402, 1955

Statutes, which provides for prorating county board expenses among the existing school districts within the county on a pupil basis?

2. Provision has not been made in local school district budgets for such expenditures. Can the necessary funds be legally obtained through the filing of supplemental budgets or other means?

3. Though Chapter 402 is silent on the matter of the filing of a county budget for the fiscal year 1955-1956 by the new county boards created May 2, 1955, can these boards legally expend funds, as provided in Section 249(6) without filing a budget, or may such a budget be filed after the expiration date for the filing of budgets?

OPINION

Section 44, which amends Section 249 of Chapter 63 of the 1947 Statutes, provides, among other things, for the appointment of a county superintendent and that “* * * The expenses of the county board shall, from May 2, 1955, to July 1, 1956, be prorated among existing school districts within the county on a pupil basis * * *.”

It becomes necessary to study and appraise that part of the School Code which applies to the availability of funds which may be expended by school boards for the payments of salaries and other expenses accruing to their districts. These provisions are found in Section 10 of Chapter 306 of the 1953 Statutes, which amends Section 238 of Chapter 63 of the 1947 Statutes. The steps to be taken by the governing board of every school district in preparing a budget are therein set forth, including a declaration as to the amount required by said districts for the next following year from taxation and the tax rate necessary to produce it. It is to be pointed out that inasmuch as Section 35 of Chapter 402 of the 1955 Statutes, which amends Section 238 of Chapter 63 of the 1947 Statutes, does not become effective until July 1, 1956, that the law above cited is controlling.

Under Section 239 of Chapter 63 of the 1947 Statutes, expenditures not named in the budget referred to in the preceding paragraph of this opinion are not to be allowed, and disobedience of this statutory mandate by any member of any governing board of any school district calls for his removal from office. Inasmuch as Section 36 of Chapter 402 of the 1955 Statutes, which amends the above Section 239, does not become effective until July 1, 1956, this section of the 1947 Statutes still prevails.

The answer, therefore, to your first question is in the negative in the absence of a budgetary item making allowance for such an expenditure. It would seem that the solution here might be to use the money budgeted for the previous superintendent as far as such budgeted money will go.

The answer to Question 2 is in the negative for the reason that the filing of a supplementary budget would require a change in the tax rate based upon the original budget.

Question 3 is answered in the negative for the reasons cited in response to questions 1 and 2.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-69. State Board of Stock Commissioners—Brand Inspection—Use of permit books for movement of stock by owner of legally recorded brands authorized.

CARSON CITY, June 9, 1955.

MR. WARREN B. EARL, *Director, Division of Animal Industry, Department of Agriculture, P.O. Box 1027, Reno, Nevada.*

DEAR MR. EARL: You have requested of this office an opinion as to whether your board could, under Chapter 145, Statutes of 1928-1929, provide the owners of legally recorded brands with permit books which would allow them to move stock from an inspection district without brand inspection.

OPINION

Under Section 2 of Chapter 145 of the 1928-1929 Statutes, the board is authorized to adopt rules and regulations and to prescribe rules of procedure for created inspection districts, not inconsistent with the provisions of the Act and as it deems wise.

This gives the board a wide latitude and evidently the Legislature in enacting such legislation had great confidence that the men selected as commissioners, and those selected to work with them, would carefully administer the Act with the end in view of fulfilling the purposes of the Act. The Act was designed to, among other things, prevent the migration of diseased stock, and to prevent cattle rustling or stock theft. It was apparent to the Legislature that in order to accomplish the purposes of the Act, the administrators should not be hamstrung by restrictive provisions which could defeat the purposes of the legislation.

With this summary we pass on to Section 5 of the Act which authorizes the board, or an authorized inspector of the same, to issue a written permit authorizing movement of stock out of a brand inspection district, without brand inspection.

This office can see no legal barrier to the board, under rules and procedures establishing proper safeguards, providing for the use of permit books by owners of legally recorded brands for the movement of stock out of a brand inspection district without brand inspection.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-70. Public Service Commission—Motor Vehicle Division. House trailers to be registered before being operated on the highways.

CARSON CITY, June 14, 1955.

MR. RICHARD A. HERZ, *Director, Motor Vehicle Division, Public Service Commission, Carson City, Nevada.*

DEAR MR. HERZ: This will acknowledge receipt of your letter dated June 10, 1955 received in this office June 14, 1955 concerning the registration of house trailers, and requesting the opinion of this office upon the following questions which are quoted from your letter:

QUESTIONS

Does Assembly Bill No. 126 nullify Assembly Bill No. 184 that registration of the trailer cannot be enforced unless the vehicle is operated on the highway?

Also when does a house trailer cease to be a house trailer? In this respect if the wheels are removed from the trailer can it still be classified as a house trailer or does it assume the category of a small house?

OPINION

The first question is answered in the negative. The first question being answered in the negative, answer to the second question, insofar as motor vehicle registration is concerned, is unnecessary.

The reason for the negative answer to the first question is as follows:

Section 6(a) of the Motor Vehicle Registration Law as amended by Chapter 57, 1953 Statutes provides as follows:

Section 6.(a) Every owner of a motor vehicle, trailer, or semi trailer intended to be operated upon any highway in this state shall, before the same can be operated, apply to the department for and obtain the registration thereof.

The pertinent portion of Section 25 of the Motor Vehicle Registration Law, as amended by Chapter 221, 1955 Statutes, provides as follows:

Section 25. There shall be paid to the department for the registration of motor vehicles, trailers, and semi trailers, fees according to the following schedule: * * *
(e) For every trailer designed for the installation of or equipped with household appliances used therein for living purposes, the registration fee shall be \$5.50 in addition to the assessed personal property tax on such trailer.

There is no question involved here of Section 6 nullifying Section 25.

Section 6 requires registration of a trailer before it can be operated on the highway. Section 25 provides the amount of the fee to be paid for that registration.

Thus, if a house trailer is to be operated upon a highway, it will have to be registered in accordance with Section 6 and the fee, in accordance with Section 25, will have to be paid therefor.

Substantially the same provisions have been in the law since 1931.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-71. Sales Tax—Exemption from sales tax of any matter used to produce domestic heat by burning including wood, coal, petroleum and gas, applies to hotels and lodging houses.

CARSON CITY, June 22, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: This opinion supplements and alters Attorney General Opinion No. 54, dated April 29, 1955, for the reason that this office held that the law of Maine restricted the use of the word "domestic" as it applied to hotels to the use of rooms occupied by guests for four months or longer. This was in error.

In your letter of April 28, 1955, you requested an interpretation of Section 59.1 of the Sales and Use Tax Act, insofar as the word "domestic" was concerned where hotels were concerned.

SUPPLEMENTAL AND REVISED OPINION

The case of *Acheson v. Johnson*, 86, A. 2d 628, decided in 1952, went fully into the matter of whether matter used to produce domestic heat by burning applied to hotels.

The assessor had ruled that coal delivered to the Augusta House, a hotel in Augusta, Maine, was subject to his ruling that "Fuel consumed in heating those portions of any hotel which are customarily occupied for a period of four months or longer by individuals will be considered as used for domestic purposes. Fuel consumed in heating other portions of hotels, including rooms normally occupied by persons remaining for less than four months at a time, will not be considered as used for domestic purposes. That portion of the fuel, other than gas or electricity, purchased by a hotel and used for domestic purposes, as noted above, would not be subject to the sales tax.

Pursuant to said ruling the State Tax Assessor determined that 15 percent of the coal used was exempt from the sales tax and that 85 percent was subject to the tax.

The hotel appealed the ruling on the ground that it was an erroneous interpretation of the Maine statute, which is similar to ours.

The court pointed out that the fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The court stated that if the Legislature had meant to restrict the use of the phrase "for domestic purposes" to homes, it would have used the phrase "used in a home." The court goes on to point out that the words "domestic purpose" are used to distinguish such purpose from manufacturing purposes, commercial purposes, trade purposes, or industrial purposes.

The court goes on to point out that "A hotel may be a permanent home or it may be temporary. It is a 'home away from home' as some hotel advertisements state. The guests are not restricted to their sleeping rooms any more than would be the invited guests in a private dwelling. The guest in this larger or 'hotel home' has the right to use, and pays to use, the hall, the lobby, the dining room, and other rooms maintained for the use and comfort of guests. So too, the rooms in the hotel used and occupied by hotel servants are in 'domestic' use."

In view of the carefully studied opinion in this case, and in view of there being no contrary opinions which have come to the attention of this department, it is the opinion of the Attorney General that any matter used to produce domestic heat by burning, including without limitation, wood, coal, petroleum and gas, when used for such purpose in a hotel or similar lodging place, is exempt from the sales tax under Section 59.1 of the Act.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-72. Sales Tax—Sales tax applicable to by-products and manufactured forms of mined material exempt from net proceeds of mines tax.

CARSON CITY, June 22, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: You have requested this office to interpret Section 52 of Chapter 397 of the 1955 Statutes in four respects. Your inquiries are as follows:

1. Is limestone as extracted from the earth and resold in that form subject to the sales tax?
2. Are the by-products of quicklime and hydrated lime subject, when sold, to the sales tax?
3. Is gypsum extracted in this State, shipped to California for packaging as soil conditioner, and resold in this State subject to the sales tax, though packaged as extracted?
4. Is turquoise extracted from Nevada mines, then cut and polished, subject to the sales tax when sold as semi-precious stones?

STATEMENT

It is important to first set out the provisions of Section 52 of Chapter 397 of the 1955 Statutes:

There are exempted from the taxes imposed by this act the gross receipts from the sale of, and the storage, use, or other consumption in this state of, the proceeds of mines which are subject to taxes levied pursuant to chapter 77, Statutes of Nevada 1927.

A clear interpretation of this section of the Sales and Use Tax Act of 1955 can only be resolved by a close scrutiny and study of an Act to provide for the assessment and taxation of net proceeds of mines, Chapter 77 of the 1927 Statutes, as amended. Section 3 of the Act exempts from the net proceeds subject to taxation,

1. The actual cost of extracting the ore from the mines.
2. The actual cost of transporting the product of the mine to the place, or places of reduction, refining, or sale.
3. The actual cost of reduction, refining and sale.
4. The actual cost of marketing and delivering the product and the conversion of the same into money.

It is easily determined that the intent of the 1955 Legislature was to exempt from the sales tax products of the mines which had already been taxed under Chapter 77 of the 1927 Statutes, and the Acts amendatory thereof. In other words, when the raw material had been mined, reduced, refined, marketed and sold, it was taxed with the costs of these procedures deducted. At this point to have again taxed them under the sales tax would have placed a double taxation burden on the products.

However, the Legislature wisely foresaw that when the mined materials had reached the point of marketing and sale, they would assume other forms and adopt other marketable guises which would divorce them from their original state entirely and that in this state of enhanced value they would be subject to the sales tax, not having, in this form, been taxed before.

OPINION

In line with the foregoing analysis your question number one is answered in the negative.

Question two is answered in the affirmative, quicklime and hydrated lime being by-products of the limestone.

The third question is answered in the affirmative. The repackaging of the gypsum as soil conditioner gives it a marketable guise different from that of the gypsum and subjects it to the sales tax.

The fourth question is answered in the same way and for the same reasons. The turquoise has been taxed before as mined turquoise. The transmutation to gems subjects them to sales tax.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-73. Taxation—Nevada Tax Commission. Motor Vehicles.

Duty to register household trailer depends upon whether it is in use upon public highways. Household trailer is taxable annually as other personal property even if not registered.

Member of the armed forces stationed in Nevada, not taxable here upon household furnishings or car unless he has voluntarily made Nevada his residence and domicile.

CARSON CITY, June 24, 1955.

MR. HOMER D. BOWERS, *Director, Division of Assessment Standards, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. BOWERS: We have your letter of June 15, 1955, received in this office on June 17, 1955, concerning the registration of house trailers not being operated upon the highways, and the concern of the County Assessors in the construction of Chapter 221, Section 25(e), Statutes of 1955.

Specifically you have asked the following questions:

QUESTIONS

1. Do trailers not being operated on the highway but which are parked in trailer courts or elsewhere have to be registered?
2. If so, who is the enforcement officer?
3. What is the penalty for violation?

OPINION

A recent well written opinion of Mr. Dunseath of this office is determinative of this problem. The questions are put in a different manner, however, and we will therefore not requote the opinion. See: Opinion No. 70, June 14, 1955.

The answer to question number 1 above, is in the negative.

Section 6(a) of the Motor Vehicle Registration Law, as amended by Chapter 57, Statutes of 1953, provides as follows:

Section 6. (a) Every owner of a motor vehicle, trailer, or semi trailer intended to be operated upon any highway in this state shall, before the same can be operated, apply to the department for and obtain the registration thereof.

The pertinent portion of Section 25 of the Motor Vehicle Registration Law, as amended by Chapter 221, 1955 Statutes, provides as follows:

Section 25. There shall be paid to the department for the registration of motor vehicles, trailers, and semi trailers, fees according to the following schedule: * * *
(e) For every trailer designed for the installation of or equipped with household appliances used therein for living purposes, the registration fee shall be \$5.50 in addition to the assessed personal property tax on such trailer.

Under Section 6(a) intention to operate the trailer upon the public highways is a condition precedent to the fixing of owners duty to register.

Under Section 25(e) the registration fee that is designated to be paid upon this particular type of trailer is collectable only when the duty upon the owner to register arises.

We understand the facts to be that many house trailers remain in one location literally for years without being moved. Such trailers are taxable as other personal property is taxable, the registration and taxing liability of the owner being not determined by the same facts.

The answer to question number one, above, being in the negative, it becomes unnecessary to answer parts two and three.

You have also asked us to review Opinion No. 314 of a February 3, 1954. This opinion deals with Taxation Motor Vehicles—Military Personnel. You have enclosed a photostatic copy of a general letter signed by E.E. Woods, Judge Advocate General of the Navy. You have also pointed out that,

In areas such as Washoe, Clark, Mineral, Churchill and Esmeralda Counties a considerable amount of tax revenue is being lost due to the allowance of exemption of taxes to the extent of its full value, whereas, if a limit of one thousand dollars assessed value as applied to a bona fide resident ex-serviceman could be imposed, a portion of the taxes could be obtained.

In response to this request the undersigned has reviewed Opinion No. 314 and all authorities therein cited.

In *Woodroffe v. Village of Park Forest*, 107 Fed. Supp. 906, decided on October 16, 1952, by the United States District Court, Northern District of Illinois, the Federal statute was again construed. (See Title 50 U.S.C. A. Art. 574). In this case the chattel taxed was a car. The tax

levied was not sustained for the record showed that no change of residence and domicile from Pennsylvania to Illinois had been effected by petitioner.

There can therefore be no question but that Opinion No. 314 is correct as a matter of law for the Dameron v. Brodhead case (tax levied upon furniture) has now been affirmed in the Woodroffe case (tax levied upon car), for in neither case had there been a change of residence and domicile to the state that attempted to collect the tax, by the man in the Armed Forces, transferred to the taxing state by order of his superior in the Armed Forces of the United States.

Unless the man in the Armed Forces has changed his residence to the state to which he has been moved by orders of his superiors, the sole exception to this rule of exemption from taxation upon car or household furnishings is a situation in which the taxable property is used in a business for the production of income.

There is nothing gained in further reviewing Dameron v. Brodhead, 73, S. Ct. 721, for it is determinative of the matter. In that case it is held that even though a tax upon the chattel has not been paid the state in which the man in the Armed Forces claims his residence and domicile, it nevertheless is not taxable by the state in which he is temporarily located by reason of being transferred there by order of a superior in the Armed Forces. We are much impressed with the decision of the Supreme Court of the State of Colorado, holding that in the Dameron case the tax was collectable Cass v. Dameron, 244 P. 2d 1082. However this decision has been reversed by the Supreme Court of the United States, which is conclusive.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-74. Sales Tax—Mining—An ingredient classed as tangible personal property, which, when used in manufacturing or processing becomes incorporated into the processed or manufactured tangible personal property, is exempt from the use tax provisions of Chapter 397 of the 1955 Statutes.

CARSON CITY, June 24, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: You have requested from this office an opinion construing Section 34 of Chapter 397 of the 1955 Statutes, as modified or altered by Section 9 of the same Act. Specifically you wish to know whether light gauge scrap iron, stored in Nevada, and used in a mining process to precipitate copper out of a copper sulphate solution, wherein certain percentages of said iron are absorbed in and become a part of the copper precipitate, is subject to the use tax provisions of the Act.

Chapter 34 reads as follows:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use, or other consumption in this state at the rate of 2 percent of the sales price of the property.

It is to be noted that the excise tax here imposed is on storage or use in this State of tangible personal property. Let us turn then to Section 9 of the Act which exempts certain tangible personal property from the Act by placing it outside the definitions of "storage" and "use." It reads:

"Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

FACTS

The question arose over the use of light gauge scrap iron by the Anaconda Copper Company at Weed Heights, Nevada, for the purpose of precipitating copper out of the copper sulphate solution. In this process the iron is absorbed in some measure into the copper precipitates, and the remainder of the iron loses its physical identity and becomes a part of what might be termed an iron sulphate solution which is valueless.

It is a valuable guide in construing a statute of this nature to look to court decisions in other states, where similar provisions of like Acts have been construed. In this regard this office has reviewed numerous cases, but cites here only the case in which the circumstances and conditions approximate those of the present problem.

In *State v. Southern Kraft Corporation*, 8 So. 2d 886, the State Commissioner of Revenue made an assessment order under the Use Tax Act against Southern Kraft Corporation based upon the sale and purchase of salt cake, sulphur, lime, starch, hydrate of lime and chlorine, used by said company in the process of manufacturing pulp and paper. The company objected to the tax on the ground that these ingredients entered into and became a component part of said products so manufactured for resale, and were not, therefore, subject to the use tax. The court in this case sustained the position of the Kraft Corporation after deciding that the ingredients named did, in fact, enter into and become a component part of the finished pulp or paper, and that a chemical analysis of the completed product would reveal the exempt ingredients.

The line of demarcation has been clearly established. If the tangible personal property sold to the manufacturer, producer or processor is used or consumed, but does not enter into the actual processing and does not become an ingredient or component part of the commodity manufactured, or produced, it is taxable. The fundamental rule to be followed in construing the statute in question is to ascertain and give effect, if possible, to every word it contains, and as far as practicable reconcile the terms therein employed so as to render it consistent and harmonious.

It would seem from a careful study of the Sales and Use Tax Act of 1955 that the statute was meant to impose a tax upon that which is consumed and used and to exempt that which is sold for resale. The ultimate consumer of all articles purchased and used by a manufacturer in its manufacturing operations is the manufacturer, and upon this basis alone the manufacturer would be liable for tax on all such items. However, in the course of our complex industrial and commercial systems many articles and commodities are used and consumed by manufacturers and processors for resale in an altered form. In the event an intermediate sales tax was imposed upon intervening transactions, taxes would be pyramided upon the final product offered for sale to the ultimate consumer. The extent to which relief should be afforded the ultimate consumer is purely a matter of legislative discretion. Our Legislature met this situation by the enactment of Section 9 of the Act.

If the light gauge scrap iron which is incorporated into the copper precipitate, and which travels with it beyond our borders, were to become a component part of the finished copper, there would be no difficulty in arriving at a decision in accordance with *State v. Southern Kraft Corporation* cited heretofore in this opinion. Once the copper precipitate leaves our State further refining removes the iron which has been incorporated. The iron is not, therefore, a component part of the finished product. A chemical analysis of the finished copper would reveal no traces of the iron which had become a part of the copper precipitates during the processing of the copper.

Let us further analyze Section 9 of the Act insofar as it applies to the problem at hand. “ ‘Storage’ and ‘use’ do not include the keeping, retaining, or exercising any right or power over tangible personal property * * * for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.” While grammatical construction may be criticized, there is little doubt as to the intention of the Legislature. It did not intend that any agency, comprising tangible personal property, which by any circumstance, and however remote, when used or employed in the process of manufacturing the finished product, should be exempt from the provisions of the Act.

The present problem is a borderline case. However, there is no question but that the light gauge scrap iron becomes a necessary part of and becomes incorporated into the copper precipitates, and that the copper precipitates are the tangible personal property to be transported outside the State and thereafter used solely outside the State.

OPINION

It is, therefore, the opinion of this office that the light gauge scrap iron used in the processing of copper, and which is partly incorporated into the copper precipitate, falls within the exemption of Section 9 of Chapter 397 of the 1955 Statutes, and is not taxable under said Act.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-75. 1. City of Elko. 2. Elko County Commissioners 3. City Charter. 4. Municipal corporations. Provision in city charter, embodying a provision of the statutory law is repealed by implication upon Supreme Court decision that the statutory law is so repealed.

CARSON CITY, June 27, 1955.

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

DEAR MR. SAWYER: Your letter of June 15, received on June 17, 1955, presents a question of road tax money collected within the county, between the City of Elko and the County of Elko, and the controlling statute as to that division.

We quote your succinct statement of the question, viz:

The sole question is as to whether or not the city charter of 1917 prevails over the general statutory provision as appears in the 1937 Statutes, Chapter 63, page 125.

We recite a brief statement of relevant facts preliminary to the opinion as follows:

1. Section 32 of Chapter 84, Statutes of 1917 (an Act to incorporate the town of Elko) would, if controlling, provide for the city of Elko a greater sum of money than would Section 3 of Chapter 63, Statutes of 1937.

2. The Elko County Commissioners have for a great many years followed the 10 percent apportionment basis, as provided in Section 3, Chapter 63, Statutes of 1937.

3. The first known request for distribution made by the city supervisors to the County Commissioners was made in March 1955.

OPINION

The Legislature in 1907 (Chapter 74 p. 241) passed an Act providing for the incorporation of cities. Section 76 thereof reads as follows:

Sec. 76. The several Boards of County Commissioners in this State shall from time to time, upon request of the City Council, apportion to each incorporated city within the respective counties, such proportion of the General Road Fund of the county as the value of the whole property within the corporate limits of such city, as shown by the assessment roll, shall bear to the whole property of the county, inclusive of the property within incorporated cities and all such moneys so apportioned shall be expended upon the streets, alleys and public highways of such city under the direction and control of the Council.

The city of Elko was incorporated in 1917, as aforesaid. Section 32, p. 157 of the incorporating statute has a similar provision which reads as follows:

Sec. 32. County Commissioners to Apportion Road Fund. The board of county commissioners of Elko County shall, and it is hereby made their duty, from time to time, upon the request of board of supervisors, to apportion to the city such proportion of the Elko road district fund of the county of Elko as the value of the whole property within the corporate limits of the city, as shown by the assessment roll, shall bear to the whole property within the Elko road district, inclusive of the property within the city, and all moneys so apportioned shall be expended upon the streets, alleys, and public highways of the city, under the direction and control of the city board of supervisors.

In fact these similar provisions in regard to apportionment of tax moneys between cities and counties appear in a number of instances. This list is not exclusive:

(a) Tonopah—1903 p. 163. Apportionment—Sec. 29 p. 172.

(b) Fallon—1907 p. 302. Apportionment—Sec. 76 p. 324.

(c) Winnemucca—1913 p. 66 Apportionment—Sec. 32 p. 82.

We mention these only to show the uniformity of the inclusion of this provision in the Statute of Incorporation.

Carson City was incorporated in 1875 (1875 Stats. p. 87). In this statute we find no provision in regard to apportionment of tax money between the city and county. Section 76 of the Statutes of 1907 has placed the burden upon the Boards of County Commissioners of the counties

throughout the State, however, to apportion to the cities tax money received for the General Road Fund upon a ratio to be computed from the records of the county.

In *Carson City v. Commissioners*, 47 Nev. 415, *State v. Dougherty*, 224, p. 615, decided April 3, 1924, this identical question was presented and it was held that Chapter 149, Statutes of 1917 as amended by Chapter 217, Statutes of 1921 (the Budget Law), was repugnant to Section 76, Chapter 75, Statutes of 1907 (Section 842—Rev. Laws). Relief was refused to the city under the said Section 76, which was declared by the court repealed by repugnance to the Budget Law. It will be observed that Section 32, Chapter 84, Statutes of 1917, does place a duty upon the Board of Supervisors (city) to make a request upon the Board of County Commissioners as a condition precedent to a duty on the part of the commissioners to apportion said moneys.

In 1925 the Legislature obviously considered the decision of the Supreme Court, above referred to, and enacted Chapter 159, Statutes of 1925 p. 242, purportedly amending Section 842 Revised Laws. The said Section 842 Revised Laws could not be amended for on the effective date, March 21, 1925, it was nonexistent. The said Section 3 was amended to read as follows:

Section 3. To provide funds for paying the expenses of such road work the several boards of county commissioners in this state may from time to time, upon the request of the city council, apportion to each incorporated city within the respective counties such proportion of the general road fund of the county as the value of the whole property within the corporate limits of such city or cities as shown by the last assessment roll shall bear to the whole property in the county, inclusive of property within the incorporated cities, and all such moneys so apportioned shall be expended upon the streets, alleys and public highways of such city or cities under the direction and control of the council; provided, however, that the apportionment of moneys to cities as herein provided shall not exceed an amount greater than ten per cent of the total amount levied and collected for general road purposes within the county, exclusive of the county-state highway fund, and funds for the payment of the principal and interest of bonds for road and street purposes.

The Legislature of 1937, Chapter 63, p. 125, amended Section 3 by substituting “shall” for “may” and thus making apportionment by the county commissioners mandatory upon request of the city council.

It is our opinion that the decision of the Supreme Court in *Carson City v. Commissioners*, 47 Nev. 415; 224 p. 615, nullified Section 32, Chapter 84, Statutes of 1917, for “* * * where charter provisions conflict with the general laws of the state in matters not purely municipal, the former must give way.” 43 C.J. Art. 310, p. 296.

The subsequent enactments of the Legislature of 1925 and 1937 are in harmony with this construction for the language there employed is all inclusive and refers to all “incorporated cities” within the State. The apportionment of road money may be waived by failure of the city to make request upon the County Commissioners. The reduction in amount available for apportionment to the city government upon request is compatible with the concept of necessity to make request, as well as the decision in *Carson City v. Commissioners*, *supra*.

The conclusion follows that the statutory provisions of Chapter 63, Section 3, Statutes of 1937 are controlling.

The second part of your inquiry having reference to the right of the city to collect from the county for past years, by reason of the city being limited to 10 percent in the past, therefore

requires no further analysis. The city has received its apportionment by application of the controlling law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-76. Taxation—Net proceeds of mines exempt as a basis for the imposition of the Nevada Sales and Use Tax.

CARSON CITY, June 27, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. CLAY: This will acknowledge receipt of your letter dated June 14, 1955, relative to the question posed by the United States Gypsum Company involving construction of Section 52 of the Sales and Use Tax Act.

STATEMENT OF FACTS

It appears from the letter of the United States Gypsum Company that the company mines gypsum and perlite in Nevada, crushes the ore and sells it in Nevada in that condition, as crushed ore; that this ore constitutes a portion of the gross yield of the company's production, which yield in turn constitutes the basis for the computation of the Net Proceeds of Mines Tax.

The gross receipts from the sale of the crushed ore to the consumer will, of course, constitute the basis for the imposition of the sales tax.

The Act providing for the taxation of the net proceeds of mines, Chapter 77, 1927 Statutes, provides in effect that such tax is to be placed upon the value of the yield from the mine or mines for a certain period after the value of the costs of production and sale (the deductions are specifically listed in the Act) have been subtracted.

Section 52 of the Sales and Use Tax Act, Chapter 397, 1955 Statutes, provides as follows:

There are exempted from the taxes imposed by this act the gross receipts from the sale of, and the storage, use, or other consumption in this state of, the proceeds of mines which are subject to taxes levied pursuant to Chapter 77, Statutes of Nevada 1927.

QUERY

We quote your question from your letter:

We therefore ask your opinion as to whether or not any part of a finished product, fabricated from ores extracted in this State, would be exempted from the imposition of the sales tax at the time of sale in this State.

OPINION

The answer is in the affirmative. The value of that part of the product which is subject to taxation under the Net Proceeds of Mines Tax is exempt and does not become a factor in the computation of the gross receipts upon which the sales tax is placed. Thus, stating the matter in its most simple form, we would say that if the gross yield from the mine in a given period was valued at \$100 and the cost of extraction, reduction, transportation and sale amounted to \$50, there would be \$50 subject to taxation under the Net Proceeds of Mines Tax Act. This latter \$50 is not figured in the sales price or gross receipt for the purpose of placing thereon a 2 percent sales tax. This by reason of the specific exemption found in Section 52 of the Sales and Use Tax Act wherein it is provided in effect that the gross receipts from the sale of the proceeds of mines which are subject to taxation under the Net Proceeds of Mines Tax Act are exempt.

It is the other \$50 constituting the cost of production and sale that, as we interpret its letter, is giving the company concern. What of this other \$50? Is it computed in the gross receipts from the sale for sales tax purposes or is the whole of the sale exempt?

This office is of the opinion that it is not exempt; that the sales tax is placed upon that portion of the gross receipts constituting the value of the product which is not taxed under the Net Proceeds of Mines Tax.

Had the Legislature intended that the entire sale was to be exempt it would have simply said that the gross receipts from the sale of the proceeds of mines is exempt. Rather, it specifically limited the exemption to those gross receipts from the sale of proceeds which are otherwise taxed.

It appears to be the meaning of the law derived from a study of the entire Act that the sales tax is to be imposed upon all retailers of tangible personal property computed at the rate of 2 percent of the gross receipts as defined by the Act. Gross receipts are defined by Section 12 of the Act to mean the total amount of the retail sale valued in money without deducting therefrom the costs of putting the product in a saleable condition and selling it. This, aside from specific exemptions, is the standard and measure of who and what is to be taxed and how much.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-77. Public Service Commission—Public Highways—Public Schools. Statutes of 1953 (Public School Law) with reference to the passing of stopped school bus is not in conflict with Statute of 1945 (Highway Law) but imposes upon driver an additional burden.

CARSON CITY, June 28, 1955.

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

DEAR MR. ALLEN: We are in receipt of your letter of June 23, 1955, calling attention to certain apparent conflicts in the statutes with reference to the duties placed upon a driver in passing a school bus.

The questions are with reference to the conflicts, which statute controls and upon whom the duties of enforcement rest.

OPINION

Chapter 171, Statutes of 1945, Section 6, portion of subdivision (d) reads as follows:

The driver of any vehicle upon a highway outside of a business or residence district upon meeting or overtaking from either direction any school bus equipped with signs as herein required which has stopped on the highway for the purpose of receiving or discharging any school children shall bring such vehicle to a stop immediately before passing said school bus, but may then proceed past such school bus at a speed not greater than is reasonable or proper but in no event greater than ten miles per hour and with due caution for the safety of pedestrians.

Chapter 118, Statutes of 1953, Section 166, reads in part as follows:

Every school bus when operated for the transportation of school children shall be equipped with first aid kit, an ax, and a fire extinguisher containing an extinguishing substance other than tetrachloride, and shall have a flashing red light signal system of a type to be approved by the safety division of the public service commission. The driver of a school bus shall operate this signal at all times when children are unloading from a school bus to cross a street, highway or road or when a school bus is stopped for the purpose of loading children who must cross a highway, street or road to board said bus. Such signal may be used in time of emergency or accident, but shall not be operated at any other time. Such signal system shall be installed at the expense of the school, school district, or operator, for which each such bus is operated. On and after July 1, 1953, each newly purchased school bus shall be equipped with a rear escape door of a type to be approved by the safety division of the public service commission.

The driver of any vehicle upon a highway, street or road upon meeting or overtaking from either direction any school bus equipped with signs and signals as herein required which has stopped on a highway, street or road for the purpose of receiving or discharging any school children when such school bus displays a flashing red light signal visible from front and rear shall bring such vehicle to a stop immediately before passing said school bus and shall not proceed past such school bus until said red flashing signal ceases operation. The driver of a vehicle upon a highway, street or road with separate roadways need not stop upon meeting or passing a school bus which is upon the other roadway. The driver of a vehicle need not stop upon meeting or passing a school bus when the latter is stopped at an intersection or place where traffic is controlled by a traffic officer or official traffic signal.

The statute of 1953 provides that school busses be fitted with certain equipment not provided in the earlier statute. This statute also provided that “a flashing red light signal” shall be operated “when children are unloading from a school bus to cross a street, highway or road or when a school bus is stopped for the purpose of loading children who must cross a highway, street or road to board said bus.” Also the statute provides that the “signal may be used in time of emergency or accident, but shall not be operated at any other time.”

The effect of this is that the driver of the bus equipped with a flashing red light is not required or permitted to flash the light at each stop of the bus, but only upon certain stops. Drivers of other vehicles are not required to comply with the statute of 1953, unless the flashing red light signal is operating. If it is not operating the bus may be passed in the manner outlined in the statute of 1945.

This construction makes the laws hard to understand, and the corresponding duties difficult to remember. The confusion and complication renders the law of 1953 of doubtful value, but such is the function of the legislative branch. When the two statutes can be construed in such a manner as to stand together, such construction will be adopted and the latter statute will not be held to have repealed the former. *Ex Rel City of Carson v. County Commissioners*, 47 Nev. 415 224 p. 615.

It is our opinion that any peace officer while functioning within his geographical limits has power and authority to enforce these statutes, and to make arrests for the violation thereof.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-78. Insurance Commissioner—County Commissioners-Municipal Corporations. Contracts of Inter-Insurance may not be entered into by political subdivisions, being violative of Section 10 of Article 8, Constitution, and of the budgetary law.

CARSON CITY, June 29, 1955.

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

DEAR MR. HAMMEL: We have your letter of June 21, 1955, requesting an opinion from this department as reflected by the contents of your letter which reads as follows:

Your opinion is requested as to whether or not Section 10 of Article 8 of the Constitution of the State of Nevada would prohibit a county or city of Nevada from buying insurance in a reciprocal insurance exchange.

For your information and guidance, a copy of an application form from the Farmers Insurance Exchange and the Truck Insurance Exchange showing the wording of the limited power of attorney are enclosed.

With your letter you have enclosed a form of Truck Insurance Exchange, 4680 Wilshire Boulevard, Los Angeles 54, California, entitled "Application for Membership and Insurance"; also a form of Farmers Insurance Exchange of the same address, entitled with the same language.

OPINION

An examination of the documents reveals that the limited power of attorney is in effect an assent that each applicant upon signing binds himself with each other applicant who has or may in the future, signed or may sign an application of like content, to authorize the Board of Governors or Executive Committee to "do severally or jointly with reference to all policies issued, including cancellation thereof, collection and receipt of all monies due the Exchange from whatever source and disbursement of all loss and expense payments, effect reinsurance and all other acts incidental to the management of the Exchange and the business of inter-insurance."

It is therefore clear that the contracts entitled. "Application for Membership and Insurance" are contracts in which a liability may arise, beyond the amount of moneys paid thereon at the time of application and periodically thereafter, under the heading shown on the blank of "Premium Deposit."

Section 10 of Article 8 of the Constitution of Nevada (Section 140 N.C.L. 1929) reads as follows:

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

Opinion No. 47 of this office, of April 22, 1955, points out that the budgetary provisions of the law appertaining to the State, counties, municipalities, school districts and other political subdivisions, are mandatory; that these political subdivisions are required to operate upon a budgetary and cash basis.

Section 4, Chapter 335, Statutes of 1953, reads as follows:

Sec. 4. It shall be unlawful for any commissioner, or any board of county commissioners, or any officer of the county to authorize, allow, or contract for any expenditure unless the money for the payment thereof is in the treasury and specially set aside for such payment. Any county commissioner or officer violating the provisions of this section shall be removed from office in a suit to be instituted by the district attorney for the county wherein said commissioner or officer resides, upon the request of the attorney general, or upon complaint of any interested party.

The conclusion follows from the reasons given that for a county or city to become a party to this type of contract of "inter-insurance" is a "loan of its credit" forbidden by Section 10, Article 8 of the Constitution of the State of Nevada and that for a governing body to contract in this manner for an indefinite and indeterminate sum, would clearly be a violation of Section 4, Chapter 335, Statutes of 1953, in that money would be or could be expended thereunder, not budgeted for or "specifically set aside for such payment."

A county or city is therefore under the law not authorized to enter into a contract of this content. A violation by a county commissioner or other officer of the governmental board of the political subdivision renders the officer removable from office.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-79. Nevada School of Industry—Superintendent of Nevada School of Industry has no legal power to dismiss, or fix term of juveniles committed to said institution by court of competent jurisdiction, or to determine legally when said juveniles have become rehabilitated.

CARSON CITY, July 6, 1955.

MR. WARD SWAIN, *Superintendent, Nevada School of Industry, Elko, Nevada*.

DEAR MR. SWAIN: You have requested of this office an opinion which is broached by three separate questions:

(1) Who has the power to release juveniles committed to the Nevada School of Industry?

(2) Does the judge committing the juvenile have the authority to determine when a boy or girl is rehabilitated, or is that the function of the Superintendent of the Nevada School of Industry?

(3) Does the judge committing the juvenile have the power to set a definite time of incarceration, or is that within the discretion of the Superintendent of the Nevada School of Industry?

In order to intelligently answer these queries it is necessary to study two legislative Acts which are controlling, for in one of these Acts are set forth the delegated powers of the Judges of the Juvenile Courts, and in the other the delegated powers of the Superintendent of the Nevada School of Industry.

The delegated power of the Judges of the Juvenile Courts are found in Chapter 63 of the 1949 Statutes. Under this Act the court has jurisdiction of persons under eighteen years of age, and may acquire or accept jurisdiction of persons more than eighteen years of age but less than twenty-one years of age under certain circumstances. Inasmuch as your institution is only concerned with those minors committed by Juvenile Courts as delinquents, those sections of the Act which lead to commitment to the Nevada School of Industry are as follows:

Sec. 5. Whenever any person over the age of eighteen years and under the age of twenty-one years is accused of a felony and the indictment or information has been filed in the district court of the county wherein the crime was committed, charging said person with the commission of said felony, the judge may, at his discretion and with consent of the accused, or upon his request, arrest such proceeding at the time of the arraignment or at any time previous to the impanelment of the jury, except where the crime charged is a capital offense or an attempt to commit a capital offense. The judge may proceed to investigate the charge against the defendant and may order the probation officer to investigate all facts and circumstances necessary to assist the judge in determining the proper disposition to be made of said person. The judge shall thereupon determine whether said person shall be dealt with under the provisions of the act.

If the judge is satisfied upon such an investigation that said person should be dealt with under this act, it may make such order as herein provided for the disposition of a child under the age of eighteen years.

If no request is made by the defendant for proceeding under this statute, or if the defendant desires a trial by jury, or if the judge declines to consent to the application of the defendant for proceeding under this statute, said case shall proceed in the ordinary manner.

Sec. 7. If a child sixteen years of age or older is charged with an offense which would be a felony if committed by an adult, the court, after full investigation, may in its discretion retain jurisdiction or certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult; but no child under sixteen years of age shall be so certified.

Having accepted jurisdiction of the person accused under these sections of the Act, the court may under Section 19(b) of the Act commit the child to the custody of your institution. At the

time of commitment, or prior thereto, the Juvenile Court shall transmit to you a summary of its information concerning the child, and you, in turn, are required by Section 19 of the Act to give the court such information concerning such child as the court may at any time require.

Under Section 20 of the Act the Juvenile Court may, at any time, modify, change, amend or terminate any decree or order previously made. This would, of course, include an order of commitment. It can thus be determined that the Judges of the Juvenile Courts have the widest possible latitude to make such orders, even after incarceration, as they deem to be for the best interests of the child, and for society.

The Act of March 26, 1913 (Chapter 254, Statutes of 1913), establishing your institution, provides under Section 14 for the method of commitment (Section 6840 N.C.L. 1929).

Let us now refer to Section 12 of the Act of March 26, 1913, above referred to (section 6838 N.C.L. 1929), and to Chapter 197 of the 1953 Statutes, for an insight into the duties and powers imposed upon you as Superintendent of the Nevada School of Industry.

Section 12 of the Act of March 26, 1913 (Chapter 254, Statutes of 1913) reads as follows:

The rules and regulations of said school and the conduct thereof by said board and said superintendent shall be in strict harmony with and obedience to the laws of the State of Nevada, and the judgments and orders of the district courts of the several judicial districts rendered and made in accordance with the laws of Nevada.

An analysis of this section reveals the intent of the Legislature to impose on the Superintendent of the Nevada School of Industry a duty to act in accordance with the judgments and orders of our courts when such judgments and orders are made in accordance with the laws of our State.

Chapter 197 of the 1953 Statutes, which provides, in part, for the administration and organization of the Nevada School of Industry, in Section 7 sets forth the duties of the Superintendent. This section is at this point set forth:

The superintendent shall devote his entire time to the duties of his position, and shall follow no other gainful employment or occupation. He shall be the executive and administrative head of the school, and as such shall have the following powers and duties:

- (1) To exercise general supervision of and make and revise rules and regulations for the government of the school.
- (2) To make and revise rules and regulations for the preservation of order and the enforcement of discipline.
- (3) To be responsible for and to supervise the fiscal affairs and responsibilities of the school, and to purchase such supplies and equipment as may be necessary from time to time.
- (4) To make reports to the board, and to supply the legislature with materials on which to base legislation.
- (5) To keep a complete and accurate record of all proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office.

(6) To invoke any legal, equitable, or special procedures for the enforcement of his orders or the enforcement of the provisions of this act.

(7) To submit a biennial report to the governor and the legislature of the condition, operation, and functioning of the school, and anticipated needs of the school.

In addition to the foregoing, other sections which define duties and powers of the Superintendent, but which are not applicable to a determination in this opinion, are Sections 8, 9, 13, 14, 15, and 16 of said Act.

It can readily be discerned that the Act gives no power to the Superintendent to substitute his opinion or ruling for that of the Juvenile Courts, either as to the term for which the juvenile is committed, or as to that time when the juvenile has become rehabilitated. These are matters to be determined by the court after recommendation or investigation. Of course, the recommendations and considered opinions of the Superintendent will be given weight by the courts in determining when rehabilitation has been accomplished and when committed minors should be discharged.

OPINION

After digesting the laws heretofore referred to your first question is answered by the opinion of this office that the release of juveniles committed to the Nevada School of Industry rests with the Juvenile Court.

Your second question is answered in accord with the foregoing. The determination of accomplished rehabilitation must be made by the court. The advice of the Superintendent may be offered to the court as an aid in such determination.

The answer to your third query is in line with the preceding opinions. The judge committing the juvenile has the power not only to set a definite time of incarceration, but the power to alter, amend or change the order of commitment. Such power is not given by law to the Superintendent of the Nevada School of Industry.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-80. Constitutional Law—Chapter 412, 1955 Statutes, providing for three Commissioner districts and three or five Commissioners in counties with population of 25,000 or more persons, constitutional.

CARSON CITY, July 15, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. DICKERSON: This acknowledges receipt of your letter of July 5, 1955, requesting an opinion as to the constitutionality of Chapter 412 of the 1955 Statutes.

While you enumerate five questions, they are based upon the constitutionality of the entire Act, and this opinion, rather than answer each question separately, will analyze and discuss Chapter 412 of the 1955 Statutes, and in doing so will answer your questions.

In order to make the discussion and opinion which follows clear to others who might read and study the opinion, I set it forth here in its entirety:

AN ACT providing that in any county in the State of Nevada with a population of 25,000 people or more, the county commissioners may, upon a petition of 30 percent of the registered voters of the county, be increased to five commissioners; providing compensations therefor; providing duties therefor, and other matters properly connected therewith.

Approved March 29, 1955.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. In any county of the State of Nevada wherein there is a population of 25,000 people or more, county commissioners of such county may be increased to be five in number, as hereinafter provided.

Sec. 2. Upon the petition of 30 percent of the registered voters at the last general election of such county requesting that the county commissioners divide the county into three commissioner districts and that thereafter the number of county commissioners in such county shall be three or five in number, the county commissioners shall within 60 days from the filing of such petition, by resolution spread upon their minutes, divide such county into three commissioner districts and shall fix the number of commissioners to be thereafter elected from each of the districts; provided, however, that no district shall have less than one or more than three commissioners. The incumbent commissioners shall, in the event such petition requires the commissioners to be five in number, appoint two additional commissioners, one being a long-term commissioner and the other being a short-term commissioner.

Sec. 3. The compensation of the two new county commissioners shall be the same as that compensation already prescribed by law in that particular county. The duties of the new commissioners shall be the same as those already prescribed by law in that particular county.

Sec. 4. Upon the expiration of the terms for which the new county commissioners have been appointed, their vacancies shall be filled by the election procedure established by law for the election of short-term or long-term county commissioners.

Sec. 5. This act shall become effective upon passage and approval.

STATEMENT

If section 1 of the Act were unconstitutional in any way, it would be by reason of the fact that it contravenes Section 21 of Article IV of the Constitution of Nevada providing that all laws shall be general and of uniform operation throughout the State, or that it contravenes Section 25 of Article IV providing for the establishment by the Legislature of a system of county and township government which shall be uniform throughout the State.

The power to make a classification of counties based upon a voting population has been expressly recognized by our Supreme Court in *Young v. Hall*, 9 Nev. 226, *State v. Woodbury*, 17 Nev. 355, and *State v. Boyd*, 19 Nev. 43. As stated in *State v. Donovan*, 20 Nev. 75, if the

classification of counties or cities by a voting population is confined to an existing state of facts at the time passage of the Act, or to any fixed date prior thereto, so as to exclude other counties from ever coming within their provisions, it would be unconstitutional. But Chapter 412 of the 1955 Statutes is a continuing statute, and while only Clark and Washoe Counties might now come within its provisions, other counties by gradual development and growth might well acquire a population of 25,000 or more persons, and thus the statute, as to said counties, would then be applicable.

The language of Section 2 of the Act could have been clearer, but I feel that what the Legislature intended was that the petition therein mentioned was to be signed by a number of voters equal to at least 30 percent of the number of voters registered for the last general election. Therefore, eligible registered voters who were registered either prior to the last general election, or who have since registered, could sign the petition.

Counties, as political entities or subdivisions of the State, are governmental agencies, all the functions and powers which have a direct and exclusive reference to the general policy of the State, and are, in fact, but a branch of the general administration of that policy. It is apparent, therefore, that the State may, through its Legislature, and in the exercise of its sovereign power and will, in all cases where the people themselves have not restricted or qualified such exercise of the power, apportion and delegate to the counties any of the functions which belong to it.

Legislatures have long had the right, by judicial decisions, to give to boards and commissions the power to establish the boundaries of districts. Section 1964 N.C.L. 1929 gives that power to our original Boards of County Commissioners. The present Act, Chapter 412 of the 1955 Statutes, follows this section as to procedure to a certain extent. It should have continued, however, as did Section 1964, to propose the method of division, and this office recommends a close study of this section to the Boards of County Commissioners in the counties coming within the provisions of the 1955 Act.

That section of the Act which provides for the appointment of interim commissioners by the present Boards of County Commissioners gave the writer of this opinion the greatest concern, because of law enacted prior hereto which covers this subject. Section 1935 N.C.L. 1929 provides that the Governor shall fill vacancies on the Board of County Commissioners, and our Supreme Court, in *State v. Irwin*, 5 Nev. 111, has pointed out that a vacancy exists in a new office as well as in one which has been filled previously by an incumbent. However, the only constitutional delegation of power to the Governor to appoint is found in Section 8 of Article V of the Constitution, and such power arises only when no mode of filling such vacancy is provided for by the Constitution or by the laws. Here Chapter 412 of the 1955 Statutes provides for the filling of such vacancy, and as it does not contravene the constitutional provisions of Section 8 of Article V, we are constrained to feel that its constitutionality would be sustained by the courts.

Those provisions of the State Constitution granting legislative power and those reserving individual rights are to be considered together as interdependent, the one qualifying and limiting the other, and neither is supreme in a sense that would deprive the other of its effectiveness. With this in view we pass to the question of the validity of the petition which requires the signatures of a number of persons equal to only 30 percent of the registered voters to effectuate the transition to a five commissioner county. In our opinion, the question of the initiative and referendum provisions of the Constitution as found in Article XIX of the Constitution are not applicable. While this method of securing an increase in county commissioners may be deemed by some to be unwise, it is to be remembered that the wisdom and expediency of the Legislature in enacting legislation is not to be questioned, unless the legislation falls afoul of constitutional restrictions.

If the people of the State of Nevada feel that such a law is contrary to public policy, their remedy, and the means for initiating it are found in Article XIX of our State Constitution.

OPINION

For the reasons hereinbefore set forth, we feel that Chapter 412 of 1955 Statutes is constitutional.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-81. District Courts—Bailiffs—Appointment of bailiff in Second Judicial District in absence of vacancy illegal as contravening Chapter 285, 1953 Statutes.

CARSON CITY, July 15, 1955.

HONORABLE DYER JENSEN, *District Attorney, Washoe County, Reno, Nevada*

DEAR MR. JENSEN: You have requested of this office an opinion as to whether the appointment of a bailiff to serve the District Courts of the Second Judicial District, in and for the County of Washoe, where there is at the present time a bailiff serving, is contrary to Chapter 285 of the 1953 Statutes, and whether under such circumstances the County Commissioners can legally pay the salary of the additional bailiff.

OPINION

The law on this matter is clear and explicit. In order to place the provisions of Chapter 285 of the 1953 Statutes clearly before those interested in this opinion, the Act is herewith set forth:

AN ACT to amend an act entitled, "An act to provide for the appointment of bailiffs for the district courts of the several judicial districts of this state in the counties polling forty-five hundred or more votes; defining the powers and duties of such bailiffs; fixing their compensation and repealing all acts or parts of acts in conflict with this act," approved February 24, 1909.

Approved March 27, 1953

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2 of the above entitled act, as last amended by chapter 240, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 2. In all judicial districts where there is more than one judge, there shall be but one bailiff to attend all divisions of the court, said bailiff to be appointed by the joint action of the judges; provided, if the judges cannot agree upon the appointment of the same within thirty days after a vacancy occurs in the office of bailiff, then the appointment shall be made by a majority of the board of county commissioners.

Sec 2. Section 5 of the above entitled act, as last amended by chapter 240, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 5. The compensation for each bailiff for his services shall not be more than \$350 per month, and shall be paid by the county wherein he is appointed, the same as the salaries of other county officers are paid.

Sec. 3. This act shall become effective upon passage and approval

It is difficult to understand how the law could be interpreted in any other way than that the appointment of a bailiff, in the absence of a vacancy, is illegal under the present law.

There was introduced in the 47th Session of the Legislature a bill to increase the number of bailiffs in district courts having more than one department, but said bill, A. B. 235, died in committee.

The Act as it now stands is constitutional until declared otherwise by a court of competent jurisdiction. If the Act impedes the administration of justice, it might well raise the constitutional question that the legislative Act invades the province of the judiciary, but until this question is raised properly before a tribunal of competent jurisdiction, it stands as the law.

It is equally clear that the appointment being unauthorized by law, that the County Commissioners are not authorized to pay the salary of the additional bailiff.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-82. Personnel Department—Employees. Right to 15 days of leave without loss of pay to serve in certain enumerated branches of the Armed Forces, properly limited to those of permanent or probationary classification.

CARSON CITY, July 18, 1955.

MR. WORTH MCCLURE, JR., *Personnel Director, Personnel Department, Heroes Memorial Building, Carson City, Nevada.*

DEAR MR. MCCLURE: We are in receipt of your letter of July 8, 1955 requesting an opinion of this office, as reflected in the content of the letter which we quote in full:

Section 46 of Chapter 351, Statutes of Nevada, 1953, authorizes leave without loss of regular pay for a period not to exceed 15 working days in any one calendar year to 'any person holding a position in the classified service who is an active member of the U. S. Army Reserve, the U. S. Air Force Reserve, the U. S. Naval Reserve, the U. S. Marine Corps Reserve, the U. S. Coast Guard Reserve, the U. S. Public Health Reserve, or the Nevada National Guard.' Section 45 of this same Act, authorizes extended military leave for 'permanent or probationary employees performing active military service.

As directed in Section 20 of the Act, we have prescribed a code of rules and regulations for the classified service which have been approved by the Personnel Advisory Commission and are now effective. Paragraph 2 of Section 8.05 of these rules uses the same language as Sec. 46 of the Personnel Act with the exception that the training leave is limited to 'permanent or probationary employees', as opposed to provisional, emergency, or temporary employees in State service. Our

opinion has been that an employee is not actually 'holding' a position in the technical sense, until he has qualified himself by examination for probationary or permanent status.

The propriety of this limitation, in the face of the language in Sec. 46 of the Act, has been questioned by a number of individuals.

We shall appreciate your opinion with respect to this matter.

OPINION

Section 46 of the Personnel Act to which you have referred reads as follows:

Any person holding a position in the classified service who is an active member of the United States army reserve, the United States air force reserve, the United States naval reserve, the United States marine corps reserve, the United States coast guard reserve, the United States public health reserve, or the Nevada National Guard, shall be relieved from his duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed fifteen working days, in any one calendar year, and any such absence shall not be deemed such employee's annual vacation provided for by law.

Section 20 of the Personnel Act to which you have referred reads as follows:

The director shall prescribe a code of rules and regulations for the classified service, which, upon approval of the commission after public notice and opportunity for public hearing, shall have the force and effect of the law. Rules concerning certifications, appointments, layoffs, and reemployment shall be prescribed for positions involving unskilled or semiskilled labor, and said rules may be different from the rules concerning these processes for other positions in the classified service. Amendments may be made in the same manner upon recommendation of the director.

The code that you have prescribed under Section 20 of the Act, approved by the Personnel Advisory Commission, now in full force and effect, designated as paragraph 2 of Section 8.05 of these promulgated rules, would read as follows:

Any permanent or probationary employee holding a position in the classified service who is an active member of the United States army reserve, the United States air force reserve, the United States naval reserve, the United States marine corps reserve, the United States coast guard reserve, the United States public service health reserve, or the Nevada national guard, shall be relieved from his duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed fifteen working days, in any one calendar year, and any such absence shall not be deemed such employee's annual vacation provided for by law.

The question then for determination reduced to its simplest form is this: Has the Director properly exercised his rule making power, in view of the provisions of Section 46, by limiting the privilege of military training for a period of not more than fifteen days, without loss of pay, to those state employees of classified service who are permanent or probationary in classification?

Section 45 of the Act casts light upon this question, which protects the employment of a "permanent or probationary employee" for extended leave, while serving in the armed forces, under certain conditions, viz:

A permanent or probationary employee who performs active military service under the provisions of any national military service or training act, or who voluntarily serves in the armed forces of the United States in time of war or in such types of service as the director by rule and regulation may prescribe, shall be entitled upon application to leave of absence without pay for the period of such service, plus a period not to exceed ninety days, and, if within such period, he applies for reinstatement, he shall be reinstated to his former class of position, or to a class of position having like seniority, status, and pay, or, if such positions have been abolished, to the nearest approximation thereof, consistent with the circumstances.

It will be observed that the limitation under the rule that your department has promulgated does not affect a "permanent or probationary employee." Such employees are protected.

Section 39 of the Act in part reads as follows:

All original competitive appointments to and promotions within the classified service shall be for a fixed probationary period of six months, except that a longer period not exceeding one year may be established for classes of positions in which the nature of the work requires a longer period for proper evaluation of performance.

It therefore appears from a study of all sections quoted and full comprehension of the interrelationship of all these sections that:

A probationary employee, duly accepted as such, under the promulgated rule, has a right if fully qualified under the rule, to take leave to serve for limited time in the enumerated branches of the armed forces, for a period of not more than fifteen working days, without loss of pay, even if such probationary employee of the state has not been in state employment for a period of as much as six months.

And that the rule can only affect those mentioned in the latter part of Section 20 whose type of employment is such as to not qualify them to come within the "permanent or probationary" classification. In other words their employment is "unskilled or semiskilled labor." The Legislature apparently had in mind that probationary periods would be proper for those positions in the classified service in which the work was of a permanent nature, that no probationary periods would be required for "unskilled and semiskilled labor" and that the work was not of a permanent nature, and that the "rules concerning certifications, appointments, layoffs, and reemployment * * * may be different from the rules concerning these processes for other positions in the classified service."

We are therefore of the opinion that the rule mentioned as promulgated by your department is entirely reasonable and is in conformity with the provisions of the statute.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-83. Counties—County Commissioners—Municipal Airports. County Commissioners required to have property purchased for airport purposes under the Municipal Airports Act appraised by court-appointed appraisers prior to purchase—Effect of appraisal.

CARSON CITY, July 18, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. DICKERSON: The following constitutes the opinion of this office on the questions contained in your letter dated July 7, 1955 concerning the appraisal of property to be acquired for extension of the McCarran airfield runways.

The facts are these: that the Clark County Commissioners intend to extend such runways, and for this purpose it will be necessary to purchase certain land abutting upon the airport; that the Municipal Airports Act, Chapter 215, 1947 Statutes, provides authority for such purchase, but provides no specific requirement or procedure for appraisal of the property prior to purchase, whereas sub-section 9, Section 1942, N.C.L. 1931-1941 Supplement, sets up the requirement and procedure for appraisal of property to be purchased by County Commissioners for use of the county.

We quote the questions from your letter as follows:

1. Must the Board of County Commissioners proceed under the provisions of Sub-Section 9, Section 1942, N.C.L. 1931-1941, and have appraisers appointed by the Court to appraise and fix the value of the land that they desire to purchase, or are the Commissioners entitled to fix their own appraisal of the property?
2. If the Commissioners must proceed under Sub-Section 9, are they bound by the appraisements made or may they make adjustments where inequities appear?

OPINION

At the outset, as we understand it, we are dealing here with a situation wherein Clark County proposes to make addition to the airport by its own action and not in conjunction or joint effort with some other government entity.

Answering question No. 1, this office is of the opinion that the County Commissioners must proceed under the provisions of sub-section 9, Section 1942, N.C.L. 1931-1941 Supplement.

The pertinent provisions of the Municipal Airports Act are as follows:

Section 2. Every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to * * * enlarge, improve * * * airports * * *. For such purposes the municipality may * * * by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein * * * as are necessary to permit safe and efficient operation of the airport or to permit the removal, elimination, obstruction (marking or obstruction) lighting or airport hazards. (Municipality by the act is defined to include county).

Section 19. A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by this act.

Section 26. In addition to the general and special powers conferred by this act, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general or special powers.

Section 31. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

The pertinent portion of Section 1942, N.C.L. 1931-1941 Supplement, is as follows:

The board of commissioners shall have power and jurisdiction in their respective counties: * * * Ninth—Lease or purchase any real or personal property, necessary for the use of the county; provided, no purchase of real property shall be made unless the value of the same be previously appraised and fixed by three disinterested persons, to be appointed for that purpose by the district judge, who shall be sworn to make a true appraisalment thereof, according to the best of their knowledge and ability.

If the ninth sub-section of Section 1942 above quoted were in conflict with the provisions of the Municipal Airports Act, it would have been repealed by the latter Act. However, it does not appear that a conflict exists. The former provides a specific procedure for the exercise of a general power provided in the latter. We do not understand this situation to be analagous (analogous) to that found in the case of Tanner Motor Tours v. Brown decided by the Nevada Supreme Court in February of this year, Case No. 3811. The decision in that case dealt solely with a discussion of Section 1973, N.C.L. 1929, which section sets up an almost insuperable barrier to the operation of certain provisions of the Municipal Airports Act, and is, therefore, in conflict with it, and for that reason repealed. Such conflict does not exist in the instant case.

There is another decision by the Nevada Supreme Court dealing with the Municipal Airports Act which should be mentioned here. The case is Granite Oil v. Douglas County, 67 Nev. 388. The court in that case had under construction the Municipal Airports Act and the question of whether the county in the operation of an airport retained immunity from tort liability when engaged in a proprietary function. We do not think the case to be controlling in our question under discussion for the reason that as to the matter of handling public funds by county officers, it does not, as we see it, make any difference whether they are acting upon a proprietary or a purely governmental function. They are still bound to handle those funds only in accordance with the law. Nor do we think the case to stand for the proposition that, in the type of action proposed by Clark County, the Municipal Airports Act enlarges the powers of the County Commissioners for the purpose of purchasing property without following the procedure set forth in Section 1942 above.

If, then, there is no conflict and for that reason no repeal of sub-section 9, that sub-section exists as a present directive for the exercise of the powers of the County Commissioners. The County Commissioners have only such powers as are expressly granted or necessarily incidental to carry such powers into effect. King v. Lothrop, 55 Nev. 405.

Answering question No. 2 this office is of the opinion that the Commissioners are bound by the appraisalment of the court appointed appraisers, and it is no function of the Commissioners to alter the appraisalment for what they consider to be inequities. As we see the purpose of Section 1942, it is designed to prevent the Commissioners from entering into contracts for the purchase of property through the expenditure of public funds at a price in excess of the proper value of the property. If, however, the Commissioners consider the appraisalment so made to be improper, we believe them to be at liberty to request a reappraisalment. If, on the other hand, they consider the appraisalment to be proper but are unable to come to terms with the private owner with whom they are dealing, they are at liberty to resort to the power of eminent domain.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-84. Constitutional Law—State Senator. County Commissioners, in filling vacancy occasioned by death or resignation of incumbent State Senator, have power to appoint only if session of Legislature intervenes between death or resignation of incumbent, and next general election, and appointment can only be for that period of time under Section 12 of Article IV of Constitution.

CARSON CITY, July 18, 1955.

HONORABLE PETER BREEN, *District Attorney, Esmerelda County, Goldfield, Nevada*.

MY DEAR MR. BREEN: You have requested an opinion from this office as to whether a State Senator appointed by the County Commissioners of Esmerelda County in accordance with Section 12 of Article IV of the Constitution of Nevada, would serve until the next general election in 1956 or until expiration of the term for which Senator Wiley, now deceased, was elected.

OPINION

Section 12 of Article IV of the Constitution of Nevada reads as follows:

SEC. 12 In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person of the same political party as the party which elected such senator or assemblyman to fill such vacancy; provided, that this section shall apply only in cases where no biennial election or any regular election at which county officers are to be elected takes place between the time of such death or resignation and the next succeeding session of legislature.

It is to be discerned that the founding fathers in providing for the filling of vacancies caused by death or resignation of State Senators or Assemblymen, were careful to provide that if a general election occurs between the time of the death or resignation of Senators or Assemblymen and the next succeeding session of the Legislature, the County Commissioners have no power to appoint, but the choice of a new representative is to be left to the electorate.

This clearly indicates that it was the intention of the framers of the Constitution to place in the hands of the voters the selection of a State Senator or Assemblyman, whenever such course was possible.

It is therefore the opinion of this office that should a session of the State Legislature convene prior to the general election in November of 1956, that the County Commissioners would have the power and duty to appoint a State Senator to represent Esmeralda County, but that such appointment would extend only to the date of the general election in November 1956. If there is no session of the Legislature between the time of Senator Wiley's death and the general election of November 1956, the County Commissioners of Esmeralda County have no power to appoint a successor, but the successor will be elected at that time.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-85. Small Loan Act—Unlicensed person engaging in business of lending sums of fifteen hundred dollars or less cannot make charges, including interest, which exceed 12 per cent per annum.

CARSON CITY, July 18, 1955.

HONORABLE GRANT L. ROBISON, *Superintendent of Banks, Carson City, Nevada*.

MY DEAR MR. ROBISON: You have directed a letter to me under date of July 6, 1955, calling my attention to Opinion No. 243 of this office dated March 17, 1953, which interpreted the provisions of the Small Loan Act, Sections 753-759.14, N.C.L. 1943-1949 Supp., as amended by Chapter 297 of the 1951 Statutes.

Your question is this: Is the opinion correct in its interpretation of Section 754, N.C.L. 1943-1949 Supplement, which may be identified as Section 2 of the Act, insofar as the interpretation applies to Section 2(a).

Section 2(a) as amended by Section 3 of Chapter 297 of the 1951 Statutes of Nevada, read in part as follows:

Sec. 3 Section 2 of the above-entitled act, being section 754, 1929 N.C.L. 1949 Supp., is hereby amended to read as follows:

Section 2. (a) Scope. 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.

OPINION

It is our belief that before an Act of the Legislature is interpreted that every facet of such Act which tends to show the intention of the Legislature should be carefully studied and digested, and an opinion rendered which conforms with that intent.

In the Small Loan Act as amended by Chapter 297 of the 1951 Statutes, the Legislature drafted a Declaration of Legislative Intent which is found in Section 1(a) of the Act. These declarations are so important to the formulation of a legal opinion that they are here set forth:

1. There exists among citizens of this state a widespread demand for small loans. The scope and intensity of this demand have been increased progressively by many social and economic forces.
2. The expense of making and collecting small loans, which are usually made on comparatively unsubstantial security to wage earners, salaried employees, and other persons of relatively low incomes is necessarily high in relation to the amounts lent.

3. Such loans cannot be made profitably under the limitations imposed by existing laws related to interest and usury. These limitations have tended to exclude lawful enterprises from the small-loan field. Since the demand for small loans cannot be legislated out of existence, many small borrowers have been left to the mercy of those willing to bear the opprobrium and risk the penalties of usury for a large profit.

4. Interest charges are often disguised by the use of subterfuges to evade the usury law. These subterfuges are so complicated and technical that the usual borrower of small sums is defenseless, even if he is aware of the usurious nature of the transaction and of his legal rights.

5. As a result, borrowers of small sums are being exploited, to the injury of the borrower, his dependents, and the general public. Charges are generally exorbitant in relation to those necessary to the conduct of a legitimate small-loan business; trickery and fraud are common; and oppressive collection practices are prevalent.

6. These evils characterize and distinguish loans of fifteen hundred dollars or less. Legislation to control this class of loans is necessary to protect the public welfare.

7. It is the intent of the legislature in enacting this law to bring under public supervision those engaged in the business of making such loans, to eliminate practices that facilitate abuse of borrowers, to establish a system of regulation for the purpose of insuring honest and efficient small-loan service and of stimulating competitive reductions in charges, to allow lenders who meet the conditions of this act a rate of charge sufficiently high to permit a business profit, and to provide the administrative machinery necessary for effective enforcement.

A careful study of these declarations reveals that due to evils attendant upon the making of small loans the Legislature determined that regulation was necessary. It foresaw that there would be two types of lenders—those who would secure a license and operate thereunder, and those who would make a business of lending small sums without a license.

It seems to this writer that the language of Section 2(a) is capable of but one interpretation, i.e., that if a person engages in the business of lending in amounts of fifteen hundred dollars or less without first securing a license that he will be limited to an interest charge on said loan of 1 percent per month or 12 percent per annum in accordance with Section 4323, N.C.L. 1929, and that said 12 percent will include any charges whatsoever, whether for interest, compensation, consideration *or expense*.

There is a clear and determining reason for this from the legislative standpoint: It discourages the business of lending money in sums of fifteen hundred dollars or less without first obtaining a license. Licensed lenders come to the attention of the Superintendent of Banks as commissioner of small loans, for he grants the license. He has closer supervision over licensed lenders, and they in turn have advantages in interest and legitimate charges which the Legislature did not intend to extend to unlicensed lenders. Nothing could more clearly indicate this than declaration 4 which I requote for emphasis.

4. Interest charges are often disguised by the use of subterfuges to evade the usury law. These subterfuges are so complicated and technical that the usual borrower of small sums is defenseless, even if he is aware of the usurious nature of the transaction and of his legal rights.

While the present Attorney General is not inclined to rule differently than has his distinguished predecessor in this office, yet occasions must arise when a careful study of the statutes involved will merit a contrary ruling. To departments which feel that previous rulings are contrary to law and to the intent of the Legislature, the avenues of this office must always be open in the interests of public welfare.

It is therefore the opinion of this office that one engaged in the business of lending sums of fifteen hundred dollars or less, who does not have license from the Small Loan Commissioner to engage in such business, cannot contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charge whether for interest, compensation, consideration, or expense, which in the aggregate are greater than 12 percent per annum.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-86. Nevada Industrial Commission—Taxation. Real property in Ormsby County, record title in name of Nevada Industrial Commission, exempt from taxation.

CARSON CITY, July 20, 1955.

MR. JOHN F. CORY, *Chairman, Nevada Industrial Commission, Carson City, Nevada*.

DEAR MR. CORY: Under date of July 13, 1955, your office has requested an opinion of this office relative to an assessment placed upon the real property standing in the records of the Recorder of Ormsby County, Nevada, in the name of the Nevada Industrial Commission.

QUERY

Is the real property owned by and standing of record in the Recorder's Office of Ormsby County in the name of the Nevada Industrial Commission subject to taxation?

OPINION

The Nevada Industrial Commission was created by an act of the Legislature of 1913, Chapter 111, page 137.

The Act was amended from time to time and repealed as amended by Chapter 168, Statutes 1947, p. 569. The Act of 1947, as amended, therefore contains the present law appertaining to this subject.

Chapter 177, Statutes of 1923, p. 315 (Sections 2732, 2733 and 2734, N.C.L. 1929) authorized the commission to purchase the present facility, i.e., building. This Act contemplates that the building so purchased would or might produce some income. This income should go to the "rent and expense" fund, be administered by the commission and constitute a part of the State Insurance Fund. The "state insurance fund" is provided for in Section 21 of the original Act.

The Act of 1923, by which the Legislature authorized the purchase of a building in Carson City, is silent as to the taxation or exemption from taxation of that facility.

Section 1 "First" of Chapter 217, Statutes of 1955 (in this paragraph the same as the corresponding paragraph of Chapter 344, Statutes of 1953) provides:

All lands and other property owned by the state, or by the United States, not taxable because of the constitution or laws of the United States, or by any county, incorporated farm bureau, domestic, municipal corporation, irrigation, drainage, or reclamation district, town or village in this state, and all public schoolhouses, with lots appurtenant thereto, owned by any legally created school district within the state; also non-profit private schools, with lots appurtenant thereto, and furniture and equipment, drainage ditches and canals, together with the lands which are included in the rights-of-way of such.

Since this facility, the Carson City real property, obtained by and for the commission, under the statutory authority as aforesaid, is not specifically exempt from taxation under the Act providing for its purchase or under the statute of tax exemptions, the question resolves to this: Is this real property in question together with other property there used (chattels), owned by the State, within the intent of the tax exemption statutes? It is not directly so and the process of analysis therefore becomes more difficult and involved. The Legislature could have made this problem much less difficult by making more clear the status of the property, taxwise, but this it has failed to do.

We know of no other agency or commission of State Government (and this we will establish the Nevada Industrial Commission functionally to be) in which real property has been taken in the name of the agency or commission. All others, so far as we know, operate within buildings in which title is held in the State of Nevada. We are therefore unable to draw any comparisons which will lead to a conclusion as to the legality of a tax assessment made by Ormsby County affecting this real property.

Workmen's compensation laws are purely statutory. They are a growth of the conditions brought about by the industrial revolution. Beginning on the continent of Europe (Germany 1884) and throughout the principal nations of Europe, they have gradually spread until in 1921 it was said that they had been adopted by all of the American states that had any considerable industrial development. 71 C. J., Art. 16, p. 250. Principally the Acts are intended for the benefit of the employee. 71 C.J., p. 250. It may with truth be said that such statutes are the result of widespread change from a system of self-employment. When widespread employment through corporate entities and otherwise reached the point that widespread evils were discovered as a result of the laissez faire doctrine, the sovereign has stepped in under the police powers to afford a protection to workmen which they vitally needed and were unable to obtain without the aid of government.

We have set out this historic background at considerable length, by way of showing that the Nevada Industrial Commission was created and exists for a public purpose.

We next approach the question of directive authority or control.

The original Act (Chapter 111, Statutes of 1913, p. 137) in Section 8 provides that the commission be composed of five members, namely, the Governor, State Mine Inspector, the Attorney General and two others to be selected by those named.

The present Act (Chapter 168 Statutes of 1947 as amended by Chapter 323, Statutes of 1949, as amended by Chapter 330, Statutes of 1951, as amended by Chapter 227, Statutes of 1953) appertaining to the personnel composing the commission, the manner of appointment, salary, etc., Section 39(1) reads as follows:

The Nevada industrial commission, which shall be composed of three commissioners, is hereby created. All of the members of such commission shall be appointed by the governor. One of such commissioners shall be representative of labor and shall be selected by the governor for appointment from the individuals whose names are submitted to him, one by the Nevada state federation of labor affiliated with the American federation of labor, and one by the congress of industrial organizations for the State of Nevada. One of such commissioners shall be representative of employers and shall be selected by the governor for appointment from the individuals whose names are submitted to him by recognized associations and employers groups located in the state. The third commissioner selected by the governor shall be the chairman, and such appointee shall have not less than five years' experience as an insurance actuary, and have a degree of master of business administration or experience deemed equivalent to that degree. The annual salary of the chairman shall not be less than \$8,500, and the annual salary for each of the other two commissioners shall be \$6,600.

Subdivision (6) Section 39 provides for removal by the Governor and filling of vacancy by the Governor.

Generally, and without citing particular instances, which would serve no purpose, no session of Legislature in recent years has passed without making provision for changes in the Nevada Industrial Insurance Act.

Elaborate precautions have been set up by law for the protection and investing of the funds of the commission. This is in effect a check and balance system by which the funds of the commission are placed under the scrutiny of the Governor, State Treasurer, and State Controller. See, Sections 84 to 94 of the Act, inclusive.

The original Act, Section 46 thereof, made provision for the disposition of the fund by the Legislature in the event of the repeal of the Act, having regard for the obligations for compensation incurred and existing. The present law, in Section 98 thereof, contains a similar provision.

Section 42 of the law provides for printing for the commission by the State Printing Office.

We could enlarge and multiply the showings of fact that lead irresistibly to the conclusion that the Nevada Industrial Commission is a state agency existing for a public purpose, created by and under the legislative direction of the legislative body, supervised by the executive branch of the State Government.

State v. McMillam, 36 Nev. 383, points out that the original Act provided for the commission to receive \$2,000 of state money, the appropriation to be returned within 6 months. The commission's funds throughout the history of the Act have been carried with the State Treasury, and when from time withdrawn by the commission do not require the approval of the Board of Examiners.

The real property located in Ormsby County, recorded and standing of record in the name of the Nevada Industrial Commission, is therefore state property held in trust by the commission for the State and falls within the provisions of exemption, heretofore quoted. The fact that the record title to the real property stands in the name of the commission presents no obstacle to this conclusion. We quote in this respect from 61 C. J. (taxation), Article 359, p. 366, as follows:

The public property which is thus immune from taxation includes all property, real or personal, held for public purposes, which legally or equitably belongs wholly to the state, no matter on what basis its title rests.

It follows that since the real property in question is owned by the State held in trust by the commission, together with the furnishings (chattels) located therein and owned as the realty is owned, and is under the statute exempt from taxation, that the assessment is void.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-87. Public Schools—Children attending private school, that for any reason closes, thus leaving them without school facilities, must be provided with public educational facilities by school board.

CARSON CITY, July 22, 1955.

HONORABLE WAYNE O. JEPSON, *District Attorney, Lyon County, Yerington, Nevada*.

DEAR MR. JEPSON: You have requested an opinion from this office as to whether the school board governing the Smith Valley Schools must accept boys from the Nevada Ranch School, which is a private school.

You set forth the material facts which led to your posing the question, and if our understanding is correct, these facts are as follows: The Nevada Ranch School for Boys has been operated in Smith Valley the general direction of the Christian Church. The school has been operated as a nonsectarian school and has been supported by churches and civic and fraternal organizations throughout the State. The school has accepted problem boys, boys from broken homes and boys who have been in trouble.

While your letter does not so state, I presume that the Nevada Ranch School, due to financial difficulties, or for other reasons, is no longer able to continue to operate. The school board of Smith Valley is confronted with two problems as a result thereof: (1) As problem children the students to be transferred to public school might cause trouble in the school, and (2) the public school in Smith Valley is already overcrowded.

OPINION

Education in Nevada is compulsory for children between the ages of 7 and 18, and attendance at public school is excused only in certain specific instances set forth in Section 6084.11 N.C.L. 1943-1949 Supp. Because only several of these reasons are applicable to this opinion, I cite them herewith:

1. That the child's bodily or mental condition or attitude is such as to prevent or render inadvisable its attendance at school or application to study. A certificate in writing from any reputable physician filed with such board that such child is not able to attend school, or that its attendance is inadvisable must be taken as satisfactory evidence by any such board, which certificate shall be filed with such board immediately after it has been so received; or

3. That the child is receiving under private or public instruction, at home or in some other school, equivalent instruction fully approved by the state board of education as to the kind and amount thereof; or

4. That the child, fourteen (14) years of age or over, must work for its own or its parent's support; or

5. That the deputy superintendent of public instruction of that educational supervision district has determined that the child's residence is located at such a distance from the nearest public school as to render attendance unsafe or impracticable and its parent or guardian has notified said school board to that effect in writing.

It is apparent that if the children now attending the Nevada Ranch School are to be left without school facilities due to the closing of said school, or if the children, or any of them, are withdrawn from such school, that they become subject to the Public School Law, unless they come within the excuse provisos set forth above.

The fact that they are problem children would not deprive them of the right and privilege to attend the public schools, and as a matter of fact the law imposes upon their parents or guardians the duty of seeing that they do attend public school.

It is the opinion of this office that if the children presently attending the Nevada Ranch School are deprived of the privilege of attending that school and are left without school facilities as a result thereof, that the Board of Education of Smith Valley must provide school facilities for them under the law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-88. Public Employees Retirement—Lump sum paid to member of system in lieu of annual leave is subject to regular deduction for retirement benefit.

CARSON CITY, July 25, 1955.

HON. C. A. CARLSON, JR., *Director of the Budget, Carson City, Nevada*.

DEAR MR. CARLSON: Your office has requested an opinion from this office as to the legal propriety of that portion of your memorandum No. 22 dated June 30, 1955, wherein you instruct all payroll departments of the State Government not to deduct retirement payments from lump sum payments for accumulated leave on termination.

STATEMENT

In order to arrive at a determination of the correct interpretation it is necessary to study the applicable sections of the Public Employees Retirement Act approved March 27, 1947, as amended.

That part of Section 14 of the Act which deals with employee contribution reads as follows:

Employee Contribution.

Each employee who is a member of the system shall contribute 5 percent of the gross compensation earned by him after July 1, 1948, as a member of the system; provided, that no employee shall be required to contribute on any amount in excess of four hundred dollars (\$400) per month. From each pay roll during the period of his membership the employer shall deduct the amount of the member's contributions and transmit the deduction to the retirement board at intervals designated by the board. No portion of the contribution referred to above shall be used for administrative expenses.

It is to be noted that each employee who is a member of the retirement system *shall* contribute 5 percent of the gross compensation earned by him after July 1, 1948. The question that arises is this: Is a lump sum payment for accumulated annual leave a part of the employee's gross compensation? We think it is. It appears to us that if the Legislature had intended to make any exception as to the payment of the 5 percent of the employee's compensation to the retirement fund, that they would not have used the word "gross". Black's law dictionary, fourth edition at page 832, defines "gross" as "Before or without diminution or deduction. * * * Whole; entire; total; as the gross sum, amount, weight—opposed to net."

Section 15 of the Act in providing for the employer's contribution to the retirement fund also uses the term "gross" with reference to compensation received by the employee.

That the lump sum payment in lieu of leave is compensation cannot be doubted. It is payment for work or labor performed at a time when the employee should have been resting from such work or labor. Black's law dictionary, fourth edition at page 354, defines compensation as an "equivalent in money for a loss sustained." The loss sustained in these instances is loss of vacation.

The argument that the payment of a lump sum for accumulated leave is a benefit payment after termination of service can readily be answered. Suppose an employee had been paid up to June 1st, and instead of terminating said employee as of that date, the employee was given his two weeks vacation with pay, and terminated on June 15th. Could it satisfactorily or legally argued that retirement contribution could not be deducted from the employee's June 15th check? If the employee had accumulated two weeks annual leave, the amount received in addition to his pay up to June 1st, would be the same whether he was paid and given two weeks vacation, or whether he was paid a lump sum in lieu of vacation.

OPINION

It is the opinion of this office that a lump sum paid to an employee in lieu of annual leave, when that employee is a member of the retirement system, is a part of the gross compensation paid to that employee, and that deduction must be made from such lump sum for retirement benefits.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-89. State Welfare Board—Sums appropriated by the Legislature for the administration of the State Welfare Board may be used to meet the expenses of said Board when meeting as the policy-making board of the State Children's Home, even though not specifically requested for that purpose.

CARSON CITY, July 25, 1955.

MRS. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department, P.O. Box 1331, Reno, Nevada.*

DEAR MRS. COUGHLAN: You have requested this office to give you an opinion as to the legal authority of your department to pay the expenses of the State Welfare Board when it meets as the policy making body of the State Children's Home.

Under Section 4(9), Chapter 249, 1953 Statutes, amending Section 10 of the Act of March 30, 1949, it is provided that the State Welfare Department shall cooperate and advise with the State Welfare Board and the Superintendent of the Nevada State Children's Home in such matters as may be referred to the State Welfare Department by the State Welfare Board or the Superintendent of the State Children's home.

Under Section 8 of the Act, Chapter 249, 1953 Statutes, the Welfare Board is given the power and the duty to formulate policies and to establish rules and regulations for administration of the welfare program for which the department is responsible.

Section 3(16) of Chapter 249, 1953 Statutes, gives the director the authority to allocate, with the approval of the State Welfare Board, the State's appropriation for administration of the separate programs for which the department is responsible.

OPINION

It is the opinion of this office that such funds as have been appropriated by the State Legislature for administration of the State Welfare Board, are available, insofar as they will go, for the payment of the expenses of the board when meeting as the policy making board of the Nevada State Children's Home.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-90. Liquor License—County Liquor Boards. County Liquor Boards, composed of County Commissioners, District Attorney and Sheriff, have power to grant or refuse, and to revoke for cause, retail liquor licenses in unincorporated cities and towns. Jurisdiction does not extend to liquor importers or wholesalers as defined by Liquor License Act of 1935.

CARSON CITY, August 2, 1955.

HONORABLE ROLAND W. BELANGER, *District Attorney, Pershing County, Lovelock, Nevada.*

DEAR MR. BELANGER: You have requested of this office an opinion as to who has the power to revoke a liquor license in Pershing County.

STATEMENT

In order to reach a decision it is necessary to take into consideration the history of the statutes of Nevada which deal with granting and revocation of liquor licenses.

An Act was approved March 24, 1917, 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 the state; prescribing the duties and declaring the powers of such board." This Act was Chapter 194 of the 1917 Statutes. Under this Act the Board of County Commissioners, the District Attorney and the Sheriff were authorized, empowered and commissioned to act jointly as a liquor board. The Act empowered the board thus created to grant or refuse liquor licenses and to revoke the same whenever, in the judgment of a majority of the board, there was sufficient reason for such revocation. The Act further set forth the specific power of such board, but for the purposes of this decision it is not necessary to recite them.

This Act was amended by Chapter 135 of the 1933 Statutes, but only to the extent of prohibiting the sale or disposition of liquor where such sale or disposition would create or constitute a public nuisance and to prohibit the sale or disposition of liquor where a disorderly house was maintained.

The same session of the Legislature, anticipating the repeal of prohibition, enacted Chapter 184 (1933 Statutes) which more clearly defined the word liquor and put the buying, selling, possession and trafficking (trafficking) in liquor under the jurisdiction of the liquor board, which was constituted as in the original Act. This became Section 3690 N.C.L. 1931-1941 Supp.

At the 1935 Session of the Legislature an Act to provide revenue for the support of the Government of the State of Nevada was passed. This Act, Chapter 160 of the 1935 Statutes, was designated as the Liquor License Act of 1935. The title provides that all Acts or parts of Acts in conflict with the provisions thereof are repealed.

It is to be noted, however, that the 1935 Act implies to importers and wholesalers, not to retail outlets. The Act was not intended to apply to those applicants who seek a liquor license under the provisions of Section 3681 N.C.L. 1931-1941 Supp., except in cases where retail applicants might, after securing their license, buy from other than a licensed importer and wholesaler in Nevada. To this extent only, the provisions of Chapter 184 of the 1917 Statutes (Section 3690 N.C.L. 1931-1941 Supp.) are modified.

OPINION

It is therefore the opinion of this office that the County Liquor Board, composed of the Board of County Commissioners, the District Attorney, and the Sheriff, has the power and authority to grant or refuse retail liquor licenses to revoke the same in unincorporated cities and towns when in the judgment of a majority of the board there is sufficient reason for such revocation. Their jurisdiction does not extend to liquor importers and wholesalers as defined in the Liquor License Act of 1935.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-91. Corporations—Insurance—Insurance Commissioner—Fraternal Benefit Society. The phrases, "principal office" and "principal place of business" are not synonymous terms. A domestic Fraternal Benefit Society may maintain its "principal place of business" in another state.

CARSON CITY, August 4, 1955.

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

DEAR MR. HAMMEL: We have your letter of July 29, 1955, asking for an opinion of this office as will be developed by a statement of facts as follows:

STATEMENT OF FACTS

Nevada has one domestic fraternal insurance company. It was incorporated on March 24, 1939, as the "Nazarene Mutual Benevolent Association." The name was changed on August 8, 1940, by filing an amendment to the Articles of Incorporation to "Christians Mutual Benevolent Association." The corporation was formed under the General Corporation Law. The corporate powers are very broad and do not by special emphasis otherwise delineate that the intent at the time of formation was to function as an insurance entity. The company has remained in good standing from the time of formation insofar as the filing annually of a list of officers and directors and designation of resident agent, with the office of Secretary of State, is concerned.

The company maintained its office in Carson City, Nevada, from the date of incorporation until March, 1945, at which date it established its "executive offices" in Seattle, Washington. From that date (March 1945) the record filed annually with the office of Secretary of State shows Mr. E.W. Miller, 511 North Carson Street, Carson City, Nevada, as the resident agent, and lists the home office as the same address. The principal records, books, etc., are kept in the executive offices in Seattle, State of Washington, and all of the normal business of the company is transacted in the Seattle office.

A portion of Section 20, Chapter 217, Statutes of 1949, reads as follows: "but its principal office shall be located in this state." A search of the official records of this office does not reveal that this department has ever rendered an official opinion upon the question here presented.

QUESTION

Does the law require that the main office of the company in which it transacts its usual business (principal place of business), that is the business office of the company, be located within the State of Nevada?

OPINION

As we have heretofore stated, this corporation was formed under the General Corporation Laws of the State of Nevada on March 24, 1939.

The Insurance Code was enacted in 1941. See Statutes of Nevada 1941, Chapter 189, p. 451. A section of the Act makes the Act retroactive, and in effect to include corporations later to be formed and also those earlier formed.

Article 2 of the Act has reference to domestic corporations, and under Section 9 thereof it is provided as follows:

The principal office and principal place of business of any company organized under this article shall be located in this state.

Article 17 of the Act, Section 129, designates the general powers of the Insurance Commissioner and provides that the State Controller of the State of Nevada be ex officio Insurance Commissioner and charged with duties of enforcement of the Act.

The General Corporation Law of 1925, Section 1603 N.C.L. (2) provides that the certificate or articles of incorporation shall set forth "The name of the county, and of the city or town, and of the place within the county, city, or town in which its principal office, or place of business is to be located in this state, giving the street and number wherever practicable * * *." Paragraph numbered 2 of the General Corporation Law of 1903 contained a similar requirement. See Section 1699 N.C.L. 1929. The same appears in Section 4, Chapter 121, Statutes of 1949, p. 158. (Section 1603 N.C.L. 1943-1949 Supp.) Under Section 1601 N.C.L. 1929 we observe that the Legislature reserves the right of change in corporate statutes, which we construe to mean that no corporation can claim any vested right to be immune from further regulation, as may be spelled out by the Legislature from time to time.

The Nevada Fraternal Benefit Societies Statute was enacted in 1949, Chapter 217, p. 459. It provides in Section 4 as follows:

Such societies shall be governed by this chapter, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.

Although from the time of its approval (March 28, 1949) this statute by its terms is exclusive of the effect and operation of other statutes, the fact remains that the Insurance Commissioner obtained jurisdiction over the subject company under the Statute of 1941.

A disturbing part of this problem is reflected by the fact that the subject company established its "executive offices" in Seattle in the year 1945, and before the enactment of the Fraternal Benefit Society Statute, while under the jurisdiction of the Insurance Commissioner. We, therefore, have presented the question of whether or not the original removal was lawful.

Section 9 of Chapter 189, Statutes of 1941 (the Insurance Statute) reads as follows:

Principal Office and Place of Business. The principal office and place of business of any company organized under this article shall be located in this state.

It will be remembered that the subject company was not "organized under this article," being previously organized. Also that it did not and does not claim the privileges of Section 12 of the Act as regards sale of stock, raising of capital, etc.

The Nevada Fraternal Benefit Societies Statute is, in theory and language, not peculiar to the State of Nevada. California has a similar Act, enacted in 1935. See: Deering's California Codes—Annotated—Insurance 2, Sections 10,110-13,003, Chapter 10, "Fraternal Benefit Societies," p. 294, Section 10,970 et seq. Washington has a similar Act, enacted in 1949. See: Revised Code of Washington, Volume 4, Chapter 48.36 "Fraternal," Section 48.36.010 et seq.

In the Nevada statute, Section 20 of the Act (Statutes of 1949, p. 470) reads as follows:

Sec. 20. Place of Meeting; Location of Office. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if

such meetings were held in this state; but its principal office shall be located in this state.

In the California statute Section 11,026 has the same meaning. There is a variance of two words. In the Washington statute, Section 48.36.180, the introductory words are different. This statute begins with the words: "Place of Meeting—Principal Office." The remainder of the Washington section of the statute is identical with the Nevada statute.

In the statutes appertaining to all three states there is provision for domestic corporations as well as foreign corporations of the "Fraternal Benefit Society" type.

In all three states provision is made for the examination by the Insurance Commissioner of the books and records of foreign corporations of this type, also for the granting of a license. There are provisions for removal or suspension of license when the financial affairs as shown by the examination reflect that the public is not safeguarded.

See: Section 11,192 of the California Act.

Section 29 of the Nevada Act.

Section 48.36.270 of the Washington Act.

The Washington Insurance Commissioner could under the law accept, in lieu of an examination, the report and findings of the Nevada Insurance Commissioner touching upon his examination of the subject company.

We find the expression "in this state," or words of similar import, appearing frequently in the Nevada Statute. In all places in which this wording appears, however, we find the usage susceptible to the construction that the business office (principal place of business) might be located in another state.

Volume 13, Am. Jur. Art. 474, p. 516, points out that in the absence of statutory authority or authority growing out of its articles of incorporation there is some doubt about authority of a corporation to hold stockholders meetings in a state in which it is foreign. Be this as it may, the position of benevolent corporations is different. See also: 38 Am. Jur. (Mutual Benefit Societies) Art. 32, p. 467.

In *Manson & Hanger Co. v. Sharon*, 231 F. 861, 863, and in *Carminuti v. Superior Court*, 108 P (2d) 911, 914, it is held that there is a great distinction between "principal office" and "principal place of business."

We are clearly of the opinion that the subject company is required to maintain its principal office in the State of Nevada. In such office it must keep the corporate records, including the Articles of Incorporation, official minutes, list of stockholders and stock transfer books, and that beyond this it is not required to go to meet the provisions of the Nevada statute.

In so deciding the purposes of the statute are not circumvented. For we find that in order to obtain and hold a certificate in the State of Washington, it must be examined not less frequently than once in three years, by the Insurance Commissioner of the State of Washington, or in lieu thereof, receive the report of the Insurance Commissioner of the State of Nevada.

The timing in this case, being as it was, that the removal was at a time that the office Insurance Commissioner had been created and that such office had jurisdiction over the subject company, at the time of the removal and before the creation of the Fraternal Benefit Society

Law, and the presence of the provisions quoted under the General Corporation Law, as to the requirement of maintenance of the "principal office" in the State of Nevada, under the law then in force and effect appertaining to corporations generally, and the fact that the law recognizes that there is a very different meaning between the phrases, "principal office" and "principal place of business," we feel that there can be no question but that the removal was not in opposition to the law, and that to continue the office as at present situate for the purposes mentioned is not in conflict with the Nevada statutory law.

The question posed is, therefore, answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-92. Insanity—Person acquitted by criminal jury for reason that person at time of committing crime was insane, and is still insane at time of trial, must be committed to State mental hospital until regularly discharged therefrom in accordance with law. Committing judge loses jurisdiction upon commitment.

CARSON CITY, August 5, 1955.

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

DEAR DR. TILLIM: You have directed an inquiry to this office requesting an interpretation of Section 11015 N.C.L. 1929.

Specifically you set forth the following facts: 1. A person is acquitted by a criminal jury for the reason that at the time the crime was committed the person so committing it was insane, and is still insane at the time of trial. 2. He is committed to the State Hospital under the provisions of Section 11015, but a District Judge adds to the order of commitment the words "and that pursuant to Section 39 of Chapter 331, Statutes of Nevada, 1951, as amended, he be held at the said Nevada Hospital for Mental Diseases, until the further order of this Court." 3. Subject, a veteran of World War II with a service connected disability, applied for a transfer to a Veterans hospital, and this application was approved by the Veterans Administration, which filed a petition for an amendment to the commitment under Section 9562 N.C.L. 1929. 4. The court added to the amended commitment order in his own handwriting the words "until the further order of this Court."

The Veterans Administration has advised you that the amended commitment in this form is not acceptable because it is in conflict with that provision of Section 9562 N.C.L. 1929 which provides that "the officials of such hospital shall be vested with the same powers now exercised by the Superintendent of the Nevada hospital for mental diseases with reference to the retention of custody of the veteran so committed."

What is the meaning, in Section 11015 N.C.L. 1929, of the words "* * * the finding of the jury shall have the same force and effect as if he were regularly adjudged insane as now provided by law * * *." It means that the Judge shall cause said acquitted insane person to be conveyed to the Nevada Hospital for Mental Diseases, at the expense of the State, and place such person in charge of the proper person having charge of said Nevada Hospital for Mental Diseases, as provided in Section 3511 N.C.L. 1931-1941 Supplement. Thereafter his jurisdiction ends, for Section 3523 N.C.L. 1943-1949 Supplement places in the Superintendent of the State Hospital and the State Hospital Board the responsibility of discharge.

The provisions of Section 39 of Chapter 331 of the 1951 Statutes and Section 39 of Chapter 365 of the 1953 Statutes, and especially that provision which reads “* * * provided, however, that nothing herein contained shall authorize the release of any person held upon an order of a court having criminal jurisdiction arising out of a criminal offense * * *,” arise where a person charged with a felony other than homicide is believed by the court to be mentally ill and is temporarily committed for examination and report, such commitment to continue until the further order of the court. In the latter case the court retains jurisdiction, but in the case recited in your letter it cannot. The man, having been acquitted, is a free man subject to treatment for a mental illness. He is not like the person accused of a crime who has not been brought to trial, and who, upon recovery, may be returned for trial upon order of the court retaining jurisdiction. When the acquitted man is received at the hospital, he is under the jurisdiction of the Superintendent and the Board, not the court, and upon recovery may be discharged to take his place in society like any other free man.

OPINION

It is, therefore, the opinion of this office that neither the commitment, nor amended commitment, of a man acquitted by reason of insanity in accordance with the provisions of Section 11015 N.C.L. 1929, should contain any reservation of jurisdiction by the committing judge.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-93. A State Senator elected by the qualified electors of the county in which he resides at the time of his election, is not barred from serving as the State Senator of such county during his term of office, even though he removes his residence, after election, to another county.

CARSON CITY, August 11, 1955.

HONORABLE JOHNSON W. LLOYD, *District Attorney, Eureka, Nevada*.

DEAR MR. LLOYD: You have requested this office to answer the following question: Where a duly elected state senator, who has served in the immediate past session of the State Legislature, moves to and resides in another county than that from which he was elected, can he legally represent the county from which he was elected in the next session of the Legislature, his term not having expired?

STATEMENT

Section 4 of Article IV of the Constitution of Nevada provides: “Senators shall be chosen at the same time and places as members of the assembly, by the qualified electors of their respective districts and their terms of office shall be four years from the day next after their election.”

Section 4780 N.C.L. 1929, which makes statutory provision for carrying out the constitutional mandate for the election of State Senators, reads as follows: “The senators shall be elected by the electors of their respective districts, at the general election in the year eighteen hundred and sixty-six and every two years thereafter, and shall hold their offices for four years from the day succeeding such general election.”

It is to be noted that the only reference to residence in both the constitutional provision and the statutory provision is by the implication contained in the proviso that the senators shall be chosen (Section 4 Article IV Constitution) or elected (Section 4780 N.C.L. 1929) by the electors of their respective districts. This implies residence in the county at the time of their election.

Section 12 of Article IV of the Constitution of Nevada defines the method of filling vacancies in the Legislature's membership, but such vacancies arise only by way of death or resignation. The referred to section reads as follows:

In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person of the same political party as the party which elected such senator or assemblyman to fill such vacancy; provided, that this section shall apply only in cases where no biennial election or any regular election at which county officers are to be elected takes place between the time of such death or resignation and the next succeeding session of the legislature.

It is clear from a perusal of this constitutional provision that residence by a State Senator after election in a county other than that from which he was elected does not create a vacancy in such office. American Jurisprudence (42 Am. Jur. 915) cites *Bigney v. Secretary of Commonwealth*, 16 N.E. 2d 573, as holding that "where residence within the district or political unit is not made a condition of eligibility to holding office therein by express provisions of the law, such residence is generally considered not necessary."

OPINION

It is therefore the opinion of this office that a State Senator elected by the qualified electors of the county in which he resides at the time of his election, is not barred from serving as the State Senator of such county during his term of office, even though he removes his residence, after election, to another county.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-94. Equalization—Clark County Board of Equalization may during the year 1955 sit beyond the date of August 15. The Limit of time at which it may so sit is determined by the requirements for transmission of county records to State Board of Equalization.

CARSON CITY, August 12, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. DICKERSON: We are in receipt of your letter of August 9, 1955, requesting an opinion of this department upon certain questions hereinafter stated. For clarity and to show the magnitude of the problem as well as the limitation of time, we quote the body of your letter in full.

Over last week end the Assessor's Office of Clark County mailed the Clark County, Nevada, 1955-1956 Assessment List to all taxpayers of Clark County. The Board of Equalization of Clark County has been flooded with protests of taxpayers due to the tremendous increase in assessment of the property. At the request of the

Board I am , therefore, submitting the following questions and would appreciate an expeditious answer. May I refer you to Section 6434 N.C.L. 1931-1941 Supp., Chapter 344, 1953 Statutes, Chapter 13, 1954 Special Session.

1. Can the Board of Equalization sit beyond the third Monday in August to process the voluminous protests, which they will otherwise be unable to process? 6434 N.C.L. 1931-1941 Supp.
2. Can the Board of Equalization change the formula of assessment or must they accept the formula of the Assessor and merely equalize assessments?
3. Can the Board of Equalization accept the 1954 assessment if sufficient to meet governmental budgets and reject the assessment as submitted by the Assessor for the January 1st-June 30th period? See Section 70, Chapter 344, 1953, as amended Section 70, Chapter 13, 1954.
4. Must a taxpayer appear before the Board of Equalization to have adjustments made in the assessment, or may the Board fix a blanket assessment for all property within a given area on the recommendation of the Assessor without the taxpayers in the area appearing to protest?
5. If the Board of Equalization is unable to handle all protests by August 15, 1955, may they apply to those protests which they were unable to consider the formula applied to the area wherein such property is located in order to have a record for purpose of appeal to the State Board of Equalization.

OPINION

Chapter 344, Statutes of 1953, page 597, is a complex tax statute, as distinguished from an amendment to previously existing statute.

Section 18 of the Act provided that the Board of County Commissioners of each county shall constitute a Board of Equalization, and that such board "shall meet during the month of January of each year, and shall hold such number of meetings during said month as may be necessary to care for the business of equalization presented to it; provided, however, that the business of equalization must be concluded during said month of January."

Section 70, makes provision for the effective dates of the Act, certain sections to be earlier effective by reason of the change to a fiscal year from calendar year, not related to this opinion, and that the remainder of the Act should be effective on January 1, 1955.

The Legislature of 1954 (Special Session) enacted Chapter 13, which was an amendment to the tax law of 1953 heretofore mentioned. Among others this Act of 1954 amends Section 70 and places the operation of the assessment and collection of taxes for the first six months of 1955 upon a six months' basis, preparatory to the operation of the tax collection to be upon a fiscal year basis beginning with the date of July 1, 1955 and extending for twelve months from that date.

The second paragraph of this Section 70, Statutes of 1954, is directed toward the preservation of the right of equalization, as to this nonrecurring six months' assessment plan. This second paragraph of Section 70 reads as follows:

For all other purposes, this Act shall become effective July 1, 1955, and taxes for the fiscal year July 1, 1955, to June 30, 1956, shall be assessed, levied and

collected as in this act provided and for each fiscal year thereafter in the same manner; provided, that nothing contained in this act shall affect the equalization or processing of the assessments made for the 6-month period from January 1, 1955, to June 30, 1955, in accordance with the law then in existence.

These two statutes then, when analyzed together with reference to the taxpayers' right of equalization of taxes, in the delineation of the method to be employed and the time in which the work is to be done, have reference back to Section 6434, N.C.L. 1931-1941 Supp. In this section we have the following provision:

The board of equalization of each county shall meet on the fourth Monday of July in each year, and shall continue in session from time to time until the business of equalization presented to them is disposed of; provided, however, that they shall not sit after the third Monday in August.

From this analysis of these three statutes we have come to the same view that you entertain as regards the applicable statutes, and we agree that the hearings of the Board of Equalization can only be held from the time that they began. From this then the preliminary question presents itself, namely, to what date may these hearings of the Board of Equalization continue? Is the date mentioned in the statute, the third Monday in August, mandatory or directory?

Conversations upon this dilemma that we have held with your office are to the effect that the assessment list to all taxpayers of Clark County, for the six months' term under investigation, were mailed to the Clark County taxpayers or were delivered to them in Las Vegas, on or about August 5, and that at the time that you called and wrote us there were literally hundreds of protesting taxpayers who desire to be heard by the Board of Equalization; also that during this entire week the Board of County Commissioners sitting as a Board of Equalization has sat and heard protesting taxpayers six hours per day and that it will be impossible for the board to come near completing the hearings of these protests, even though the board has attempted to limit them in time to fifteen minutes of testimony.

In July 1892 the Supreme Court decided *State v. Central Pacific Railway Company*, 21 Nev. 271. The Facts were: Section number 1091 General Statutes of Nevada provided in part as follows:

The Board of County Commissioners shall constitute a Board of Equalization, of which board the Clerk of the Board of County Commissioners shall be Clerk. The Board of Equalization shall meet on the third Monday in September, in each year, and shall continue in session from time to time until the business of equalization, presented to them, is disposed of; provided, however, that they shall not sit after the first Monday in October, except as in this section provided.

The Assessor of Lander County assessed the railroad track mileage within the county, for the year 1890, at \$14,000 per mile and surveyed lands at fifty cents per acre.

The Board of Equalization met on the 15th day of September. There being no business before them, they adjourned to the 20th day of October 1890. On the 2nd day of October two members of the board met, set aside the order of adjournment as mentioned heretofore made September 15, 1890, and reduced the valuation placed upon the railroad from \$14,000 per mile to \$12,000 per mile, and from fifty cents per acre to twelve and one-half cents per acre upon the land.

The court held that the meeting held upon October 2, 1890 was unauthorized and void. That the original order of adjournment was to a date beyond the final date at which they were authorized to act. The court mentions that a proper time and place was defined by law by which

the railway could protect its property interests as regards its rights of equalization. That the meeting held at the later date was beyond the term fixed by law, unauthorized and illegal, therefore void.

In the determination of the question numbered 1, with reference to the termination of the hearings of the Board of Equalization now in progress, we feel that there are a number of reasons that distinguish the present situation to that presented to the court in 1892, and thus alter the determination to that reached by the court in *State v. Central Pacific Railway Company*, 21 Nev. 271. We feel that under the facts and law the Board of Equalization of Clark County is not required to wind up or discontinue its hearings on August 15, 1955. We feel that the provision of the statute that sets forth a final or "dead line" date is only advisory. This conclusion is based upon a number of reasons more fully treated hereafter, viz:

(a) Another statutory provision is controlling.

(b) A continuation of the hearings as distinguished from long extended recesses and then work done beyond the "dead line" date, does not render the work void.

(c) Cases in which the board cannot complete the work within the time limited are distinguishable.

(d) To hold otherwise is to deprive the protesting taxpayer of his day in court, and this is to deprive him of his property without due process of law.

(e) It was not the intent of the legislature to allow ten days in August 1955 for this purpose and to allow thirty one days in 1954 and the same period of thirty one days in 1956.

(f) In the earlier case the protest was not made within the time limited, whereas in the present case the protests have been lodged and the protestants are eager to testify in their own behalf.

(g) The act must be liberally construed for the taxpayer and against the limitation for any other construction would deprive the citizen of his rights, liberties and privileges.

(h) Any other construction would leave the other mandatory provisions of the law unsatisfied.

We have carefully analyzed:

State of Nevada v. Wright, 4 Nev. 251

State v. Central Pac. Ry. Co., 21 Nev. 75

State v. Central Pac. Ry. Co., 21 Nev. 94

State v. Central Pac. Ry. Co., 21 Nev. 172

State v. Central Pac. Ry. Co., 21 Nev. 247

State v. Central Pac. Ry. Co., 21 Nev. 260, and find the holdings therein not in conflict with the conclusions reached.

(a) Another statutory provision is controlling.

Section 37, Chapter 344, Statutes of 1953, at page 612, in part reads as follows:

No tax heretofore or hereafter assessed upon any property, or sale therefor, shall be held invalid by any court of this state on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of any other irregularity, informality, omission, mistake, or want of any matter of form or substance in any proceeding which the legislature might have dispensed with in the first place if it had seen fit to do so, and that does not affect the substantial property rights of the persons whose property is taxed; and all such proceedings in assessing and levying taxes, and in the sale and conveyance therefor, shall be presumed by all of the courts of this state to be legal until the contrary is affirmatively shown.

See: *Espalla v. Mobile County*, 73 Southern 761, holding that under a statute similar to this, the board may legally sit and equalize taxes beyond the time limited.

See: *Buswell v. Board of Supervisors*, 40 P. 226, with holding to the same effect under a similar statute.

See: *Graham v. Lasater*, 26 S.W. 472, holding that a continuance beyond the time limited does not render the work so performed null and void.

See also: 105 A.L.R. 624, at 629.

Also: *Buswell v. Alameda County*, 48 P. 226, to the same effect.

Also: *Overland Co. v. Utter (Idaho)*, 257 P. 480, to the same effect, also pointing out, "If the board of equalization completes its business on or before the date it is required to relinquish jurisdiction by delivering the tax roll to the County Auditor, then its acts are valid, and no injury is done the taxpayer, provided he has an opportunity to appear and be heard before that date."

(b) A Continuation of the Hearings as Distinguished From Long Extended Recesses and Then Work Done Beyond the "Dead Line" Date, Does Not Render the Work Void.

It will be remembered that in action cited, namely, *State v. Central Pacific Railway Company*, 21 Nev. 271, the board met on the day provided. No protestants appeared to ask an equalization of taxes. The board recessed to a date beyond that limited as a final date in the statute. The board then by quorum (two members) then reconvened at a date later than the date limited, rescinded former action taken and attempted to equalize the taxes of the company by decreasing them.

In support of proposition (b) as stated above we cite: *Graham v. Lasater*, 26 S.W. 472; *Espalla v. Mobile County*, supra, *Graham v. Lasater*, supra..

(c) Cases in Which the Board Cannot Complete the Work Within the Time Limited Are Distinguishable.

In *Espalla v. Mobile County*, supra, in this respect the court, page 762, said:

If there were so many taxpayers desiring to be heard that the statutory time allotted was reasonably inadequate and it were not permissible to convene a special

session to consummate the hearings, such construction would be tantamount to arbitrarily depriving taxpayers of their day in court, and thus impinge upon their constitutional right.

(d) To Hold Otherwise Is To Deprive the Protesting Taxpayer of His Day in Court, and Thus To Deprive Him of His Property Without Due Process of Law.

See: *Espalla v. Mobile County*, supra, and in addition the court said:

The meeting provided by Section 77, supra, to be held from the third Monday in June to the second day in August is a quasi judicial procedure designed to accord to the objecting taxpayer his constitutional right to be heard and to have his day in court.

(e) It Was Not The Intent of the Legislature to Allow Ten Days in August 1955 for This Purpose and to Allow Thirty One Days in 1954 and the Same Period of Thirty One Days in 1956.

To place upon this function of government (hearings in Clark County of the Board of Equalization) a limiting date of August 15, 1955, is to allow about ten days maximum for this purpose, during the year 1955, for the work begun on or after August 5.

Chapter 344, Statutes of 1953 was approved on March 30, 1953. The Provision for equalization therefore has for its earliest applicable date the year 1954. Section 18, under this Act, would give the entire month of January 1954 for this purpose.

Similarly under the amendment to Section 18 (Statutes of 1954, Special Session) the entire month of January 1956 would be open for this purpose.

It is incredible that the Legislature would have intentionally reduced this heavy burden to ten days in view of the disposition made for the years mentioned. Such was not the legislative intent.

(f) In the Earlier Case the Protest Was Not Made Within the Time Limited, Whereas, in the Present Case the Protests Have Been Lodged and the Protestants Are Eager to Testify in Their Own Behalf.

In *State v. Central Pacific Ry. Co.*, 21 Nev. 270, the court said:

It is a salutary principle of the law that every person is bound to take care of and protect his own rights and interests, and to vindicate them in due season, in the proper time, place and manner pointed out by law, and if a party having the proper means of defense in his power fails to use them, he will not be aided by the courts.

In the earlier case the rights of the litigant were determined by reason of his failure to assert his rights in due season, whereas the opposite is true in the case presented.

(g) The Act Must Be Liberally Construed for the Taxpayer and Against the Limitation for Any Other Construction Would Deprive the Citizen of His Rights, Liberties and Privileges.

The courts will not favor a construction which has for its result the limitation of the people of rights, liberties and privileges, established and safeguarded by law.

(h) Any Other Construction Would Leave the Mandatory Provisions of the Law Unsatisfied.

Section 18 of Chapter 13, Special Session of 1954, inferentially guarantees to every protesting taxpayer within the county an opportunity to be heard by the Board of Equalization, and regulated the powers of the Board of Equalization with the following provision:

The board of equalization shall have power to determine the valuation of any property assessed by the assessor, and may change and correct any valuation found to be incorrect either by adding thereto or deducting therefrom such sum as shall be necessary to make it conform to the actual or full cash value of the property assessed, whether such valuation was fixed by the owner or the assessor; except * *

It is mandatory that the "day in court" be accorded to each protesting taxpayer. *Espalla v. Mobile County*, supra. *Buswell v. Board of Supervisors of Alameda County*, supra.

Although this holding is to the effect that the Board of Equalization of Clark County may continue its hearings beyond the date August 15, 1955, the extension has its limits.

The Chairman of the State Tax Commission advises that the State Commission sits this year as a Board of Equalization from September 6 through 19; also that the records of protesting taxpayers who have had a hearing before the County Board of Equalization, desiring a rehearing before the State Board, must be in the possession of the State Board at the time of the opening of the State Board of Equalization. By transcribing the records of testimony of the protesting taxpayers as taken before the Clark County Board of Equalization daily, and keeping that record up to date, that board should be able to continue during the remainder of August, and meet all legal requirements insofar as the State Board of Equalization is concerned.

We shall not delineate the exact hour at which the hearings of the Board of Equalization of Clark County shall close, for we have given the requirements which that board must meet, to remove any doubt as to the validity of the continued hearings.

QUESTION NO. 2

We are of the opinion that the board could change the formula of assessment in equalizing assessments. The statute enumerating the power is very broad and Section 18, Special Session of 1954, in part reads as follows:

The board of equalization shall have power to determine the valuation of any property assessed by the assessor, and may change and correct any valuation found to be incorrect either by adding thereto or deducting therefrom such sum as shall be necessary to make it conform to the actual or full cash value of the property assessed, whether such valuation was fixed by the owner or the assessor; * * *.

In *State of Nevada v. Northern Belle Mining Company*, 12 Nev. 89, it was held that "statements made by the assessor in regard to the valuation of property before the board of equalization, in his official capacity and under the sanction of his official oath, is intended by the law to have the force of testimony, and such a statement is competent evidence upon which the board is authorized to act in raising the assessment." We are of the opinion that under this authority the board after hearing such testimony would also be authorized to reduce such assessment.

QUESTION NO. 3

We are of the opinion that the board is not authorized to accept the 1954 assessment of property of Clark County and reject the assessment of the Assessor. Such is not a process of "equalization" under the specific authority set out under Question No. 2 above.

We are of the opinion that it is the duty of the Board of Equalization to take testimony and consider the objections individually. This is subject to the qualification that in the discretion of the board when protesting taxpayers fall within a group, as to their place of residence, similarity of property, etc., it would be proper for them to stipulate to the board that one may speak for all and that the determination of the case of the one would regulate the determination of the cases of each and all, for we feel that "equalization" under the cases defining the term is for the most part a process of an equitable assessment between districts than between individuals of a district. Some reflection upon this and classification of protesting taxpayers within groups, upon such an understanding of each of the members of the group with the Board of Equalization, the same to be made of record, could greatly reduce the load of the Board of Equalization, and yet accord to each of the persons interested his "day in court."

Equalization of assessments is defined in *People v. Millard*, 139 N.E. 113, as follows:

"Equalization of assessments" is the adjustment of graduated values of property as between different taxing districts, so that the whole tax imposed on each taxing district shall be justly proportioned to the value of the taxable property within its limits, in order that one taxing district may not pay higher tax in proportion to the value of its taxable property than another.

QUESTION NO. 4

Question number 4 reads as follows"

Must a taxpayer appear before the Board of Equalization to have adjustments made in the assessment for all property within a given area on the recommendation of the Assessor without the taxpayers in the area appearing to protest?

To the first part of the question, namely, "Must a taxpayer appear before the Board of Equalization to have adjustments made in the assessment," we are of the opinion that the answer is in the negative. Under *State v. Meyers*, 23 Nev. 274, it was held that the Board of Equalization "shall have the power to determine the valuation of any property assessed." That the provision does not have any qualification or condition, and therefore extends very broad power to the board. Under the Statute of 1954, Section 18, formerly quoted, the authority of the board is equally broad.

"or may the Board fix a blanket assessment for all property within a given area on the recommendation of the assessor without the taxpayers in the area appearing to protest?"

To this part of the question, under the authority cited, both case and statutory, we feel that the answer is in the affirmative, with the qualification that such recommendation of the Assessor would by necessity be one of diminution (diminution) of the assessment and not increase, for under the law (Section 18, Special Session of 1954) "if the board of equalization finds it necessary to add to the assessed valuation of any property on the assessment roll, it shall direct the clerk to give notice to the person so interested by registered letter, * * *." What we have said here is merely affirming the statutory principle that under these circumstances the taxpayer is entitled to notice.

Summarizing this question and the holding we have said: That a taxpayer receives his assessment or has constructive notice of its contents. He decides to protest to the Board of Equalization or to allow the matter to stand. If he protests and his hearing reveals to the board an inequitable assessment as to the taxing area in which he has an interest and as a result the board determines to make a blanket reduction to the area, others in the area affected have the right to that blanket reduction despite the fact that they did not apply for it. On the other hand if a protest is lodged by one who has his assessment interest lodged in area A, and convinces the board at his hearing that area B is under assessed, it would then be the duty of the board to give notice to those persons that have an assessment interest in area B, that the board proposes to increase the assessments within that area and that a hearing in protest will be conducted at a definite time, date and place. This is the registered letter provision.

QUESTION NO. 5

Question number 5, we feel, presupposes that the date August 15, 1955 will be the latest date upon which the Board of Equalization may conduct its hearings in equalization. Since the answer to Question number 1 is to the contrary, we feel that Question number 5 requires no further attention.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-95. Use Tax—County Assessor may, if Chapter 327 of 1955 Statutes setting forth manner of collection of use tax on motor vehicles requires expenditure in excess of budgeted funds, apply to Motor Vehicle Commissioner for relief under Section 4435.29, N.C.L. 1931-1941 Supp. Assessor may not refuse licensing of motor vehicle because applicant refuses to pay use tax.

CARSON CITY, August 16, 1955.

HONORABLE GEORGE DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. DICKERSON: Your office has submitted to this office for an official opinion, the following inquiries:

1. Since Chapter 327 of the statutes provides that for the purpose of collecting a Use Tax on automobiles, the County Assessors are considered to be agents of the Nevada Tax Commission can the various assessors make claims upon the Treasury of the State of Nevada for the necessary costs and expenses of collecting this Use Tax?
2. Is there any authority for the assessor to refuse to issue a motor vehicle license unless the Use Tax is paid?

STATEMENT

The Assessor of Clark County has proposed the above questions as a result of further duties imposed on his office by the provisions of Section 1 of Chapter 327 of the 1955 Statutes of Nevada, amending the Act providing for the licensing and registration of motor vehicles. Said section reads as follows:

Section 1. The above-entitled act, being sections 4435 to 4435.39 inclusive, 1929 N.C.L. 1941 Supp., is hereby amended by adding thereto a new section to be designated as section 7.6 which shall read as follows:

Section 7.6. Whenever application shall be made to the department for registration of a vehicle purchased outside the state and not previously registered within this state, the county assessor, as a deputy of the department, shall ascertain to the best of his ability whether use tax thereon is due to the State of Nevada, and, if so, collect such tax and remit the same to the Nevada tax commission.

Section 4435.28, N.C.L. 1929, as amended, provides: (a) The Assessor of each and every county of the State of Nevada is hereby constituted an officer of the department (Motor Vehicles) and charged with the performance of such acts and duties as are hereby delegated to the County Assessors under the provisions hereof, *as well as other duties as may be delegated to such Assessor by the department in connection therewith.*

It is clear, therefore that the Chairman of the Public Service Commission as commissioner of the motor vehicle division has the power, under the law, to assign the performance of the duties outlined in Chapter 327 of the 1955 Statutes of Nevada, to the Assessors.

Section 4435.29, N.C.L. 1931-1941 Supp., as amended by Chapter 216 of the 1953 Statutes, provides that funds for the administration of the provisions of the Act shall be provided by direct legislative appropriation from the Highway Fund, upon presentation of budgets in the manner required by law. It further provides that out of such appropriation the department shall pay each and every item of expense which may be properly charged against the department.

It is to be noted that under paragraph (c) of the section above cited, that in addition to the expenses set forth in the preceding paragraph, the department will, at the end of the year, certify claims to the Board of Examiners in favor of each and every county of the state to the amount of seventy-five cents for each and every registration issued in that county, the amount so received to be placed in the General Road Fund by the Treasurer.

Section 4435.21, N.C.L. 1931-1941 Supp., provides that registration may be refused for, among other reasons, the neglect or refusal of reasonable, additional information required by the department. This requires the applicant for registration to give the Assessor the information required for the performance of functions detailed to him by Chapter 327 of the 1955 Statutes. There is no provision in chapter 327 of the 1955 Statutes for the refusal of the Assessor to register a vehicle unless the use tax is paid. Under the provisions of Chapter 397 of the 1955 Statutes, the Use and Sales Tax Act, methods of enforcing collection of the use tax by the State Tax Commission are set forth (Sections 98-121).

After studying these pertinent provisions of the applicable law it would appear that if the Assessor is faced with the problem of having to hire additional help to handle the duties entailed by performance of the provisions of Chapter 327 of the 1955 Statutes, that aid from the motor vehicle division of the Public Service Commission could be secured under Section 4435.29, N.C.L. 1931-1941 Supp., as amended, by notifying the division of the requirement so that a direct legislative appropriation could be made to cover the added expense.

OPINION

It is the opinion of this office that if the necessary costs and expenses of administering Chapter 327 of the 1955 Statutes exceed the budgeted expenses of Assessors, that they may apply to the Commissioner of Motor Vehicles for relief under the provisions of Section 44335.29, N.C.L. 1931-1941 Supp., as amended.

It is further the opinion of this office that the Assessor has no authority, under present law, to refuse to issue a motor vehicle license unless the use tax is paid. The collection, after refusal of applicant to pay, is within the province of the Tax Commission. The duty of the Assessor is fulfilled by demanding the tax and if refused, referring the matter to the Tax Commission.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-96. Sales Tax—Nevada Tax Commission. “Tangible personal property” only and not realty is taxable under the Sales and Use Tax Act. A prefabricated or roll-away house constructed with the intent that it be sold and then delivered to its permanent location, is personalty until so delivered and attached to the soil.

CARSON CITY, August 19, 1955.

MR. NORMAN W. CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: We have your letter of August 16, 1955, the body of which reads as follows:

Reference is made to Chapter 397, Statutes of Nevada 1955, Sales and Use Tax Act of Nevada.

The act imposes a tax on the sale and/or storage, use or consumption of “tangible personal property” in this state.

In interpretation of similar acts it has generally been held that the imposition of the tax on tangible personal property only, excludes real property or realty from the imposition of the tax.

An opinion is therefore requested from you in reply to the following two questions:

1. Does Chapter 397, Statutes of Nevada 1955, impose a tax on realty or real property?
2. If the act does not impose a tax on realty or real property, are prefabricated houses or so-called roll-away homes, real property or tangible personal property at the time of sale or delivery prior to being attached to the realty?

OPINION

To the question numbered one the answer is in the negative. The sales and/or use tax of 1955 is imposed only on personalty.

The answer to question numbered two is to the effect that “prefabricated houses” or so-called “roll-away homes” are personalty and are subject to the tax.

Chapter 397, Statutes of Nevada 1955, Section 19 thereof, at page 766, provides as follows:

Sec. 19. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after July 1, 1955.

Section 10, at page 764, in part reads as follows:

Sec. 10. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

Section 34, at page 769, reads as follows:

Sec. 34. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use, or other consumption in this state at the rate of 2 percent of the sales price of the property.

It will be observed that in all three sections quoted appear the words "tangible personal property." The tax imposed by the Act, whether the theory of "sale" or "use," is, we find by close inspection, limited to "tangible personal property." We are therefore of the opinion that a "sale" or "use" of real property is not taxable by the provisions of this Act.

Commonly we think of "chattels" as articles capable of manual delivery, but such is in no respect its legal meaning. Both a locomotive and an elephant are chattels. So also is a house that is from its component materials constructed as such, at a location and upon supports, at and upon which it is not intended to remain. When a house is built by its owner, with intention that it will be removed upon completion and before being placed in its normal use, to its permanent location, it remains a chattel until so removed, or until a change of intention on the part of the owner.

For a detailed discussion of the distinguishing characteristics between real and personal property see 50 C. J. (Property) Articles 43 and 44, page 768.

We will not labor the opinion, for there is no question but that a house built as you designate in question number 2, for sale and delivery, and upon delivery to be permanently attached to the land is personalty and remains such until so attached to realty.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-97. Municipalities—City of Las Vegas—Insurance Law, General. Municipal corporations are not permitted by reason of the General Insurance Law to enact ordinances which place an occupation tax upon local insurance agents.

CARSON CITY, September 2, 1955.

HON. PAUL A. HAMMEL, *Insurance Commissioner, Carson City, Nevada*.

DEAR MR. HAMMEL: We are in receipt of your letter of August 17, 1955, asking for an opinion of this department.

You have called attention to Section 31(10) of Chapter 152, Statutes of 1955, which is an amendment to the City Charter of the City of Las Vegas, under which section the powers of the commissioners (city governing board) are enumerated, which paragraph 10 in part reads as follows:

10. To fix, impose and collect a license tax on and to regulate all character of lawful trades, callings, industries, occupations, professions, and business, whatsoever, conducted in whole or in part within the city, including, but not limited to * * * insurance companies, building and loan associations and companies, fire, life, and accident insurance companies, and agents or solicitors for the same, * * *.

You have also called attention to Section 3656.59, N.C.L. 1943-1949 Supp. (Statutes of 1949, Chapter 255, p. 552) being an amendment to Section 60 of the Nevada Insurance Code, which in part reads as follows:

Section 60. Fees and Charges. (1) The Commissioner shall charge, collect and give proper acquittances for the payment, the following fees and charges:

- (a) For filing each power of attorney, five (\$5) dollars.
- (b) For an annual license to each fire insurance company to transact business throughout this state, one hundred (\$100) dollars.
- (c) For an annual license to each life insurance company to transact business throughout this state, one hundred (\$100) dollars.
- (d) For annual license to each life and accident insurance company to transact business throughout this state, one hundred (\$100) dollars.
- (e) For an annual license to each casualty and surety company to transact business throughout this state, [twenty (\$20)] one hundred (\$100) dollars.
- (f) For an annual license to each underwriter's agency, for each company represented in such agency, twenty-five (\$25) dollars.
- (g) For filing annual company statement, ten (\$10) dollars.
- (h) For issuing agent's license, two (\$2) dollars.
- (i) For issuing solicitor's license, two (\$2) dollars.
- (j) For issuing nonresident broker's license, one hundred (\$100) dollars.
- (k) For issuing any other certificate required or permissible under the law, one (\$1) dollar.
- (2) 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.

QUERY

Does the amendment of 1955, in the charter of the City of Las Vegas, supersede and repeal by repugnance thereto, the previously effective section (Section 3656.59, N.C.L. 1943-1949 Supp., subdivision (k)(2) thereof—Chapter 255, Statutes of 1949, p. 552)?

OPINION

In other words, may the City of Las Vegas enact an effective ordinance (ordinances) requiring the payment of an occupation tax payable by insurance company or agent or both, in addition to that required by law and collectable through the office of the Insurance Commissioner?

The answer to the question is in the negative and to the effect that the insurance code statute still controls.

We find that the City of Las Vegas was incorporated in 1911 (Statutes of 1911, Chapter 132, p. 145) and that Section 31(10) was amended by Chapter 68, Statutes of 1923, and find the conferral of power upon the Board of Commissioners, as follows:

To fix, impose and collect a license tax on and regulate all lawful professions, trades, callings, and business whatsoever, including * * * insurance companies, fire, life and accident, and agents or solicitors for the same * * *.

This language carried over in the amendment of 1925 (Statutes of Nevada 1925, Chapter 56, p. 81) and in recent years, omitting the intervening years, again in 1953, Chapter 313, p. 529, all being statutes amendatory to the City Charter of the City of Las Vegas.

The insurance statute is Chapter 189, Statutes of 1941, p. 451, and under this Act the administration was imposed upon the State Controller. Under Chapter 314, Statutes of 1951, p. 509, the office of Insurance Commissioner was created and the duty of the then existing insurance law was transferred to the Insurance Commissioner.

From the foregoing it is clear that the Legislature empowered the City of Las Vegas through its Board of Commissioners both to regulate and to tax insurance companies and their agents in that city, at an earlier date than the enactment of the insurance law, which applies to the entire State of Nevada. From this fact the suspicion is born that the provision in the Las Vegas City Charter for the imposition of a license tax and to regulate insurance companies and agents, as the same appears in the 1953 and 1955 Statutes (appearing in the earlier statutes) is carried along in 1953 and 1955, more by accident than by design.

It should also be made clear that the opinion of the Attorney General, numbered 308, of December 17, 1953, is not a denial of the right of a city, as for example Las Vegas, to tax agents, who, upon said date maintained offices within the taxing city. The said opinion number 308 determined the question of the right of the municipality of Carson City to collect an occupational tax, from an insurance agent with offices in Reno, said tax being demanded by virtue of the provisions of the city ordinance which required license and the payment of an occupational tax of \$3 per quarter year, per company represented by him from "every insurance agent conducting and carrying on the insurance business within said city," by denying the right of the city to collect the tax. The opinion does not, nor could it, properly pass upon the right of the City of Carson City to exact the tax had the agent's office and principal place of business been located in Carson City. We thus distinguish the problem, i.e., the one covered by the opinion numbered 308 and the one here presented.

We also call attention to the fact that that portion of the city charter of the City of Las Vegas, which we have quoted, set forth in Chapter 152, Statutes of 1955, Section 31(10), is not new to the charter as of the year 1955. It also appears in identical language in Chapter 313, Statutes of

1953, Section 31(10). In other words the question here raised is not determined in Attorney General's opinion numbered 308, and could have been raised by the City of Las Vegas, under the same statutory law and the same powers of the city governing board, as now exist, at a date earlier than the convening of the Legislature of 1955. It could be, of course, and concerning this we are not informed, that the City of Las Vegas, through its Board of Commissioners, has enacted an ordinance or ordinances, affecting insurance agents, and/or companies, all subsequent to the effective date of Chapter 152, Statutes of 1955. The presence or absence of such ordinances could not affect this determination, for the matter must hinge upon the validity of the said Section 31(10) as applicable to insurance companies and agents. The reenacting by the Legislature of 1955, of the provision quoted, could or could not be significant, which will be dealt with upon its merits, hereafter.

We are not assisted by that line of authorities that hold that the agent may be taxed by a city under its licensing statutes, even though the insurance company which the agent represents is properly licensed, upon a state level, by the Insurance Commissioner, and has immunity from further taxation, under the "in lieu" provisions, similar to that set out in the Nevada law; for the reason as assigned by the courts that the corporation and the agent are not one and the same. These decisions may be distinguished by the fact that under our statute (Chapter 255, Statutes of 1949, p. 552) both the companies and the agents must be licensed by the Insurance Commissioner and when licensed as required by law, the "in lieu" provision, i.e., the immunity provision to further taxation runs to both licensees, under Section 60 (k) (2), formerly quoted. See: *City of Farmington v. Rutherford* (Mo. 1902), 68 S.W. 83. *City of Cape Girardeau v. Comer* (Mo. 1938), 119 S.W. (2d) 1005. In the *Cape Girardeau* case the court held that the inter-insurance exchange was exempt from tax by the city, but since the agent and the company are not one in the same, the immunity running only to the company, the city could place an effective tax upon the agent. The distinction between this situation and the one presented is thus apparent by reason of the provisions of the Nevada statute.

Also it may be said with equal force, that we are not greatly assisted by that line of authorities which hold that a city may collect under an occupational tax ordinance, a tax (erroneously referred to as "license"), from an attorney at law, despite the fact that his license and supervision comes from the judicial branch of government, and may be suspended or revoked by that branch only, and despite the additional fact that he must pay the annual exaction to the state professional association or suffer the loss of his license to continue in his profession. This line of decisions however does point out the dual purpose of such ordinances, viz: (1) A "license tax" is based upon the police power of the state to regulate or prohibit a particular calling or business. (2) An "occupational tax" is one primarily intended to raise revenue by that particular method of taxation. See: *Davis v. Ogden City*, 215 P. (2d) 616; *Sterling v. City of Philadelphia*, 106 A. (2d) 793.

The *Davis* decision points out that "The statute permitting cities to license, tax and regulate hawking and peddling and other enumerated businesses is primarily a delegation of power to municipalities to license and regulate enumerated businesses to protect the health, morals and general welfare of the public," and points out that as applied to the practice of law the exaction is an occupation tax, and is for revenue purposes only.

Under the case law of Nevada we have included in that class of businesses that require regulation for the protection of public morals, both the liquor and the gaming businesses. See: *West Indies, Inc. v. First National Bank of Nevada*, 214 P. (2d) 144.

From the nature of the work done by attorneys at law, and insurance agents, and considering the supervision afforded to each calling, upon state level, the former by the judicial branch and the latter by the Insurance Commissioner, each license being granted by an authority holding the power of suspension or revocation, it may by analogy be concluded that the tax ordinance is in

the nature of an “occupational tax” and is levied for revenue purposes only. The validity of such a statute is normally determined by whether or not it affords equal protection or imposes equal burdens to those falling within the classification.

* * * * *

In *New York Life Insurance Company v. Town of Comanche*, (Oklahoma 1917) 162 P. 466, the attempt was to collect an occupation tax from the agent of the company, namely, one Kessler, whose business was conducted within the town of Comanche.

The life insurance company had paid 2 percent of all premiums collected within the state, and \$3 upon each local agent, receiving a state license for each, under a statute which provided that this tax as to each licensee should be in lieu of all other taxes to the state or any subdivision or municipality thereof. The right to tax by the municipalities had existed by a statute enacted before the enactment of the statute requiring the licensing of agents. It was held that the latter statute, placing a heavier burden upon the insurance company financially, withdrew from the municipalities within the state the right they had formerly possessed, namely, that of imposing an occupation tax upon insurance companies and agents.

In *Hughes v. City of Los Angeles* (California 1914) 145 P. 194, the City of Los Angeles had enacted an ordinance which provided for the payment of \$10 per quarter year for each insurance agent, as an occupation tax. A provision of the California State Constitution provided that every insurance company within the state be required to pay an annual tax of one and one-half percent computed upon the amount of gross premiums received by it upon the business done within the state and provided that “this tax shall be in lieu of all other taxes of licensees, state, county, and municipal upon the property of such companies, except county and municipal taxes on real estate, and except as otherwise in this section provided.”

The city advanced the contention that this was not a tax upon the company but upon the agent. To this the court replied that an insurance company operates only through agents and quoting Shakespeare in the person of Shylock said:

You take my house when you do take the prop that doth sustain my house; you take my life when you do take the means whereby I live.

The court then held the ordinance to be unconstitutional and the tax statute void.

In *Groves v. City of Los Angeles* (California 1949) 208 P. (2d) 254, a revenue ordinance of the City of Los Angeles required the payment of a license tax against those agents engaged in the business of soliciting and effecting undertakings of bail. Plaintiff in an injunction action was such a bail bond broker, alleged that both he and his principal were duly licensed under the laws of the state by licenses issuing out of the office of the Insurance Commissioner, and that under the state Constitution such an ordinance was unconstitutional. The court so held affirming the case of *Hughes v. City of Los Angeles*, supra. The court held that there was no showing in the pleadings that the bail business was conducted other than exclusively by the duly licensed principal and no showing that the agent engaged in any business other than the bail bond business.

In *Groves v. City of Los Angeles* (California 1953) 256 P. (2d) 309, it was held that an agent selling insurance is an agent of the company that he represents as distinguished from an “independent contractor,” within the meaning of the insurance statutes and that when he and the company are properly licensed through the offices of the Insurance Commissioner, he may not, under the provisions of the Constitution and the “in lieu” provision, be subjected to an additional occupational tax levied by the city.

From the foregoing it is clear under the provisions of our insurance statute containing the “in lieu” provision, that the Legislature in enacting the insurance statute intended to remove from the municipal corporations and other taxing units, the privilege of placing an occupation tax upon insurance agents, duly licensed by the Insurance Commissioner under the insurance laws of state-wide application, representing insurance companies duly licensed by said Commissioner under said statute.

As we have pointed out, the apparent power to tax such agents is not new to the Las Vegas City Charter, and that this power actually existed prior to the effective date of the insurance statutes. Following the analogy of the case of *New York Life Insurance Company v. Town of Comanche*, supra, we conclude that the power once existed to enact such legislation, but that by the enactment of the insurance law statutes, the power has been withdrawn, and that all ordinances then existing in conflict with the exclusive jurisdiction of the Insurance Commissioner were repealed, by necessary repugnance thereto.

We do not regard the fact that the Legislature of 1955 included and reenacted this provision, within the amendment to the City Charter of Las Vegas, permitting the enactment of ordinances which would levy an occupational tax upon agents engaged in business within the city, as having presented any formidable obstacle to the conclusion that has been reached, believing that this part of the statute has been merely a “copy job” of what has gone before, and that in this manner this provision has been inadvertently included in the Statutes of 1953 and 1955. We believe that the provision under consideration has been included by accident and not by design.

The alternative construction which we have rejected would be violent in its effect. If Section number 31(10), Chapter 152, Statutes of 1955 (authorizing the City of Las Vegas to place an occupational tax upon insurance companies and agents) which has been reenacted subsequent to the insurance law of state-wide application, and ordinances enacted thereunder, were construed to have the effect of repealing the earlier law, it or they could repeal it only as to those agents and companies doing business within the City of Las Vegas. It does not purport nor could it go further than the city limits. We would then have a situation in which the earlier law of state-wide application would still be controlling in the remainder of the State, or at least part of the remainder, by allowing for some of the other cities possessing similar provisions in the charters, to be accorded a like construction. This would mean that the law of state-wide application would be compressed in its effect and thus be rendered violative of constitutional provisions. Under such facts a law originally constitutional would have been rendered unconstitutional. Section 20, Article 4, of the Constitution of Nevada in part reads as follows:

The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * *.

Section 21, Article 4, of the Constitution, reads 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.

A statute will be construed in such a manner as to avoid absurdity. Sutherland statutory construction, Third Edition, Section 5505.

We note that the city attorney of Reno, under date of January 19, 1944, rendered an opinion numbered 25, in which the same conclusion is reached, namely that the provisions of Section 3656.59, N.C.L. 1943-1949 Supp., is exclusive and that so long as the agents business is exclusively insurance, the city has no power to impress an occupation tax.

It follows from what we have said that the amendment of 1955 to the charter of the City of Las Vegas does not supersede the previously effective section number 3656.59, N.C.L. 1943-1949 Supplement (Statutes of 1949, Chapter 255, p. 552) and that only the sums therein provided are to be collected from agents whose sole business within the municipality is insurance

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-98. State Welfare—Aid to Dependent Children. Aid to Dependent Children Act of 1955 construed. In determining eligibility for aid, encumbrances on property owned by the needy individual are to be deducted in arriving at the cash value of the property.

CARSON CITY, September 2, 1955.

MRS. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department, P. O. Box 1331, Reno, Nevada.*

DEAR MRS. COUGHLAN: This office is in receipt of your letter dated August 30, 1955 relating to the Aid to Dependent Children Act of 1955.

The statement of your problem is quoted from your letter as follows:

We would appreciate your opinion as to whether the following policy is in accordance with the intent of Chapter 409, Statutes of Nevada 1955:

The amount of any encumbrance against personal property or marketable nonincome-producing real property owned by a needy relative or dependent child shall be deducted in arriving at the combined cash value of such property in relation to the maximums specified under Section 8 of the Aid to Dependent Children Act.

OPINION

This office is of the opinion that such deduction is permissible and the policy of the Board is proper.

Section 8 of the Aid to Dependent Children Act of 1955, which Act is Chapter 409 of the 1955 Statutes of Nevada, provides as follows:

Sec. 8. Denial of Aid Where Personal Property Exceeds \$500 Cash Value; Exclusions.

1. No assistance under this act shall be granted or paid to any dependent child who owns, or whose needy relative owns, personal property or marketable nonincome-producing real property, the combined cash value of which exceeds \$500 at the time of application for assistance is made, or while in receipt of such assistance. For each additional dependent child in the same home or in the same family, the \$500 limitation herein described may be increased by \$150.

2. For the purposes of this act, "personal property" shall not include clothing, furniture, household equipment, foodstuffs and means of transportation found by the department to be essential for the well-being of the child or his needy relative.

The above-quoted section contains no specific provision for deduction of the amount of an encumbrance on property in arriving at the cash value. However, we are impelled to the conclusion that the Legislature intended that such deduction was to be made by the use of the term "cash value."

The court decisions define the term "cash value" of an article to mean that amount of cash into which it can be converted, or again, cash value is the usual selling price at a private sale. See 6 Words and Phrases, page 271. See also, in this connection, *State v. Tax Commission*, 38 Nev. 112, 145 P. 905.

Now the context of Section 8, and the very purpose of the Act discloses that it is the intention of the Legislature that aid shall be given to those sufficiently needy to warrant public aid, and by Section 8 a standard has been set as to who is sufficiently in need of aid. That is to say, if the needy individual owns property which can be converted into more than \$500 in cash, the use of which will provide for his needs, he is not sufficiently needy to warrant aid. The thought being that a person must first liquidate what assets he has and use the return from such liquidation for his needs before he is entitled to public aid. If, therefore, he holds property from which he can obtain more than \$500 to be used for his needs he is not qualified to receive aid. \$500 on hand or available which can be used for the individual's needs is the measure and standard determinative of the qualification for aid. (This is subject of course to the provisions of Section 7 of the Act.)

This being the purpose and reason for the section, it cannot be thought that the Legislature intended that encumbrances were not to be deducted in arriving at the cash value; for if the encumbered property is to be sold, it would be a rare case wherein the seller would realize the full value of the property in cash as net return from the sale, and this would be true whether the buyer is to assume the obligations of the seller to which the property is subject as a security or not. This is particularly true where the encumbrance on the property has been recorded as a notice to third party purchasers that the property is encumbered. If the needy person owns no more property than that valued at \$1,000 which is mortgaged in the sum of \$900, he would not hold property within the meaning of the Act which has a cash value of more than \$500. Such person would be eligible for aid.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-99. State Engineer—County Recorder. Chapter 159, 1955 Statutes, does not repeal or supersede Section 7957, N.C.L. 1931-1941 Supp., so as to increase Recorder's fees.

CARSON CITY, September 6, 1955.

HON. HUGH A. SHAMBERGER, *State Engineer, Carson City, Nevada, Nevada*.

MY DEAR MR. SHAMBERGER: You have requested of this office an opinion as to whether Chapter 159 of the 1955 Statutes of Nevada supersedes and repeals Section 7959, N.C.L. 1931-1941 Supplement.

Section 7959, N.C.L. 1931-1941 Supplement reads as follows:

As soon as practicable after satisfactory proof has been made to the state engineer that any application to appropriate water or any application for permission to change the place of diversion, manner or place of use of water already appropriated, has been perfected in accordance with the provisions of this act, said state engineer shall issue to said applicant, his assign or assigns, a certificate setting forth the name and post office address of the appropriator, his assign, or assigns, date, source, purpose and amount of appropriation; and if for irrigation, a description of the irrigated lands by legal subdivisions, when possible, to which said water is appurtenant, together with the number of the permit under which such certificate is issued, which certificate shall, within thirty (30) days after its issuance, be sent by mail to the recorder of the county in which such water is diverted from its source, as well as to the recorder of the county in which the water is used, to be recorded in books especially kept for that purpose, and the fee for recording such certificate, which is hereby fixed in the sum of one dollar (\$1) for each county in which said record is made, shall be paid in advance to the state engineer by the party in whose favor the certificate is issued.

It is to be noted that under this statute the State Engineer collects the one dollar fee for filing the certificate from the party in whose favor the certificate is issued, and it is then forwarded to the County Recorder for the filing in the county wherein the water is diverted from its source as well as in the county in which the water is used.

Chapter 159 of the 1955 Statutes regulates the fees of the County Recorder of Clark County, and under this Act the County Recorder of that county advises you that hereafter the fee for filing certificates Under Section 7957, N.C.L. 1931-1941 Supplement will be \$2.50 instead of the one dollar prescribed in that section.

The question arises as to his constitutional right to increase the fee and this in turn calls for a study of the applicable provisions of our State Constitution. Under Section 20 of Article IV of the Constitution, wherein the Legislature is restrained from passing local or special laws in enumerated cases, it is provided, “* * * but nothing in this section shall be construed to deny or restrict the power of the legislature to establish and regulate the compensation and fees of county officers * * *.” It is apparent, then, that in the absence of a further constitutional prohibition, the Legislature has the power to establish fees to be charged by the County Recorder.

Section 21 of Article IV of the Constitution reads 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. (Italics added).

There can be no question but that Section 7957, N.C.L. 1931-1941 Supplement is a general law which not only can be, but has been, made applicable throughout the state.

To allow the Recorders of all 17 counties to charge 17 different amounts for the certificate set forth in Section 7957, N.C.L. 1931-1941 Supplement, would unduly burden the State Engineer. As Acts changing the fees would be constantly being revamped, it would mean that in order to collect the necessary fee for recording the certificate the State Engineer would have to continually keep in touch with each Recorder. The Act provides that the fee for recording shall be applicable in the county from which the water is diverted from its source, as well as the county in which it is used. The payment of different fees for recording this certificate of uniform applicability would lead to confusion and this was the reason for the enactment of Section 7957.

OPINION

In view of the general uniformity and applicability of Section 7957, N.C.L. 1931-1941 Supplement, throughout the State, it is the opinion of this office that Chapter 159 of the 1955 Statutes, a special Act applying only to Clark County (enacted under the exceptions set forth in Section 20 of Article IV of the Constitution), does not repeal or supersede Section 7957, and that insofar as the cost for filing the certificate provided for in the latter Act, the charge cannot exceed one dollar.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-100. Corporations—Secretary of State. Section 1603, N.C.L. 1943-1949 Supp., is substantive and designates, as to capital stock, the minimum content of the articles of incorporation; whereas, Section 1610, N.C.L. 1931-1941 Supp., is adjective and regulates the manner of administration, as to capital stock, after formation.

CARSON CITY, September 8, 1955.

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

DEAR MR. KOONTZ: We are in receipt of your letter of September 7, 1955 with reference to the adequacy of content of proposed articles of incorporation. The proposed articles which have been sent to you for filing have been by you handed to us for examination.

The question presented calls for construction of Section 1603(4), N.C.L. 1943-1949 Supp. (Statutes 1949, Chapter 121, p. 158) and Section 1610, N.C.L. 1931-1941 Supp. (Statutes 1941, Chapter 162, p. 374), the former being Section 4, the latter Section 11 of the General Corporation Law of 1925, as amended.

QUERY

Are the proposed articles of incorporation under "FOURTH" in compliance with the law and acceptable for filing in the present form?

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

Under "FOURTH" of the proposed articles the draftsman has set out the following:

FOURTH. The amount of the total authorized capital stock of the Corporation shall be One Million Dollars (\$1,000,000) consisting of Ten Million (10,000,000) shares of capital stock, all of one and the same class, of the par value of Ten Cents (10¢) per share. The Corporation, by resolution or resolutions, passed by a majority of the whole Board of Directors, may create and issue one or more classes or kinds of stock, whether common or preferred, with par value, or without par value, with full or limited voting powers, or without voting powers, with such designations, preferences, dividend, redemption, dissolution and distribution rights, and relative, participating, option, or other special rights, or qualifications, limitations or restrictions as may be stated in such resolution or resolutions; and may make any

preferred or special stocks of any class or series thereof, if there are other classes or series, convertible into or exchangeable for shares of any other class or classes or of any other series of the same or any other class or classes of stock of the Corporation and may determine the prices or rates of exchange and adjustments to be applicable to any and every such conversion or exchange.

It will be observed from the foregoing that the incorporators propose to reserve for future consideration of the Board of Directors certain things including inter alia the following:

- A. Whether or not there will be authorized one or more than one class of stock, either:
 - 1. Common or preferred
 - 2. With or without par value
 - 3. With full or limited voting powers
 - 4. With such designations, preferences, dividend, redemption, dissolution and distribution rights, and relative participating, option, or special rights or qualifications, limitations or restrictions as may be stated in such resolution or resolutions.

Section 1603, N.C.L. 1943-1949 Supp., in part reads as follows:

The certificate or articles of incorporation shall set forth:

4. The amount of the total authorized capital stock of the corporation, and the number and par value, and the par value of the shares of which it is to consist; or, if the corporation is to issue shares without par value, the total number of shares that may be issued by the corporation, the number of such shares, if any, which are to have a par value, and the par value of each thereof, and the number of such shares which are to be without par value. If the corporation is to issue more than one class of stock, there shall be set forth therein a description of the different classes thereof and a statement of the relative rights of the holders of stock of such classes; and if the corporation is to issue in series any class of stock which is preferred as to dividends, assets or otherwise, over stock of any other class or classes, there shall be set forth in the certificate or articles of incorporation the limits, if any, of variation between each series of each class, as the amount of preference upon distribution of assets, rate of dividends, premium or redemption, conversion price, or otherwise; *provided, however, that in any corporation the certificate or articles of incorporation may vest authority in the board of directors to fix and determine upon the same as provided by section 11 of this act.* (Italics added).

From the latter part of this section, the portion underscored, it is clear that the above provision is to have a restricted meaning as limited by the powers that may be reserved to the Board of Directors, by a proper provision made in the articles of incorporation or amendment thereto as permitted by the provisions of Section 11 of the General Corporation Law of 1925, as amended. The section referred to is Section 1610, N.C.L. 1931-1941 Supp.

This Section 1610, N.C.L. 1931-1941 Supp., is long and we are reluctant to quote it in full. In part the section reads as follows:

Every corporation shall have the power to issue one class or kind of stock, or two or more classes or kinds of stock, any of which may be stock with par value or stock without par value, with full or limited voting powers and with such

designations, preferences and relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate or articles of incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate or articles of incorporation, or any amendment thereto. * * *

To this point as quoted we construe the section to mean that every corporation is authorized to issue such stock as to types and qualifications, and at such times as may be authorized by the Board of Directors by resolution, if such authority is vested in the corporation "by the provisions of the certificate or articles of incorporation, or any amendment thereto."

A great deal of material then follows, as to the power of the Board of Directors to control the issuance of classes of stock, and to regulate the relative rights of classes of stock, which appears to reflect no light upon the question here under study, namely how much is by law required to be included in the articles and how much, or what, may be reserved by the provision of the articles for future decision by the Board of Directors. Finally, the last sentence of this section is significant, which reads as follows:

No corporation shall create any preferred or special stock unless the creation of such stock shall be authorized by the certificate or articles of incorporation or an amendment thereto.

This provision requires no construction, for it means exactly what it says, namely, that no corporation shall create (issue) any preferred or special stock unless its authority to do so is contained in the certificate or articles of incorporation or an amendment thereto. We are more convinced of the correctness of this construction by a reference to the second sentence of Section 1603(4) formerly quoted, which in part reads as follows: "If the corporation is to issue more than one class of stock, there shall be set forth therein a description of the different classes thereof and a statement of the relative rights of the holders of stock of such classes; * * *." The inference is here clear, that at the time of the formation of the corporation the decision must have been reached in regard to whether one or more than one class of stock is to be issued, and that this question cannot be left open for future consideration.

In other words we construe Section 1603(4), N.C.L. 1943-1949 Supp. (Section 4 of the General Corporation Law of 1925, as amended) to be substantive. It designates as to capital stock the minimum content of the Articles of Incorporation. Whereas, we construe Section 1610, N.C.L. 1931-1941 Supp. (Section 11 of the General Corporation Law) to be adjective or administrative. By the former the minimum content of the articles at the time of the birth of the corporation is designated. By the latter the law designates the manner in which the governing body (Board of Directors) may control and administer their legal entity after legal life is breathed into it. The former section designates the prerequisites to the formation of the corporation. With this question solely, at this time, we are concerned.

The reasons for these provisions of the law is clear upon a moment's reflection. If by a mere resolution of the Board of Directors the rights, and privileges of stockholders, one class toward another, could be modified by the mere whim or dishonest intent of the Board of Directors, by the procedure of issuing a new class of stock with rights never reflected upon or anticipated by the stockholders with former ownership, then in this manner property could be confiscated or taken without due process of law, in violation of all justice and also in violation of constitutional safeguards.

It follows that the proposed articles of incorporation, which we herewith return to you, in the present form are not in compliance with the law.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-101. State Officers—Lieutenant Governor entitled to per diem and mileage when sitting at State Capital as Acting Governor, in absence from State of Governor, when Lieutenant Governor's home and residence is elsewhere than Carson City, the State Capital.

CARSON CITY, September 8, 1955.

C. A CARLSON, JR., *Director of the Budget, Carson City, Nevada*.

MY DEAR MR. CARLSON: This office is in receipt of a letter from your office under date of September 7, 1955 in which you ask the following specific question:

Is the Lieutenant Governor entitled to per diem, or does Carson City become his official headquarters while he serving as Acting Governor, the Governor's office being located in Carson City, thus eliminating the state of "travel status?"

OPINION

Chapter 137 of the 1926-1927 Statutes of Nevada authorized the State Board of Examiners to fix the amount of expense money to be allowed state officers, commissioners, representatives or employees when traveling in or out of State on official state business. This law has been amended from time to time, and as late as 1955, Chapter 239 of the 1955 Statutes, wherein the amount to be allowed from per diem and mileage is set by the Legislature.

There can be no question but that the Lieutenant Governor is a state officer (Section 17, Article V, Constitution).

There is no constitutional or statutory provision for the Lieutenant Governor to reside at the seat of government during his term in office, and inasmuch as the present Lieutenant Governor's residence is in Las Vegas, he must, when attending the State Capital as Acting Governor, in the absence of the Governor, remain away from his home and domicile at a greatly added personal expense.

The fifteen dollars per day which the Lieutenant Governor earns as Acting Governor, and which is in addition to his regular salary of fifty dollars per month, is added salary, by reason of increased duties, and does not replace per diem.

It is therefore the opinion of this office that the Lieutenant Governor, when sitting as Acting Governor, in the absence from the State of the Governor, is entitled to per diem if his permanent place of abode and residence is other than Carson City, the State Capital.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-102. Banks and Banking—Banks, Superintendent of “Domestic Lender” as used in Chapter 228, Statutes 1955, page 361, defined.

CARSON CITY, September 12, 1955.

HONORABLE GRANT L. ROBISON, *Superintendent of Banks, Carson City, Nevada.*

DEAR MR. ROBISON: We are in receipt of your letter of August 31, 1955, requesting an opinion of this department, as appears in your letter, of which, from the body of the letter we quote in full as follows:

Chapter 228 of the 1955 Statutes of Nevada provides that foreign corporations may participate in various ways with domestic lenders in acquiring loans in this State. Apparently a great many people will place different interpretations on this chapter insofar as it refers to a domestic lender. It was my understanding when this bill was discussed before its passage by the Legislature that a domestic lender was considered to be a bank or savings and loan association actually in the business of making loans. In various parts of the State mortgage loan offices have been established and, of course, they operate as a brokerage office and receive a fee for processing loans which are later sold to other institutions.

We would, therefore, appreciate the official opinion of your office as to the proper definition of “domestic lender” and whether or not a mortgage loan company could qualify as such.

QUESTION

The question then is presented, what constitutes a “domestic lender” within the meaning of the statute and may a mortgage loan company qualify as such?

OPINION

We call attention to the Attorney General Opinion No. 343 of August 2, 1954, the holding of which is discussed at length in the Attorney General Opinion No. 50 of April 26, 1955.

The latter opinion holds that as a result of the earlier opinion the Legislature of 1955 enacted Chapter 228, p. 361, enabling foreign corporations to do a loan business in Nevada in participation with a domestic lender, upon bringing themselves within the provisions of the Act.

In this manner and upon this set of facts and circumstances the present question arises, as heretofore set out.

Many statutes contain a precise definition of terms. This statute does not define “domestic lender.”

A search of the authorities fails to disclose a case in which the term “domestic lender” is construed. Cases construing the word “domestic” are numerous. In its common and ordinary usage the word “domestic” pertains to household or family, belonging to house or home, pertaining to one’s place of residence and to the family. In *re Salvin’s Estate*, 26 A (2d) 270; 31 N.J. Eq. 563. *Lyoles Realty Corp. v. Canella*, 73 N.Y.S. (2d) 10.

However, with nothing in the Act to guide us, except the overall purpose of the Act, i.e., the objective sought to be achieved, we are inclined to the belief that the term is here used in its legal and technical sense, as for example it would be used to distinguish a domestic lending

corporation from a foreign lending corporation. We are concerned with the business function of lending and such more frequently is a function of a corporation than otherwise. If the purpose of the Act as we have held (Attorney General's Opinion No. 50 of April 26, 1955) is to permit foreign corporations to function, by the making of loans, by purchase, assignment or participation with a domestic lender, within the State of Nevada, without being required to meet all of the statutory provisions formerly incumbent upon them under the law and as construed by the former opinion, as a condition precedent to doing business in Nevada, then the word "domestic" as we have construed it, meaning the opposite of "foreign" in the language of corporate law, becomes reasonable. That is, this construction is in accord with the spirit of the law and the object which it was enacted to accomplish.

Southerland in Statutory Construction, Third Edition, Section 4814, sets forth this well known and recognized principle with these words: "In interpreting a statute a court looks to the subject of the act and to the object which it intends to accomplish."

In *United States v. Edgar*, 140 F. 655, quoting from *United States v. United Verde Copper Co.*, 25 S. Ct. 222, 196 U.S. 207, 49 L. Ed. 449, the court said: "We may properly and accurately speak of 'domestic manufactures,' meaning not those of household, but those of a country, state or nation, according to the object in contemplation."

The "object in contemplation" here is lending of money and providing of credit upon a statewide basis. "Domestic" as here used is therefore construed to mean those entities of business of Nevada residence. This definition and limitation excludes those foreign corporations that are qualified legally to do business within the State.

The word "lender" presents no problem of construction for the wording of the Act makes clear that a "lender" is one that deals in; "loans, notes or other evidence of indebtedness secured by mortgages, (or) deeds, of trust on real property situated in this state, * * *."

Thus far we have determined that a "domestic lender" within the meaning of the statute, must be an entity of legal residence in Nevada, and that it must be one that deals in loans, notes or other evidences of indebtedness secured by mortgages, or deeds of trust of real property situated in this State.

To further define and clarify the inquiry the question has shown a concern as to what kind of business entities are included. The Act itself sets forth no limitations as to what entities may so qualify as "domestic lenders." To defeat the right on the part of any business entity, it would then be necessary to show that for other legal reasons, or reasons violative of the purpose of the Act, it could not so qualify. Clearly a domestic corporation when duly qualified to do business in the State, and with corporate powers to engage in that type of business, is included. If a mortgage loan company doing business in Nevada is a domestic corporation as distinguished from a foreign corporation if it has met all legal requirements to do business in Nevada, if its corporate powers authorize it to make the kind of loans enumerated in Chapter 228, Statutes of 1955, then it may and it is authorized under this chapter to purchase, assign or participate with foreign corporations, or associations that are in compliance with the provisions of the Act.

We do not find from the Act that the Legislature has contemplated that in any eventuality a liability to the State attach upon the "domestic lender" by reason of the acts of commission or omission of the foreign corporation or association.

As formerly stated we find no enumerated limitations within the Act as to what constitutes or may not constitute a "domestic lender." The purpose of the Act appears to be to make it less difficult for lending institutions to function in Nevada in the restricted manner as set forth in the Act, and to bring about more competition among lending institutions. For these reasons we are

not able to read into the Act, by the expedient of construction, words and concepts, which the Legislature in its deliberations did not see fit to include therein, and by doing so reduce competition to the financial injury of the borrowing public.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-103. Assessors—State Tax Commission—The state tax rate for the fiscal year beginning July 1, 1955, has been fixed at 42 cents per one hundred dollars of assessed valuation.

CARSON CITY, September 12, 1955.

HONORABLE A. D. JENSEN, *District Attorney, Washoe County, Reno, Nevada*.

DEAR MR. JENSEN: We have your letter of September 9, 1955, requesting an opinion of this department, as more specifically is set out in the body of your letter which reads as follows:

The County Commissioners of Washoe County, in preparation of submission of their budget, request an opinion from your office on the following inquiry:

Pursuant to Chapter 444 Nevada Session Laws 1955, what levy shall be made by the County Assessor as ad valorem tax on all taxable property located in the County of Washoe, State of Nevada?

Pursuant to the above-mentioned statute, tax levies were placed on a fiscal basis, and prior to the enactment of said statute the tax levy was 69 cents per \$100 of taxable property. Information has been received by the County Commissioners of Washoe County that budgets submitted by other counties have been rejected by the Tax Commission on the grounds, and for the reason that the levy should be 69 cents per \$100 of taxable property. I am of the opinion that Chapter 444, Nevada Session Laws 1955, is explicit and unambiguous in that Section 2 clearly demands the levy be, for State purposes, only 42 cents on each \$100 of taxable property.

QUESTION

The question then is as submitted in your letter, namely, what levy should be made by the County Assessor as an ad valorem tax on all taxable property located in the County of Washoe, State of Nevada, for the fiscal year beginning July 1, 1955?

OPINION

Section 2 of Chapter 444, Statutes of 1955, reads as follows:

SEC. 2. For the fiscal year commencing July 1, 1955, an ad valorem tax of 42 cents on each \$100 of taxable property is hereby levied and directed to be collected for state purposes upon all taxable property in the state, including net proceeds of mines and mining claims, except such property as is by law exempt from taxation, which shall be apportioned by the state controller among the various funds of the state as follows: Contingent university funds, 1 cent; consolidated bond interest and redemption fund, 1 cent; general fund, 40 cents.

Section 1 of this Chapter 444, Statutes of 1955, refers to the statutes which appertain to the conversion over from a calendar year to a fiscal year, for the assessment and collection of taxes, and ends by fixing the annual tax rate for the 6-month period January 1, 1955 to June 30, 1955 at 69 cents.

Section 2, above quoted, fixes the rate at 42 cents, upon an annual basis, and fiscal year beginning July 1, 1955.

Section 3 fixes the rate at 39 cents, upon an annual basis, and fiscal year beginning July 1, 1956.

We are in accord with your conclusion that Section 2 of the Act is clear and unambiguous and calls for the fiscal year beginning July 1, 1955 and closing June 30, 1956.

Incidentally, Chapter 397, Statutes of 1955, p. 762 (the sales tax) which became effective on July 1, 1955, will as provided in Section 152 increase the General Fund of the State. The Legislature has therefore decreased the sum to be collected, as an ad valorem tax, for state purposes, in anticipation of the income to the General Fund from the sales tax.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-104. Superintendent of Buildings and Grounds—Budget Director—State Treasurer—State Controller—Money received by the Superintendent of Buildings and Grounds from governmental agencies which are not supported by legislative appropriation from the General Fund is to be credited to the “Buildings and Grounds Contingent Fund.”

CARSON CITY, September 16, 1955.

HONORABLE C. F. COONEY, *Superintendent, Department of Buildings and Grounds, Carson City, Nevada*,

DEAR MR. COONEY: We are in receipt of your letter of September 2, 1955 setting out a certain factual situation and requiring a construction of law, appertaining to the situation.

FACTS

Certain funds by way of rent are received from departments and agencies that are not supported by legislative appropriation from the General Fund of the State of Nevada, by reason of the fact that such departments or agencies occupy space in state-owned facilities. Some of these departments and agencies are under the United States Government, by way of illustration of how this situation arises. These sums of money are received by the Superintendent of Buildings and Grounds for the State.

QUESTION

The question that is presented is in regard to the proper fund to receive such sums. Are these sums required to be deposited in the General Fund or “Buildings and Grounds Contingent Fund”?

OPINION

Chapter 320, Statutes of 1949, p. 651, is an Act to create a State Department of Buildings and Grounds. Section 3 of the Act provides for the appointment of a Superintendent of Buildings and Grounds.

Section 5 of the Act, as amended (Chapter 167, Statutes of 1953, p. 198), reads as follows:

SEC. 5. The superintendent shall have supervision over and control of the state capitol building, the capitol grounds and state water supply, the state printing office and grounds, the heroes memorial building, the state office building, the governor's mansion and grounds, and all other state buildings, grounds, and properties not otherwise provided for by law. He shall direct the making of all repairs and improvements on the aforesaid buildings and grounds. All officers, departments, boards, commissions, and agencies shall make requisition upon him for any repairs or improvements necessary in the capitol building or in other buildings or parts thereof owned by or leased to the state, and occupied by said officers, departments, boards, commissions, or agencies.

Section 6 of the Act, as amended (Chapter 167, Statutes of 1953, p. 198), reads as follows:

SEC. 6. The superintendent shall have authority to expend appropriated funds to meet expenses for the care, maintenance, and preservation of the aforesaid buildings and grounds and their appurtenances, and for the repair of the furniture and fixtures therein. He shall take proper precautions against damage thereto, or to the furniture, fixtures, or other public property therein. *The superintendent is hereby authorized to accept fees from various departments and agencies that are not supported by legislative appropriation from the general fund, that are occupying space in various state-owned buildings. Such fees shall be deposited in the buildings and grounds contingent fund, hereby created. The money in the fund may be expended for the general purposes of the department.* (Italics supplied).

The portion which is italicized is the amendment of 1953. The remaining portion of this section is the section as it appears in the original Act of 1949.

The Act providing for the construction of the State Office Building in Las Vegas was also enacted in 1953. See: Chapter 206, Stats. of 1953, p. 258. We are advised by the State Planning Board that in this building are housed some of the agencies that are not supported by appropriation by legislative appropriation from the General Fund. Perhaps the amendment of 1953 came in anticipation of this income from this building. Be that as it may the amendment of 1953, above quoted, we feel is clear and unambiguous. It provides that certain incomes from certain entities (namely those that are not supported by legislative appropriation from the General Fund) are to go to the "Buildings and Grounds Contingent Fund."

The test is clear: If a certain income comes from some department or agency of government, either State, Federal or municipal, which is not supported by legislative appropriation from the General Fund of the State of Nevada, such income or sum is to be deposited with and credited to the "Buildings and Grounds Contingent Fund" and is to be drawn from that fund in the manner provided by law.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General.*

By: D. W. PRIEST, *Deputy Attorney General.*

OPINION NO. 1955-105. Public Employees—Nevada Real Estate Commission—Nevada Real Estate Commission is a state agency. Executive secretary of the commission is a state employee entitled to membership in the State Employees Retirement System.

CARSON CITY, September 16, 1955.

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

DEAR MR. BUCK: This will acknowledge receipt of your letter of August 30, 1955.

Because of the importance of your question and in the interest of clarity, we quote the entire body of your letter as follows:

Mr. Gerald J. McBride was recently appointed executive secretary of the Nevada Real Estate Commission and will assume the duties of such office on September 1, 1955. He has requested a ruling from this office as to his eligibility for participation in the Public Employees Retirement System of Nevada.

It is the understanding of this office that the expenses of the Commission, including Mr. McBride's salary, will be paid from funds collected by the Commission in membership fees, charges for examinations, etc. Such funds will be deposited in a private bank and may be drawn upon through vouchers signed by the secretary-treasurer and countersigned by the president of the Commission or a member thereof. The purposes and amounts of the expenditures are evidently not subject to control except as to the travel per diem compensation of members and the maximum salary to be paid to the executive secretary. (Chapter 91, Statutes of 1955).

Sec. 2(4) of the Public Employees Retirement Act defines "salary" as the remuneration paid to employees in cash "out of public funds." Sec. 7042, N.C.L. 1929, requires public officers or commissions which receive any moneys of the State of Nevada, "or for its use and benefit," to pay such sums into the State Treasury.

In view of the foregoing may we consider the Nevada Real Estate Commission to be a "public employer" as defined in Sec. 2(2) of the Retirement Act and its employees subject to the operations of the Act? Your assistance in this matter will be appreciated.

OPINION

This question hinges upon the determination of whether or not the Nevada Real Estate Commission is an agency of the State. If it is, then under Section 2(2) of the Public Employees Retirement Act, it is also a public employer mandatorily required under Section 8 of the same Act to participate in the retirement system insofar as its full-time employees are concerned. It would appear that there could be no question but that this commission, created by statute, composed of members appointed by the Governor in accordance with the statute, invested with some portion of the sovereign power of the State to carry out a public purpose, is an agency of the State. The position held by a member of this Commission does, in fact, fulfill the requirements requisite to the designation of such position as a public office. See, in this connection, 42 American Jurisprudence, page 881 and following.

As we see it, Section 7042, N.C.L. 1929 (1928 Statutes), which requires such funds, as the type here involved, shall be placed in the State Treasury, has no bearing on the question for the reason that the Legislature by later statute has authority to create a fund not to be held in the State Treasury. We find no constitutional provision requiring such funds to be held in the State Treasury. (This office is not here expressing an opinion as to whether Chapter 150, Statutes of 1947, as amended, being the law creating a State Real Estate Commission for the purpose of licensing and regulating real estate brokers and salesmen, does in fact provide that the funds created under the Act may be held outside of the State Treasury.) Even if the funds are not held in the State Treasury, that is not to say they are not public funds. However, it is not necessary to determine the question of the status of such funds as public or private. While it is true that the source of payment to an employee is a factor in determining who is the employer, it is only one factor in aid of such determination in a doubtful case. The essential and controlling factor, when it is clear, is the factor of control. That is to say, the determination of who has control of the actions of the employee in his activities of employment is determinative of the employment relationship. The person or entity which has such control is the employer irrespective of the source of that employee's salary. See 35 American Jurisprudence, pages 445, 446.

Under the Act above cited, creating a State Real Estate Commission, we think there is no question but that Mr. McBride as executive secretary to the Commission is under the direction and control of the Commission. We conclude, therefore, that Mr. McBride is an employee of the Commission, and for the same reason is therefore an employee of the State. It should also be pointed out that the set of facts in each individual case is most important to the answer of this type of question, and a different set of facts may result in a different conclusion.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-106. State Labor Commission—State Veterans' Service Commissioner—Governor—Veterans' Service Commissioner properly designated as "State Approving Agency" under Public Law No. 550, 82nd Congress, Second Session.

CARSON CITY, September 19, 1955.

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

DEAR MR. EVERETT: We are in receipt of your letter of August 31, 1955, requesting an opinion of this department. The question presented calls for a construction of Public Law No. 550, 82d Congress, Second Session (see United States Statutes at Large, 82d Congress, 2d Session, 1952, Volume 66, p. 663), construction of Chapter 189, Statutes of 1943, p. 276 (Section 6084.448, N.C.L. 1943-1949 Supp.), and construction of Chapter 192, Statutes of 1939, p. 323 (Sections 506-506.13, N.C.L. 1931-1941 Supp.).

You have informed us that under Public Law No. 550, which became effective on July 16, 1952, the Veterans Service Commissioner for the State of Nevada was designated under the provisions of Section 241(a) of the Act as the "State approving agency." You have also informed us that under the provisions of the said Chapter 192 of 1939, which became effective on March 25, 1939, the "State Apprenticeship Council" was set up and functions.

QUESTION

The question is presented which agency, the “Veterans’ Service Commissioner” or the “State Apprenticeship Council” is vested with authority to act as the “State Approving Agency” under the provisions of the said Public Law No. 550?

OPINION

The said Chapter 192, Statutes of Nevada 1939, is entitled “An Act providing for voluntary apprenticeship.” Section 1 of the Act sets out that the purpose of the Act is to open to young people an opportunity [opportunity] to obtain training, for profitable employment, and to this end to set up a program of voluntary apprenticeship for training in the “arts and crafts of industry and trade.”

Under Section 2, a council is set up, with organizational and administrative power to set up standards for apprenticeship agreements, and with power to make and issue rules and regulations, to carry out the purposes of the Act.

Under Section 3, the Labor Commission is designated as ex officio state director of apprenticeship and secretary of the council.

Under Section 8 of this Act it is in part provided:

SEC. 8. Every apprentice agreement (indenture) entered into under this act shall contain:

- (1) The names of the contracting parties.
- (2) The date of birth of the apprentice.
- (3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

From the foregoing it is clear that the Act was enacted at a time (1939) when employment was a major problem, before the commencement of World War II, when financial ability to provide training for young people was a major problem and that the terms of the Act limit its application to trades, crafts and businesses. The Act contemplates no financial assistance from or rejoinder in supervision with the Federal Government.

The office of Veterans’ Service Commissioner was created by Chapter 189, Statutes of 1943, p. 276. In Section 3 of the Act the duties of Veterans’ Service Commissioner are outlined, and enumerated. In this section it is provided inter alia that the duties of the Commissioner shall be to assist veterans in obtaining under the laws “vocational training, education, rehabilitation * * *.” The same language appears in Section 3, Chapter 252, Statutes of 1947, at p. 780, the amendatory statute. We quote Section 3 of the amended statute as follows:

The duties of the veterans’ service commissioner and the deputy veterans’ service commissioner shall be to assist veterans, and those presently serving in the military and naval forces of the United States who are residents of the State of Nevada, their wives, widows, husbands, children, dependents, administrators, executors, and personal representatives, in preparing, submitting, and presenting any claim against the United States, or any state, for adjusted compensation, hospitalization, insurance, pension, disability compensation, vocational training, education, rehabilitation, and assist them in obtaining any aid or benefit to which they may, from time to time, be entitled under the laws of the United States, or of

any of the states. It shall also be the duty of each commissioner to aid, assist, encourage, and cooperate with every nationally recognized service organization insofar as the activities of such organizations are for the benefit of veterans and service men and women. It shall also be the duty of each said commissioner to give aid, assistance, and counsel to each and every problem, question, and situation, individual as well as collective, affecting any veteran or service man or woman, or their dependents, or to any group of veterans or service men and women, when in his opinion such comes within the scope of this act.

This is the present law and was the law in force and effect on July 16, 1952, the date upon which Public Law No. 550 became effective.

The 82d Congress (2d Session) enacted Public Law No. 550, heretofore cited. The Act is entitled:

An Act to provide vocational readjustment and to restore lost educational opportunities to certain persons who served in the Armed Forces on or after June 27, 1950, and prior to such date as shall be fixed by the President or the Congress, and for other purposes.

The Act provides for benefits thereunder to certain persons as limited therein for education or training. In this respect Section 221, in part, reads as follows:

Subject to the provisions of this title, each eligible veteran may select a program of education or training to assist him in attaining an educational, professional or vocational objective at an educational institution or training establishment selected by him, whether or not in the State in which he resides, which will accept and retain him as a student or trainee in any field or branch of knowledge which such institution or establishment finds him qualified to undertake or pursue.

Under Part V of the Act, entitled "State Approving Agencies," Section 241, it is provided:

(a) Unless otherwise established by the law of the State concerned, the chief executive of each State is requested to create or designate a State department or agency as the "State approving agency" for his State for the purposes of this title.

(b) (1) In the event any State fails or declines to create or designate a State approving agency, the provisions of this title which refer to the State approving agency shall, with respect to such State, be deemed to refer to the Administrator.

(2) In the case of courses subject to approval by the Administrator under Section 242, the provisions of this title which refer to a State approving agency shall be deemed to refer to the Administrator.

We are clearly of the opinion that the designation by the Governor of the Veterans' Service Commissioner as the state approving agency for apprenticeship training was within his jurisdiction and discretion under the law.

By making this designation the Governor has kept all matters affecting the rights and privileges of veterans, including training of whatever kind in the hands of the Veterans' Service Commissioner. Otherwise, a divided authority would have been set up respecting veterans. Those veterans desiring and qualifying for training in apprenticeship and trade training would have been under the supervision of the State Director of Apprenticeship, while those veterans desiring formal education in the liberal arts and sciences or professions would have been

supervised by the Veterans' Service Commissioner. This would have created confusion, particularly when the veteran after commencing trade training would have decided to change over. It must be kept in mind that the jurisdiction over a trainee on the part of the State Director of Apprenticeship is limited to trades, crafts and businesses. We also have in mind the fact that the supervision on the part of the Veterans' Service Commissioner, over veterans, is broad and comprehensive, involving their financial affairs, rights and privileges. Also the fact that the veterans' financial rights and privileges from the government depend upon their satisfactory progress and that there is no doubt a very close coordination between the Veterans' Service Commissioner and the "Administrator." The fact is also significant that the Public Law No. 550 does not make provision for a divided authority as the state approving agency, and if such had been attempted on the part of the executive, it no doubt would have been objectionable on the part of the Administrator, for it must be kept in mind that the State Director of Apprenticeship could not, under the state statute, have undertaken the supervision of training of all veterans. He is limited to trades, crafts and businesses. Under the Federal law the state approving agency is required to work in close coordination with the Administrator.

We are not unmindful of the fact that under the state law certain nonveterans may be engaged in certain trade and apprenticeship training, under the supervision of the State Director of Apprenticeship, and certain veterans may be engaged in like trade and apprenticeship training under the supervision of the Veterans' Service Commissioner and that such trainees may or could be otherwise of an identical group, training and working together, and that such a situation makes for confusion. However, this is inescapable under the law. We believe, however, that the confusion would be greater if the designation for this group of veteran trainees had been the Director of Apprenticeship, and as we have pointed out, the Federal law does not contemplate or authorize a divided control of the state approving agency.

For the reasons given we are of the opinion that the Veterans' Service Commissioner is vested with authority to act as the state approving agency under the provisions of Public Law No. 550

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-107. Schools—1955 school legislation adds exception to requirement of law that no money shall be expended unless specifically set aside for such payment by the budget. Money to pay for expenses of county school board to be paid for by existing districts in accordance with Section 44 of the 1955 school legislation irrespective of the detail of the budget.

CARSON CITY, September 20, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. DICKERSON: This will acknowledge receipt of your letter dated September 7, 1955, requesting the opinion of this office on the following facts and question.

STATEMENT OF FACTS

Section 44 of the 1955 school legislation (Chapter 402, 1955 Statutes) provides for the creation of, what is termed by that legislation, county school boards. These boards came into being, under the provisions of Section 44, on May 2, 1955, to serve until the first Monday of January 1957. Section 44 also invests certain powers in and requires certain duties of these

county school boards. That section also provides as follows: "The expenses of the county school board shall, from May 2, 1955, to July 1, 1956, be prorated among the existing school districts within the county on a pupil basis."

Chapter 335, Statutes of 1953, is an Act regulating the fiscal management of counties, cities, towns, school districts and other governmental agencies of the State. Section 5 of this Act provides in part as follows:

It shall be unlawful for any governing board or any member thereof or any officer of any city, town, municipality, school district, county high school, or high school district, or educational district to authorize, allow, or contract for any expenditure, unless the money for the payment thereof has been specially set aside for such payment by the budget.

A bill has been sent to Educational District No. 1 in Clark County by the Clark County School Board for services rendered from May 1955. Educational District No. 1 had no provision in its budget for the payment of such charges for services rendered by the county school board.

QUESTION

Your question is whether or not the governing board of Educational District No. 1 can authorize the payment of this bill in view of the conflict between the two pertinent laws. Is such expenditure authorized?

OPINION

It is the opinion of this office that such expenditure is authorized provided the total sum authorized by the budget is not exceeded.

Clearly, Section 44 of the 1955 school legislation adds a qualification and exception to the 1953 school fiscal management legislation, and discloses the legislative intent that the money budgeted for the operation of the various school districts within each county is to be used to cover the expenses not only of the existing school districts but those expenses also of the county school board. This, irrespective of the detail of the budget. It is apparent to our minds that no other conclusion is possible from the wording of Section 44 above quoted.

It is also clear that it was the intention of the Legislature expressed in Section 44 of Chapter 402, 1955 Statutes, that the activities of the old boards are not to conflict with those of the new boards, and as a natural concomitance of that expressed intention and as a matter of plain good business it was not intended that the money would be spent in a duplication of actions by the old and the new boards. It being the intention, therefore, that the old and the new boards, would cooperate in the government and operation of the schools within a county, and with the expenses incurred thereby to be covered by such money as had been allocated in accordance with the school budget for the school year.

It is, of course, apparent that there are certain authorized actions of the new county school boards which may have not been taken into consideration in the preparation of the budgets, for example, the employment of the county superintendent. Whatever the detail of the budget may be in this regard, this office is of the opinion that the law authorizes the expenditure of the school funds to cover the expenses of such authorized action where the money to do so is available from money which has been set aside in the budget to cover some action the necessity of which has been eliminated by reason of the action taken by the new board. Such procedure permits the operation of the county school board as intended by the 1955 school legislation while at the same time confines the expenditure of money to that total amount which has been allocated to the

various districts within the county for expenditure during the school year; thus maintaining the cash basis operation required by Chapter 335, Statutes of 1953.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-108. Basic Sciences Board—Applicants for certification without examination, by Basic Sciences Board, must present proof inter alia of having passed examination given by a state basic sciences board of another state.

CARSON CITY, September 20, 1955.

PROFESSOR DONALD G. COONEY, *Secretary-Treasurer, Board of Examiners in the Basic Sciences, University of Nevada, Reno, Nevada*.

DEAR PROFESSOR COONEY: We have received your letter of September 19, 1955, requesting an opinion of this department construing the Basic Sciences Act of 1951. The Act in question is Chapter 332, Statutes of 1951, page 560.

You advise that you have understood the provisions of the Act to authorize the Board to rule that those applicants requesting a Nevada Basic Sciences Certificate by reciprocity or waiver, must have passed a written examination in the basic sciences, and that such an examination must have been given by a State Basic Sciences Board. You also advise that a number of applicants have applied for a Nevada certificate by reciprocity or waiver upon proof of having passed such examinations by the National Medical Board or by State Board examinations, exclusive of the Basic Sciences Board examinations. Also, that many have passed such state or national medical examinations and urge the right to have this accepted in lieu of the State Basic Sciences examination.

Specifically you request an opinion as to whether or not your understanding of the law and its application under these circumstances has been correct.

OPINION

The title to the Act in question is as follows:

An Act to establish a state board of examiners in the basic sciences underlying the practice of the healing art, to provide for its organization and powers, to provide that certification by that board be a *prerequisite* to eligibility for examination for licenses to practice the healing art, and to define the healing art. (Italics supplied.)

Section 2 of the Act reads 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.

The title and Section 2 of the Act when read together clearly show the legislative intent to make the passing of an examination in the basic sciences, as enumerated in subject matter in the Act, with certain enumerated exceptions as to applicants, a condition precedent to the right to be examined for a license to practice any branch of the healing art. It is the adding of another hurdle. In the Attorney General Opinion No. 48 of April 24, 1951, it is succinctly stated that the passing of an examination in the basic sciences is an additional qualification in the procedure to obtain a license to practice medicine.

Section 7 of the Act makes provision for the examinations to be conducted by such Basic Sciences Board, outlines the manner in which such examinations are to be conducted and rated, and when and how a reexamination will be accorded.

Section 8 provides for certification by the Board to those who are successful in the basic sciences examination, upon proof that other essential qualifications, there enumerated, are in fact possessed by the applicant.

Section 9 provides as follows:

The board may in its discretion waive the examination required by section 7, when proof satisfactory to the board is submitted, showing (1) that the applicant has passed in another state an examination in the basic sciences; (2) that the requirements of that state are not less than those required by this act as a condition precedent to the issuance of a certificate; and (3) that the board of examiners in the basic sciences in that state grants like exemption from examination in the basic sciences to persons holding certificates from the state board of examiners in the basic sciences in Nevada.

From the entire Act it is clear that the Legislature intended to vest in the Basic Sciences Board a discretion and power to waive the examination in the basic sciences as to a particular applicant for certification upon proof that the three conditions set forth as (1), (2), and (3), of Section 9, are as to such applicant, present. In this event the applicant may be certified without examination. Condition number 1 is the submission of proof satisfactory to the board "that the applicant has passed in another state an examination in the basic sciences." This provision clearly refers to an examination by a state board as distinguished from a National Medical Board examination, for under condition numbered 2, the reference is to "state," and under condition numbered 3, the reciprocity provision is to "state."

We are also of the opinion that condition numbered 1, above quoted, is not met by an applicant for certificate in lieu of examination in the basic sciences, upon proof to the Board that he is duly licensed in another state in some branch of the healing art, as for example a physician, and has therefore passed an examination including but not limited to the basic sciences. For the wording is that the applicant has passed an examination in the "basic sciences." and not that he has passed an examination including the basic sciences.

From the foregoing it is clear that Section 9(1), above quoted, has reference to an examination given by a state basic sciences board, as distinguished from a national medical board, a state medical board, or examinations given by a college or in graduate work, embracing like subject matter.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General.*

By: D. W. PRIEST, *Deputy Attorney General.*

OPINION NO. 1955-109. Dairy Commission—State—It is not mandatory that a “stabilization and marketing plan” for “marketing area” be adopted by Commission before distributors are bonded or before distributors are licensed—Commission is a party in all matters of appeal from its determinations under the Act, and authorized in such District Court hearings to be represented by a representative of the Attorney General’s office or by private counsel.

CARSON CITY, September 21, 1955.

HONORABLE A. J. REED, *Chairman, State Dairy Commission, Route 1, Box 167, Fallon, Nevada.*

DEAR MR. REED: On the 16th day of September 1955, by reason of conference in this office, between you, Mr. Frank Settlemeyer of Minden, and myself, we agreed that at this juncture it is necessary that you be advised by official opinion upon two questions that are hereinafter stated. We also agreed that general advice in regard to organization and functioning of the Commission at this early stage would be important and you stated a desire to have such advice. You advised that the effective date of the appointment of the members of the Commission was August 1, 1955.

The two questions propounded of great importance at this stage were stated as follows:

QUESTIONS

1. Under the law is it mandatory to set up a “stabilization and marketing plan” before it may proceed with (a) approval of producer-distributor contracts, (b) bonding of distributors or licensing of distributors?
2. Does the Commission have the legal authority to employ its own counsel?

OPINION

The statute creating the State Dairy Commission is Chapter 387, Statutes of 1955, page 736.

We first direct our attention to the question numbered 1 above.

The title of the Act is as follows:

An Act creating the state dairy commission, defining its powers and duties; authorizing the establishment of marketing areas and stabilization and marketing plans; providing for the investigation of the dairy industry; prohibiting unfair trade practices; prescribing penalties for violations hereof; providing for the assessment of producers and distributors; and other matters properly relating thereto.

Here it will be noted we find the permissive and not directory language, “authorizing the establishment of marketing areas.”

Under Section 16(c) it is provided: The purposes of the Act are: “To authorize and enable the commission to formulate stabilization and marketing plans * * *.” The statute here it will be noted is permissive and not mandatory.

Section 40 of the Act reads as follows:

The commission may formulate any stabilization and marketing plan as prescribed in this act and declare the same effective after public hearing and

reasonable notice by mail or otherwise to all producers and distributors of record with the commission, affected by such plan.

Here it will be noted the language is permissive only.

Section 53 of the Act in part reads as follows:

If the commission finds that a stabilization and marketing plan is necessary to accomplish the purpose of this act, it shall formulate a stabilization and marketing plan * * *.

Here the inference is clear that if the Commission deems a plan necessary, the Commission is authorized to set it up.

As a part of the major question numbered 1, it now becomes necessary to determine clearly what is a "stabilization and marketing plan," i.e., of what does it consist?

The mandatory provisions of a stabilization and marketing plan are enumerated in Section 54, subsection (a), (b), (c) and (d). The discretionary provisions are contained in Section 55 of the Act. Summarizing Section 54, we have the following: Each stabilization and marketing plan shall contain provisions prohibiting distributors and retail stores from engaging in the following unfair practices:

- (a) Paying or allowing secret rebates, secret refunds, unearned discounts, etc.
- (b) The giving away of any milk products except to bona fide charities.
- (c) The extending or giving to customers special prices or services, not given to others of the same classification.
- (d) The purchase of fluid milk from any producer in excess of 200 gallons per month, unless under the terms of a written contract, of specified content, of which copy shall be filed with the Commission and duly approved.

Under Section 55 we have the discretionary provision that the stabilization and marketing plan may contain provisions whereby distributors are required to report periodically to producers, in regard to the purchases, payments therefor and other specified data.

We find no provisions in the Act whereby Section 54, (a), (b), (c) or (d), above analyzed, could be prohibited in the absence of those matters being specifically covered in a "stabilization and marketing plan." Also we find no provision whereby the benefits of the producer, as to the records of his production and sales, as provided in Section 55, may be safeguarded by the Commission in the absence of the adoption by the Commission of a "stabilization and marketing plan." We also have in mind that by reason of these contracts as provided in Section 54(d) and the fact that copies are filed with the Commission, and by reason of the requiring by the Commission that records be kept under the provisions of Section 55, to be available for inspection and analysis by the Commission, as elsewhere provided in the Act, that by the adoption of a stabilization and marketing plan for a marketing area, the Commission will have at its fingertips, data and information, so vitally necessary in fixing and supervising the bond provisions of Sections 60 and 61. The Act provides in a number of places in regard to enforcement of the provisions and this too will become difficult and perhaps partially ineffectual in the absence of full records, compiled as a result of compliance with an adopted stabilization and marketing plan.

We conclude, as to question numbered 1, that it is not mandatory that a stabilization and marketing plan be adopted by the Commission before it may proceed with (b) bonding of distributors and (c) licensing of distributors. However, we are of the opinion for the reasons given that it may easily lead to a great deal of confusion and unanticipated difficulties if such a plan is not adopted before either of the other two functions are carried out. As to the other proposition, namely, the approval of producer-distributor contracts, these are authorized only as a part of a stabilizing and marketing plan. Without the plan there is no authority for requiring the contracts.

Question numbered 2 has to do with the authority of the Commission to employ its own legal counsel.

Section 77 of the Act in part reads as follows:

* * * Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final 20 days after the date of notification or mailing thereof. The commission shall be deemed to be a party to any judicial action involving any decision, and may be represented in any such judicial action by any qualified attorney employed by it and designated by it for that purpose, or at the commission's request by the attorney general.

We construe this to mean that decisions of the Commission for a period of 20 days after the date of notification or mailing thereof, are subject to review in the District Court in the county in which the aggrieved party resides, and that since the office of the Attorney General may not always upon call be able to supply a representative to distant counties, or for other reasons the Commission in certain cases, and for a particular court assignment only, may or could desire to engage and employ local counsel. When such a situation arises the Commission in its discretion may for the particular judicial action, employ counsel.

The Commission created by this Act is a State Commission created under the police powers for a public purpose. Section 7313.02, N.C.L. 1931-1941 Supplement, provides for the representation by the Attorney General of "officer, board, commission, appointee or department" of the state government. An exception is stated in this section, namely, cases in which the Legislature has specifically authorized the employment of other attorneys.

Section 77 of the Act in question specifically authorizes the employment of an attorney by the Commission, in a specific case and for a specific purpose and not otherwise. The section quoted is subject to strict construction in view of the provisions of Section 7313.02, *supra*, extending the authority no further than specifically provided in the said Section 77.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-110. Public Schools—While the teaching of physiology and hygiene in our public schools is mandatory under Section 326 of Chapter 63, 1947 Statutes, the attendance of pupils in these classes is not mandatory, and a request by a parent to excuse a child from said classes, when based upon religious grounds, should be honored.

CARSON CITY, September 22, 1955.

HONORABLE GEORGE DICKERSON, *District Attorney, Las Vegas, Nevada*.

MY DEAR MR. DICKERSON: Your office has requested an opinion of this office construing Section 326 of Chapter 63 of the 1947 Statutes, which has not been repealed by Chapter 402 of the 1955 Statutes.

Section 326 provides that physiology and hygiene shall be taught in the public schools of this State and further provides that especial attention shall be given to the effects of stimulants and narcotics upon the human system.

Physiology is that branch of biology which deals with the processes, activities and phenomena of life and living organisms. It gives the student a general idea of the physiological processes which transpire within the human body to induce and conserve that status which the layman terms "living," and is not in any offensive to any moral precepts.

Hygiene is the science of preserving health and may be termed the science of cleanliness. Here, also, instruction of an inoffensive nature is promulgated and carried forward by those who instruct our children.

The importance of these subjects is universally recognized. To indoctrinate our school children with courses in these subjects is to better fit them to care for themselves in future years. This, a wise and farseeing Legislature anticipated in making these courses mandatory in our schools.

The question then arises: Does the fact that the teaching of physiology and hygiene in our public schools is required, mean that all who attend such public schools must take these courses? The answer depends upon the individual school. If the courses are "required" courses in order to receive a diploma, the answer must be in the affirmative. If on the other hand they are not "required" courses, and other courses may be substituted to earn required credits toward graduation, then a legitimate request by a parent to excuse his child from such courses should be honored, and especially if such excuse is sought on religious beliefs.

The extension of religious freedom requires the most liberal interpretation of our laws consistent with good government, and no course should be pursued by public officials which tends to deny to any religious sect the following of tenets and precepts which to them, seem justified, in the absence of constitutional restrictions or patriotic barriers.

Here the loss of the instruction in physiology and hygiene is detrimental to the individual, but the indirect, deleterious effect upon the State by reason of the noneducation of a small minority on these subjects, is infinitesimal as compared to a breach in the wall of a strongly conceived religious opposition to such teachings

OPINION

It is therefore the opinion of this office that while Section 326 of Chapter 63 of the 1947 Statutes of Nevada requires the teaching of physiology and hygiene in all of Nevada's public schools, it does not make it mandatory that all pupils take these subjects. A request by parents that their children be excused from these courses when such request is based on a religious conviction, should be honored.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-111. Schools—Contracts for the transfer of pupils between counties is not violative of the state political subdivision fiscal management Act, being Chapter 335, Statutes of 1953.

CARSON CITY, September 23, 1955.

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

HONORABLE PETER BREEN, *District Attorney, Esmeralda County, Goldfield, Nevada.*

GENTLEMEN: This will acknowledge receipt of your letter concerning the transfer of high school pupils from Esmeralda County to Nye County.

As we understand it, there has been, for some years back, a written contract entered into yearly between the school authorities of both counties for the transfer and education of high school children of Esmeralda County in the high school in Nye County. The contract for the school year beginning July 1, 1955 and ending June 30, 1956 will be or has been entered into. Under the terms of such contract payment from Esmeralda to Nye will be made at the end of the calendar year 1956, which will be the time in which the per capita cost of instruction will have been determined.

Section 156 of the 1947 School Law (Chapter 63, 1947 Statutes, page 91), as amended, provides the authority for the execution of such contracts.

Under Chapter 335, Statute of 1953, the governing boards of the two schools herein involved will have prepared the budgets for the 1955-1956 school year. We assume that the estimate of expenditure under this contract has been made in the Esmeralda school budget.

Section 5 of Chapter 335, 1953 Statutes, provides, in part, as follows:

It shall be unlawful for any governing board or any member thereof or any officer of any city, town, municipality, school district, county high school, or high school district, or educational district to authorize, allow, or contract for any expenditure, unless the payment for the money thereof has been specially set aside for such payment in the budget.

QUESTION

In view of the fact that the determination of the per capita cost for the education of the Esmeralda pupils is not made until after the end of the school year, is the execution of such a contract a violation of Section 5, Chapter 335, 1953 Statutes?

OPINION

This office fails to see any violation whatever. If the pupil enrollment from Esmeralda County in attendance at the Nye County school is so increased that an expenditure will be required in excess of what is allowed in the budget for that purpose, then the directive in Section 5, Chapter 335, 1953 Statutes, is to the effect that the expenditure for the excess cannot be made. This is not to say, however, that the contract entered into is in any way invalid or violative of the Fiscal Management Act. Moreover, not only are there provisions in the school law for emergency loans to take care of situations wherein unexpected or unestimated expenditures must be made, but the problem resolves itself by the provisions of the law dealing with the quarterly apportionments of the State Distributive School Funds wherein such apportionments are made to the school districts on the basis of the current average daily attendance in the schools. The moneys for such increase

would be covered in such apportionments, and the expenditure of the funds received under such apportionments is, as we see it, an expenditure necessarily outside of the school district budget.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-112. Nevada Industrial Insurance Act—Occupational Diseases Act—Persons drawing compensation for total permanent disability as a result of occupational disease, are entitled to adjustment under Chapter 432 of 1955 Statutes, whether death or injury resulting in compensation arose prior to July 1, 1955.

CARSON CITY, September 26, 1955.

MR. THOMAS M. GODBEY, *Assemblyman, Clark County, Boulder City, Nevada*.

MY DEAR MR. GODBEY: You have requested an opinion of this office as to whether persons suffering disability arising out of occupational disease are entitled to the compensation provided for in Chapter 432 of the 1955 Statutes, when the disability arose prior to July 1, 1955.

STATEMENT

Chapter 432 of the 1955 Statutes amends Chapter 168 of the 1947 Statutes by increasing the benefits under the Industrial Insurance Act where the injury causes death or temporary or permanent total disability.

Section 11(d) of the 1955 Act provides: All compensation payments after June 30, 1955, to permanently totally disabled persons, widows, and dependents, by reason of injuries or death arising out of and in the course of employment of employees under the provisions of this Act, as amended, shall be paid currently according to the rates provided by this Act, as amended from time to time, whether the injury or death occurred before or after June 30, 1955, and the Commission shall adjust current and lump-sum payments accordingly; provided, the rates of compensation shall not operate retroactively for any period before June 30, 1955, except in commutation of lump-sum payments.

It becomes apparent that only those persons permanently totally disabled, or those persons who are widows or dependents of persons dead as a result of the injury, or who are the dependents of persons permanently totally disabled, are eligible for an adjustment in compensation for injury or death occurring prior to July 1, 1955. Persons temporarily totally disabled or such persons' dependents would not be eligible.

That persons suffering disability as a result of occupational disease are entitled to benefits under the general law is resolved by Section 41 of Chapter 44 of the 1947 Statutes.

Section 41 reads: "Every employee and the dependent or dependents of such employee and the employer or employers of such employee shall be entitled to all of the applicable rights, benefits and immunities and shall be subject to all the applicable liabilities, penalties and regulations provided for injured employees and their employers by the Nevada industrial insurance act unless herein otherwise provided."

There can be no doubt but that in the enactment of the Occupational Diseases Act the Legislature intended to bring within the four corners of the Act, with all its attendant benefits,

those who had theretofore been excluded, to wit, persons suffering death or disability arising from certain enumerated occupational diseases in the course of their employment.

OPINION

It is therefore the opinion of this office that those persons permanently totally disabled as a result of statutorily enumerated occupational diseases arising out of their employment, or those persons who are the widows or dependents of persons dead as a result of injuries or illness arising during the course of their employment, as defined in the Occupational Diseases Act, or persons who are the dependents of permanently totally disabled persons, are eligible for an adjustment in compensation for injury or death occurring prior to July 1, 1955.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-113. Prisons and Prisoners. Extradition between states not necessary in case of waiver of extradition by parolee as a condition to parole, and under the Uniform Act for Out-of-State Parolee Supervision.

CARSON CITY. September 26, 1955.

MR. E. C. CUPIT, *Administrator, Interstate Compact for Nevada, Supreme Court Building, Carson City, Nevada.*

DEAR MR. CUPIT: You request the opinion of this office on the following question:

Under a parole requiring and containing a waiver of extradition by the parolee, and in a situation between states operating under the Uniform Act for Out-of-State Parole Supervision, is extradition proceeding necessary for the purpose of returning a parolee to a state from which the parole issued from a state where the parole is violated?

OPINION

The answer is in the negative.

The Uniform Act for Out-of-State Parolee Supervision, being Chapter 111, 1949 Statutes of Nevada, provides that the parolee may be retaken in the receiving state with no other formality than the establishment of the authority of the officer and the identity of the parolee.

We take it that the only question requiring clarification is whether or not the parolee has a constitutional right to require formal extradition under such circumstances. The law generally appears to be to the effect that he has not. Where the statute and the parole provide for waiver of extradition as a condition of the parole, the parolee is entitled to no more than he accepted at the time of his acceptance of the parole. The principle being that the parolee is at liberty at the will of the parole authorities and he accepts that freedom upon the conditions chosen by those authorities. See, in this connection, 39 American Jurisprudence, page 579; 132 A.L.R. 1257.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-114. Hospitals—Board of trustees of county hospitals not required to advertise for bids in contracting for expenditure of hospital funds except where trustee has personal or pecuniary interest therein.

CARSON CITY, September 26, 1955.

HONORABLE ROLAND W. BELANGER, *District Attorney, Pershing County, Lovelock, Nevada.*

DEAR MR. BELANGER: This will acknowledge receipt of your letter requesting the opinion of this office on the following question:

In view of the requirement in the law that the boards of school trustees and the Boards of County Commissioners must advertise for bids in contracts involving a prescribed sum of money, is it necessary that the boards of trustees of the county hospitals advertise for bids in a contract involving the purchase of equipment costing in excess of \$1000? For example, the purchase of an X-ray machine.

OPINION

The answer is in the negative.

There is no general provision in the law requiring public officials to advertise for bids in the letting of contracts in their official capacity. The duties and powers of the school trustees and the County Commissioners are set forth in the law relating to them and are applicable only to them.

For the powers and duties of the hospital trustees we must look to Chapter 19, 1943 Statutes (Section 2228, N.C.L. 1943-1949 Supp.). Therein it is provided that the hospital trustees shall have exclusive control of the expenditures of all moneys collected to the credit of the hospital fund. We are of the opinion that the powers stated therein are sufficiently broad to warrant the procedure of contracting without the step of advertising for bids.

However, the section further provides as follows:

No trustee shall have personal or pecuniary interest, either directly or indirectly, in the purchase of supplies for said hospital, unless the same are purchased by competitive bidding.

Thus we see that, by the law pertaining to the powers and duties of county hospital trustees, bidding is not required except where a trustee has a personal or pecuniary interest in such contract.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General.*

OPINION NO. 1955-115. Motor Vehicle Registration—Under the provisions of Chapter 221 of the 1955 Statutes, a person residing in another state or country who registers and secures license plates for his motor vehicle in such foreign jurisdiction, is not required to register or secure plates in Nevada until the period for which the motor vehicle is registered in the foreign jurisdiction has expired.

CARSON CITY, October 4, 1955.

HONORABLE GEORGE DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada.*

MY DEAR MR. DICKERSON: You have requested of this office an interpretation of Section 1 of Chapter 221 of the 1955 Statutes of Nevada, which amends Section 17(a) of the Motor Vehicle Registration Act.

OPINION

In order to clearly interpret the 1955 Act, it is necessary to study and analyze Section 17(a) of the Motor Vehicle Registration Act as it appears in Chapter 120 of the 1951 Statutes (similar to Section 4435.16, N.C.L. 1943-1949 Supp.) as compared to its wording in Chapter 221 of the 1955 Statutes.

The pertinent part of Section 1 of Chapter 120 of the 1951 Statutes is as follows:

SECTION 1. Section 17 of the above-entitled act, being section 4435.16 N.C.L., 1949 Supp., is hereby amended to read as follows:

Section 17. (a) Except as otherwise provided in this section, a nonresident owner of a vehicle of a type subject to registration under this act, owning any vehicle which has been duly registered for the current year in the state, country, or other place of which the owner is a resident and which at all times when operated in this state has displayed upon it the registration number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operation of such vehicle within this state without any registration thereof in this state under the provisions of this act and without the payment of any registration fees to the state; provided, nothing in this section shall be construed to permit the use of manufacturers' or dealers' license plates issued by any state or country by any such nonresident in the operation of any vehicle on the public highways of this state; provided further, a nonresident owner of a vehicle of a type subject to registration in this state who, while residing in this state, accepts gainful employment within this state or who comes into this state for the purpose of being gainfully employed therein shall, for the purposes of and subject to the provisions of this act, be considered a resident of this state and pay such registration fees as provided for in this act; provided further, nothing in this subparagraph shall be construed to require registration of vehicles of a type subject to registration under this act operated by nonresident common motor carriers of persons and/or property, contract motor carriers of persons and/or property, or private motor carriers of property as stated in paragraph (b) of this section.

Section 1 of Chapter 221 of the 1955 Statutes reads as follows:

SECTION 1. Section 17 of the above-entitled act, being section 4435.16, 1929 N.C.L. 1941 Supp., as last amended by chapter 120, Statutes of Nevada 1951, at page 156, is hereby amended to read as follows:

SECTION 17. (a) Except as otherwise provided in this section, a nonresident owner of a vehicle of a type subject to registration under this act, owning any vehicle which has been duly registered for the current year in the state, country, or other place of which the owner is a resident and which at all times when operated in this state has displayed upon it the registration number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the

operation of such vehicle within this state without any registration thereof in this state under the provisions of this act and without the payment of any registration fees to the state; however, nothing in this section shall be construed to permit the use of manufacturers' or dealers' license plates issued by any state or country by any such nonresident in the operation of any vehicle on the public highways of this state. Nothing in this subparagraph shall be construed to require registration of vehicles of a type subject to registration under this act operated by nonresident common motor carriers of persons or property, contract motor carriers of persons or property, or private motor carriers of property as stated in subparagraph (b) of this section.

Upon expiration of such nonresident registration or upon any transfer of the vehicle within the State of Nevada, the owner shall immediately apply to register the vehicle in this state and shall pay registration and other fees as herein provided.

It can readily be perceived that the Legislature intended by the 1955 Bill to amend Section 17(a) of the Motor Vehicle Registration Act, and the line of their intention is indicated by the deletions and additions of the 1951 Act.

From the 1955 Act was stricken the proviso, "provided further, a nonresident owner of a vehicle of a type subject to registration in this state who, while residing in this state, accepts gainful employment within this state, or who comes into the state for the purpose of being gainfully employed therein shall, for the purposes of, and subject to the provisions of this act, be considered a resident of this state and pay such registration fees as provided for in this act * * *," and to the same Act was added, "Upon expiration of such nonresident registration or upon any transfer of the vehicle within the State of Nevada the owner shall immediately apply to register the vehicle in this state and shall pay registration and other fees as herein provided."

The 1955 Legislature by the enactment of Chapter 221 of the 1955 Statutes, affords to persons who purchase their cars in foreign jurisdictions and who register and secure license plates for the same elsewhere than Nevada, the benefit of not having to register the car in Nevada and secure license plates therefor, regardless of whether they become gainfully employed in Nevada, and regardless of whether they come to Nevada for the purpose of becoming gainfully employed, until such time as the period of foreign registration has expired. Any other construction or interpretation would have to be reached at points outside the four corners of the Act.

The wisdom or expediency of the legislation, or the deleterious effects thereof, are not matters within the purview of this office. If the Act, as passed, is constitutional and the wording thereof clear and unambiguous it is our duty to place thereon the construction that the words imply and no other.

It is just as clear that a Nevada resident could not, under the construction placed upon the Act by this office, go into a foreign jurisdiction, purchase a car, register and buy license plates for it outside the State of Nevada, and avoid the registration and purchase of license plates in this State. Such procedure would clearly be a fraud upon both the foreign jurisdiction and Nevada, for in the very act of registration it is necessary to give the applicant's true and correct address.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-116. Constitutional Law—Taxation—The inclusion of all money on hand or on deposit in a bank or banks, or with individuals, as taxable personal

property under Section 3 of Chapter 344 of the 1953 Statutes of Nevada, is contrary to Article X of the Constitution of Nevada, and therefore unconstitutional. Stocks and bonds are exempt from taxation as personal property under Article X of the State Constitution.

CARSON CITY, October 4, 1955.

HONORABLE GEORGE M. DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. DICKERSON: You have asked this office the following question: "Is the definition of personal property contained in Section 3 of Chapter 344, Statutes of Nevada 1953, which includes all money on hand or on deposit in a bank or banks or with individuals, unconstitutional in view of the provisions of Article X of the Constitution of the State of Nevada?"

OPINION

Section 3 of Chapter 344 of the 1953 Statutes of Nevada states: "The term 'personal property' whenever used in this act shall be deemed and taken to mean, and it is hereby declared to mean and include * * * all money on hand or on deposit in bank or banks, or with individuals * * * and all property of whatever kind or nature not included in the term 'real estate' * * *."

Article X of the Constitution of Nevada provides in part as follows, "* * * shares of stock (except shares of stock in banking corporations), bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt. * * *."

It was clearly the intention of the 1939 Legislature to exclude from taxation those items listed in the amendment to Article X of the Constitution of Nevada, and their reason is clearly and logically set forth in the declaration that they are deemed to represent an interest in property which has already been taxed. The lawmakers felt that to impose an additional personal property tax on these items would constitute an undue burden on our taxpayers.

Whatever the reasoning of the 1953 Legislature in including all money on hand or on deposit in bank or banks, or with individuals, as taxable personal property, their act was clearly in contravention of the constitutional exemption and therefore contrary to constitutional law.

It is just as clear that a County Assessor cannot place upon the tax rolls as personal property stocks and bonds, in view of the constitutional prohibition contained in the quoted section of Article X of the Constitution of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-117. Nevada Tax Commission—Nevada National Guard—Motor vehicle fuel purchased by the U. S. Property and Disbursing Officer for the use of the Nevada National Guard at Winnemucca is not tax exempt under Section 6570.05, N.C.L. 1931-1941 Supp., as amended by Statutes of 1955, Chapter 124, page 170.

CARSON CITY, October 5, 1955.

MR. WILLIAM H. SCHMIDT, *Supervisor, Motor Fuels Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. SCHMIDT: We are in receipt of your letter of September 28, 1955, requesting an opinion from this department.

It appears that Elvin G. Nelson, Administrative Assistant to Earl A. Edmunds, Major, National Guard Bureau, Acting U. S. Property and Disbursing Officer for Nevada, with offices at Carson City, Nevada, has communicated with the Richfield Oil Company to request the Richfield Company to delete the Nevada motor vehicle fuel tax from certain of the Richfield invoices covering the delivery of regular gasoline to the Nevada National Guard at Winnemucca, Nevada.

Mr. Nelson has cited in support of this position that the sales so made are exempt from the Nevada motor vehicle fuel tax, Section 6570.05, N.C.L. 1931-1941 Supp. The Richfield people, therefore, ask to be advised whether or not to comply with the request made upon them by Mr. Nelson, serving in the capacity as aforesaid.

In your letter you have also pointed out that other state agencies are not exempted from the tax and specifically request the opinion to be determinative of whether the Nevada National Guard is a state agency until mobilized for federal service and thus subject to the tax at this time, or whether it is tax exempt as being part of the United States Armed Forces.

OPINION

The statute cited by Mr. Nelson to the Richfield people is not the latest statute upon the subject of exemption from this particular tax. In part, this section provides as follows:

The provisions of this act requiring the payment of excise taxes shall not apply to motor vehicle fuel so long as it remains in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a dealer or sold to the government of the United States for official use of such government. (Statutes of 1935, Chapter 74, page 191 at 165.)

Section 5 of the Act (being Section 6570.05 aforesaid) was amended in Chapter 147, Statutes of 1951, page 208, in such a manner as to further limit the exemption from taxation in the sale of motor vehicle fuel to the government of the United States for official use of such government by changing the words "for official use of such government" to "for official use of the United States armed forces." Otherwise the section is unaltered.

Chapter 245, Statutes of 1953, page 326, amends, among others, Section 5 of the Act, but leaves the portion above-quoted from the 1951 Act unmodified.

This Section 5 is again amended by the Legislature of 1955, Chapter 124, page 170, at 175, from which section we quote in part:

The provisions of this act requiring the payment of excise taxes shall not apply to motor vehicle fuel so long as it remains in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a dealer, nor to motor vehicle fuel sold by a dealer in individual quantities of 500 gallons or less for export to another state or country by the purchaser other than in the supply tank of a motor vehicle provided such dealer is licensed in the state of destination to collect and remit the applicable destination state taxes thereon, *nor to motor vehicle fuel sold to the*

*government of the United States for official use of the United States armed forces, **
** *. (Italics supplied.)*

From the foregoing provisions it is plain that the allowance of the exemption from the payment of the tax is now more difficult and the requirements are more explicit than was the case under the Statute of 1935. Under both statutes it was for such exemption required that the motor vehicle fuel be "sold to the government of the United States." In addition thereto, in 1935 it was sufficient if the motor vehicle fuel was "for official use of such government." Under the present law it is not for official use of such government, but "for official use of the United States armed forces." Thus the uses in which the tax exemption may be claimed has been reduced and further limited.

From the statute as it now exists we are thus inescapably led to the conclusion that the legislative intent is to reduce the exemptions or rather situations in which an exemption from this tax may be taken, rather than to enlarge it. We are also led to the conclusion that from the express wording of the statute, two elements must be present, for the sale of motor vehicle fuel to fall under the exception and the exemption from taxation, as the same is by the 1955 Statute provided, namely:

- (1) The motor vehicle fuel must be sold to the government of the United States, and
- (2) For the official use of the United States Armed Forces.

Upon investigation we learn that the billing is to the Nevada National Guard, and that those invoices are cleared through the office of the State Controller and from the Treasury of the State of Nevada, from appropriations made by the Legislature. Back of this is the fact that these funds are not entirely made up of receipts derived solely from Nevada taxpayers, and that congressional action indirectly supplies both material and money to the Nevada National Guard. But this is a remote pursuit of the subject under inquiry and merits only a passing reflection. Instead we are concerned with the question of whether or not this motor vehicle fuel, purchased and paid for as aforesaid, consumed by the Nevada National Guard at Winnemucca, is sold to the government of the United States. We feel that the government of the United States does not pay for such fuel and does not take title to it and that it is not a sale to the government of the United States.

Secondly, is such fuel for the "official use of the United States armed forces? On June 21, 1954, in Attorney General's Opinion No. 337, this office held that the Nevada National Guard is an instrumentality of the State of Nevada and not an instrumentality of the Federal Government. The conclusion reached in this respect is in the opinion well supported by authorities, and we are in full accord with it. It follows that the personnel of the Nevada National Guard are not while serving as such a part of the Armed Forces of the United States.

Both of the indispensable requirements to the allowance by the Nevada Tax Commission of the exemption and exception to the tax liability, having been found by this opinion to be not present, it follows that the Richfield Oil Company should continue the invoices to this purchaser as before and to include the regular tax.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*
By: D. W. PRIEST, *Deputy Attorney General.*

OPINION NO. 1955-118. County Commissioners—County Commissioners prevented from entering into a lease-rental contract which extends beyond their term of office.

CARSON CITY, October 5, 1955.

HONORABLE GEORGE DICKERSON, *District Attorney, Clark County, Las Vegas, Nevada.*

MY DEAR MR. DICKERSON: You request a formal opinion of this office as to the authority of the Board of County Commissioners to enter into a lease-rental agreement whereby a County Courthouse would be constructed on county property by private enterprise and leased to the county for a term of 20 years at a fixed rental, after which time title to the building would vest in the county.

OPINION

While such an arrangement as outlined in your inquiry might result in considerable saving to the county, it is clearly contrary to Section 1973, N.C.L. 1929, which prevents any County Commissioner from voting on a contract which extends beyond his term of office.

The Legislature considered in enacting such legislation that the people should have the opportunity to approve such construction by voting on a bond issue, and at the same time foresaw the attendant evils that might arise in negotiations of the type proposed, were men, serving one term as Commissioner, allowed to propose and sign contracts which would bind the county for a 20-year period.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*

OPINION NO. 1955-119. State Planning Board—The State Planning Board is a board of express and limited powers and the enumeration of powers being exclusive, it is not authorized to accept gifts.

CARSON CITY, October 11, 1955.

PROFESSOR I. J. SANDORF, *Chairman, State Planning Board, 1351 Terrace Drive, Reno, Nevada.*

DEAR PROFESSOR SANDORF: We are in receipt of your letter of October 6, 1955, received on October 7, 1955, requesting an opinion from this department, as appears in the letter, a portion of which reads as follows:

By action of the last Legislature, moneys appropriated for the construction of the Southern Branch of the University of Nevada in Las Vegas were not to be available to the Planning Board until clear title to the property in Las Vegas is obtained by the University. At the present, it appears that a few months will be required to provide this clearance. The University administration wishes to avoid any delay in the construction of the building because of this lack of availability of funds.

Private parties in Las Vegas have suggested that they will make available to the Planning Board their own funds to employ architects to start the work on the plans for the building. I understand that the Planning Board is to control these architects as if the funds were provided by the State.

The question is: Is the Planning Board authorized to accept private funds for the use in the construction of a state building under the conditions described above?

OPINION

The legislative Act to which reference has been made is Chapter 400, Statutes of 1955, page 790.

The title of the Act is as follows:

An Act providing for the construction, furnishings and equipment of a *classroom building* on the campus of the southern branch of the University of Nevada; providing for the issuance of bonds therefor and the manner of their sale and redemption; defining certain duties of the Nevada state planning board, the president and regents of the University of Nevada, and the state controller; and other matters relating thereto. (Italics supplied.)

Section 1 of the Act provides as follows:

When and if title to all the real property described in section 4 hereof is acquired by the regents of the University of Nevada, in the name of the State of Nevada, provision is hereby made for the construction, furnishings and equipment, on the real property described in section 4 hereof, of a building to contain classrooms and office space for the administrative staff of the southern branch of the University of Nevada; to provide for the work and materials incidental thereto, and for the payment of the same as hereinafter provided. (Italics supplied.)

It will be noted here that the entire project, including the authority and duty to act upon the project in any manner is predicated upon the happening of a condition precedent.

Section 7 of the Act reads as follows:

The Nevada state planning board shall pay the compensation of the architects at the time of acceptance of the plans and specifications prepared and presented to the board or thereafter, in full or in part, as may be provided for in the agreement between the board and the architects for the preparation and presentation of the plans and specifications. *All bills for the employment of architects or for the work, equipment and furnishings herein provided for shall be paid out on claims against the University of Nevada, southern branch, classroom construction fund as other claims against the state are paid; and such claims, before payment, shall first be approved by the chairman and secretary of the Nevada state planning board.* (Italics supplied.)

From the foregoing it is clear that this particular charge must be paid from the "classroom construction fund," which in other portions of the Act, not quoted, it is provided shall be made from the sale of state bonds in a sum not to exceed \$200,000. This then leads to the conclusion that the fund, for the most part and insofar as the Legislature has authorized, is to be made up from the proceeds of authorized bond sales.

May this "classroom construction fund" be augmented by funds derived from gifts to the State Planning Board as proposed in the inquiry? We think not.

The State Planning Board was created by Chapter 102, Statutes of 1937, page 184. In this Act we find no provisions authorizing the Board to accept contributions. The Act was amended by

Chapter 81, Statutes of 1947, page 283. Section 5(b), providing for the functions and duties of the State Planning Board, provides in part as follows:

To furnish engineering and architectural service to all state departments, including boards or commissions charged with the construction of any state building, *the money for which is appropriated by the state legislature; * * *.* (Italics supplied.)

In *State v. McBride*, 31 Nev. 57, the Supreme Court held that Boards of County Commissioners and Boards of School Trustees, are boards of limited jurisdiction and possess only such powers as are specifically conferred upon them by the Legislature. In issuing bonds a school board has no authority to issue by a differing schedule as to maturity, than that provided in the legislative Act.

In *State v. Boerlin*, 30 Nev. 473, it was held that Boards of County Commissioners are inferior tribunals of special and limited jurisdiction, and can only exercise such powers as are specially granted, and a mode of exercising their powers prescribed by law is exclusive.

In *Specialty Company v. Washoe County*, 24 Nev. 359, it was held that Boards of County Commissioners are created by law, and derive their authority solely from the statutes, and in the exercise of their powers, are restricted to the method prescribed by law.

With equal force we could say that the State Planning Board is an authority of legislative creation and that the Legislature has defined the powers of such board, and that the enumeration of its powers is exclusive.

It therefore follows that the State Planning Board is not authorized to accept this or any gift to assist it in carrying out its authorized functions.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-120. County Commissioners—State Tax Commission—After judgment in action for collection of delinquent taxes, interest, and penalties, County Commissioners may delay collection of a portion of judgment.

CARSON CITY, October 14, 1955.

HONORABLE R. E. CAHILL, *Secretary, Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. CAHILL: We are in receipt of your letter of September 27, 1955, requiring an opinion from this department. For clarity of the problem presented we quote the body of your letter as follows:

We are in receipt of a letter from the County Commissioners of Lander County requesting an opinion on a situation existing there.

The Copper Canyon Mining Company has assessments totaling approximately \$34,000 which have been made over the past several years. Nothing has ever been paid on this amount and the company is in serious financial difficulties, and there has been a serious question as to whether the county would receive any money at

all. The county holds a default judgment in the District Court of Lander County in the amount of approximately \$48,500 after penalties, interests and costs have been added.

The company has offered to pay the \$34,000 immediately and desires to pay the balance over a period of one year. The County Commissioners feel that it would be good business to accept this offer and have asked this office if they would be in violation of the provisions of the law if they accept this proposition as submitted.

We would appreciate your opinion on this query, and as events are progressing rapidly, the county authorities have indicated that they would appreciate an answer just as soon as possible.

The inference is clear that the company or those interests that propose to come into the company, or to take rights and obligations with reference to the property, by way of refinancing, reorganization, or whatever may be the form, see their way clear at this time to pay \$34,000 (which we understand represents that portion of the judgment which we shall term the taxes assessed) and to pay the remainder of the judgment, plus the statutory interest upon the unpaid balances, within a period of one year. The judgment debtor or its successor in interest, as the case may be, asks the County Commissioners of Lander County to enter into such an arrangement.

QUESTION

May the County Commissioners of Lander County accept such an arrangement and if so what are their rights and duties thereunder? We have concluded that they may.

OPINION

By our own private investigation we have learned that this tax problem has been a long struggle. From the standpoint of the Board of County Commissioners and the District Attorney, it has involved much work and effort beyond the usual duties of the respective offices. At different times during the years involved it has appeared very doubtful if the county would ever be able to effect the collection of its tax. We have learned that it was feared that to sell the property under execution would be an inadequate remedy for in the absence of obtaining the interest of the company or a person adequately financed to operate the property, the bid might well be much less than the tax lien or after judgment, the judgment lien, and that although the lien (of whatever type it might be) would continue against any owner until discharged, its presence might well dim any interest that could have been generated in its absence; also that any operation of the property would by necessity require adequate financing or it could not be expected to succeed to the point of being able to discharge the lien plus accrued interest thereon. The problem of procedure, therefore, has presented a double difficulty; first, how to proceed within the law, and, secondly, how to proceed in such a business manner as to best protect the proprietary interest or business interest of the county in the collection of its tax, penalties, interest and costs. We have deemed it wise to state the problem as it exists for if the proposed procedure can be sustained it may well spell the difference between prosperity and adversity for a particular portion of the State. We make this observation, by reason of our own knowledge of the economy of this part of the State, that this operation is or can be a principal employer within a geographic area and that the fringe benefits, by the operation of the laws of cause and effect, within the other industries, may be very profound within the area. We also have in mind that if the procedure desired to be followed by the Board of County Commissioners of Lander County can be sustained or allowed, everyone within the area stands to gain, and no one within the area stands to lose, so far as we are able to envision or determine, by such determination of the question.

We are not here concerned with the content of the statutory law as to the assessment of the tax upon the property in question, during the years in question, or as to the manner in computing the interest and penalties upon such tax delinquencies, or as to the proper manner of pursuit if no action had been commenced against the Copper Canyon Mining Company and judgment obtained thereunder. These matters were considered by the District Attorney in the obtaining of the judgment mentioned in your letter. In this respect it appears to us that he has acted wisely and well. However, now that the judgment has been obtained, and if and when the \$34,000 as proposed is paid thereunder, the judgment debtor, or those in privity with it will be estopped to deny the validity of the judgment or any of the proceedings taken to the date of the rendition thereof; the rights, duties, privileges and obligations of the county and the defendant, or those in contractual privity with the defendant, have materially changed, and are now spelled out by different law. As for examples as and from the date of the final judgment the additions thereto will be by way of interest, upon unpaid balances at the rate of seven (7%) percent per annum. See: Sections 4322 and 8827, N.C.L. 1929.

On February 24, 1932 (at the depth of the great depression), this department released Attorney General's Opinion No. 73, to the effect that the Board of County Commissioners of Lyon County could not under the then existing law waive the collection of penalties and interest on delinquent taxes. This opinion in part reads as follows:

It was long ago settled by our Supreme Court that Boards of County Commissioners have no power to compromise and settle suits instituted by the State for the collection of delinquent taxes, and that the only power such boards have to reduce or in any manner change taxes assessed is vested in them as boards of equalization, and, when acting in that capacity, they must comply literally with the provisions of the statute. They can neither release the property from the lien of the tax nor discharge the property owner from his obligation. *State v. Cent. Pac. Ry. Company*, 9 Nev. 79.

From this opinion of the Attorney General, we quote further:

In *State v. Cal. M. Co.*, 15 Nev. 308, it was held that the District Attorney, whose duty it was and is to bring suit for delinquent taxes, could not enter into a stipulation with delinquent taxpayers to forego the collection of the penalties provided by the law, the court saying:

The law has, in terms, limited the time for payment without penalty, and the time for putting in operation the coercive machinery of the state, in case of refusal to pay according to law; and the district attorney can find no warrant in the statute for an agreement on his part, to delay the payment of a portion due to the state, upon payment of the balance. Such an agreement is opposed by the words and the policy of the law.

If he can agree to postpone payment of the penalty, upon receipt of the tax, he may delay payment of both tax and penalty, upon an agreement to pay the whole at some time in the future without a contest in the courts. If he has power to postpone payment for a year, he may extend the time to five years or more, thus practically defeating the object of the law, and giving privileges to one delinquent that are not granted to others.

The opinion of the Supreme Court closes with a remark that Boards of County Commissioners have no power to waive the statutory penalties and interest. This conclusion is based upon the theory that Boards of County Commissioners are boards of express and limited

powers, that their powers are enumerated by statutory law and that the enumeration of powers is exclusive. *State v. Boerlin*, 30 Nev. 473.

The situation presented here for determination is, we feel, materially different to that presented to the court in the action cited by the Attorney General in the said Opinion No. 73. In the present matter we have no situation in which we are striving to obtain a judgment by way of stipulation. There is not, nor can there be any controversy about the amount of the indebtedness if the matter is resolved in the manner proposed. As we have stated, a payment upon the judgment will be an affirmation of it, and will set up an estoppel to deny it or appeal from it. The District Attorney in this case cited agreed to postpone the payment of the penalty as a means of obtaining the judgment. In the execution of the plan here proposed, such would not be the case. The judgment has been obtained.

Here, if proposed plan is approved, the Board of County Commissioners would not waive or attempt to waive the statutory penalties and interest. Even the balance of the judgment, which includes both penalties and interest, would draw interest upon diminishing balances until paid in full. This balance would under the provisions of Section 48, Chapter 344, Statutes of 1953, support a lien upon the entire property taxed, which entire property would be impressed with the lien, upon reducing balances of the judgment debt, until same with interest had been fully discharged. Under the plan proposed, in other words, the security for the collection of the judgment, and balances thereunder, would be materially better than at present, and that condition of improving security would continue as payments are made thereon from time to time, until paid in full and discharged.

Very soon thereafter, and no doubt as a result of the opinion of the Attorney General, above referred to, the Legislature of 1933 enacted Chapter 59, page 66, giving certain relief to taxpayers as regards penalties and interest, upon delinquent taxes. The Act became effective on March 10, 1933. The Act provided that taxes, although delinquent, paid thereafter, and on or before midnight of June 1, 1933 should be receipted in full, without the payment of penalties, costs and interest. The Act expired by limitation expressed therein at midnight June 1, 1933. We know of no other relief measures from taxes, and conclude that the former law, as amended, is at present the controlling law. This then leads us to the conclusion that the compromising of taxes, both as to interest and penalties, by either District Attorneys or Boards of County Commissioners, was not then and is not now, allowed by law.

Under Chapter 363, Statutes of 1953, page 681, amendment to Section 8 of the earlier law, the jurisdiction and powers of Boards of County Commissioners are enumerated. A glance at these provisions show that such boards are the administrative agencies for the administration of the proprietary and business affairs of the county. The paragraph numbered "Twelfth" reads as follows: "To control the prosecution or defense of all suits to which the county is a party; and to offer and allow rewards for the apprehension or conviction of defaulting or absconding county or township officers."

There is no question in our minds but that proceedings supplementary to execution or execution proceedings after judgment to collect the amount of the judgment, is, under this section quoted, a part of the prosecution of the action for the collection of delinquent taxes. We are not unmindful of the fact that the action was brought in the name of the State of Nevada, under Section 43, Chapter 344, Statutes of 1953. However, the county, even more than the State, is the real party in interest.

Upon the proprietary and business functions of the Board, it would therefore be proper for the Board to enter a resolution to the effect that no further proceedings are to be conducted by counsel (either the District Attorney or another attorney entrusted with duties surrounding the tax liability, judgment, etc.) looking to the collection of the balance of the judgment in said action,

for a period of one year, or until the further order of the Board of County Commissioners. This order or resolution of the Board of County Commissioners would follow the payment of the \$34,000.

That is, to state the matter briefly, we take the position and it is the opinion of this department, that the Board of County Commissioners of Lander County, under the power to control the prosecution or defense of lawsuits in which the county is a party, and in furtherance of its administrative and proprietary function, may enter such a resolution of record as to its deliberations and determinations.

We conclude that the Board of County Commissioners of Lander County may accept the \$34,000 and may enter a resolution that no further action be taken by the District Attorney or other counsel for the county, in collection of the balance of the judgment, for a period of one year from the date of the payment.

We feel, and recommend to the Board of County Commissioners, that to protect the record, the legal representative of the Board in this matter should, at the time of the payment of \$34,000 as contemplated, file of record in the District Court action in which the judgment was obtained, a partial satisfaction of judgment which should reflect the following:

- (a) The amount apportioned and credited to interest—this at the rate of seven (7%) percent per annum from the date of the judgment to the date of the payment.
- (b) The amount credited to reduction of the principal judgment sum—this the remainder of the payment.
- (c) The unpaid portion of the judgment. The statutory interest then accrues on this sum from the date of partial satisfaction of judgment.

Such a determination of this matter is in no way a reduction of the tax indebtedness, or penalties and interest thereon. A comparison of this determination to other taxpayers within the county or state cannot be made, for this local tax picture is unique.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-121. Motor Vehicle Registration—Transferee or buyer of new motor vehicle from dealer or manufacturer must pay personal property tax pro rata on a monthly basis from date of registration by dealer or manufacturer to end of year in which car is purchased.

CARSON CITY, October 17, 1955.

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

MY DEAR MR. ALLEN: You have requested of this office an official opinion interpreting Chapter 289 of the 1955 Statutes of Nevada, and the provisions therein which conflict with those of Chapter 218 of the 1949 Statutes, as carried forward in Chapter 216 of the 1953 Statutes.

Specifically you are interested in the clause appearing in the 1949 and 1953 Acts which reads as follows: "Any law of the State of Nevada to the contrary notwithstanding, a new or used

motor vehicle being registered for the first time shall be taxed pro rata on a monthly basis, upon the amount of time remaining in the year.” This is an amendment to Section 11 of the Motor Vehicle Registration Act.

OPINION

In view of the fact that the 1955 Legislature did not amend Section 11 of the Motor Vehicle Registration Act, it is to be concluded that the provisions therein continue.

Section 1 of Chapter 289 of the 1955 Statutes provides in part, “* * * Except as provided in Section 16.1 vehicles ordinarily used by the dealer or manufacturer in the conduct of his business as work, personal transportation or service vehicles must be registered the same as any other like vehicle as provided in Section 6 of this act; * * *.”

Section 16.1. Registration of Vehicles Used by Franchised New Vehicle Dealers.

1. Any manufacturer of or dealer in vehicles in this state qualified to receive a dealer’s license and general distinguishing number or symbol under the provisions of section 16 of this act shall be entitled to register new vehicles of the make for which he is a licensed and franchised dealer in his name upon the payment of only the registration and licensing fee as provided in this act without being subject to the payment of personal property taxes; but not more than five vehicles may be so registered.

2. Vehicles so registered shall be subject to the payment of personal property taxes at the time of their transfer to another owner.

3. The transferee of the vehicle shall be required to pay the personal property taxes before he is entitled to a transfer of the registration and title in his name. Such transferee shall evidence the payment of the personal property taxes by submitting proper proof of such payment to the franchised new vehicle dealer prior to the dealer’s transfer of registration and title to the transferee, and the dealer shall attach such proof of payment to the application for transfer made to the department.

4. The county assessor shall accept payment of the personal property taxes tendered by a transferee upon proof to his satisfaction that the specific vehicle is being purchased from a franchised new vehicle dealer and he shall issue a receipt or other evidence of such payment.

5. Nothing contained in this section shall be construed to apply to work or service vehicles nor to prevent the transferee from placing the personal property taxes involved on the real property roll, and the assessor shall give proper evidence to the dealer of the fact of such placement.

It appears that the date of the first registration is the prevailing factor, in view of Section 11 of the Act. While the manufacturer or dealer in vehicles is excused from paying the personal property tax on five new vehicles, he is required to register and license such cars. However, under Section 16.1 the buyer or transferee of one of these new vehicles is required to pay the personal property taxes thereon, at the time of transfer. The question arises, “What shall he pay in the way of personal property taxes on such a car?”

It is our view of the law that he shall pay the pro rata tax on a monthly basis for the time remaining in the year from the time the car is registered by the manufacturer or dealer to the end

of the year in which the purchase is made. For example, if the car is registered on March 1 by the dealer or manufacturer, and is sold in September, the transferee manufacturer, and is sold in September, the transferee must pay a personal property tax based upon 10/12 of the yearly fee.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-122. Taxation—For the fiscal year 1955-1956 the tax rate for state purposes is 42 cents per 100 of valuation in accordance with Chapter 444, 1955 Statutes.

CARSON CITY, October 26, 1955.

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

DEAR SIR: We are in receipt of your letter dated October 21, 1955, relative to the state tax rate for the 1955-1956 fiscal year.

The following statement is quoted from your letter:

I have checked with several County Assessors in the State and have been advised that they are collecting personal property tax (primarily automobile tax) for the 1955-1956 fiscal year on the basis of the previous year's rate of \$0.69, apparently relying on Section 6636, N.C.L. 1929. When the Assessor turns this tax money over to the County Treasurers the Treasurer is faced with a conflict as regards the apportionment of said money, specifically that amount of money represented by the difference between \$0.69 and \$0.42 or \$0.27.

Section 6636, N.C.L. 1929, provides as follows:

It is hereby made a specific duty of all county assessors, at the time of assessing personal property, to collect the entire amount of tax on such personal property, unless the owner thereof shall be the owner of real estate, situate within his county, sufficient, in the judgment of the county assessor, to amply secure the payment of the entire tax on both such real estate and personal property should a lien attach thereto by reason of such taxes becoming delinquent; provided, should such assessment be made at any time between the first day of January and the date on which the tax is levied by the board of county commissioners for any year, such collection shall be made by the assessor on the regular tax levy for the preceding year. The county assessor shall immediately turn into the county treasurer the full amount of any such collection. The county treasurer shall apportion the tax as other taxes are apportioned; provided, if the levy for the then current year shall be less than for the preceding year, no refund shall be made to any party in interest.

Section 2, Chapter 444, 1955 Statutes, provides as follows:

For the fiscal year commencing July 1, 1955, an ad valorem tax of 42 cents on each \$100 of taxable property is hereby levied and directed to be collected for state purposes upon all taxable property in the state, including net proceeds of mines and mining claims, except such property as is by law exempt from taxation, which shall be apportioned by the state controller among the various funds of the state as

follows: Contingent university fund, 1 cent; consolidated bond interest and redemption fund, 1 cent; general fund, 40 cents.

Your questions are quoted from your letter as follows:

1. Should the County Assessors collect taxes on the basis of \$0.42 for state purposes on personal property for the 1955-1956 fiscal year pursuant to Chapter 444, Nevada Session Laws?
2. Should the County Assessors collect taxes on the basis of \$0.69 for state purposes on personal property for the 1955-1956 fiscal year pursuant to Section 6636, N.C.L. 1929, or upon other authority?
3. If the \$0.69 rate is used by the Assessors, should the entire proceeds from the tax on personal property be apportioned by the County Treasurer to the State for state purposes? If not, is the county entitled to any part of the proceeds derived from the application of the \$0.69 rate? If the county is entitled to a portion of the funds derived from the application of the \$0.69 rate to what county fund or funds should it be apportioned?

OPINION

The answer to question No. 1 is in the affirmative. The answer to question No. 2 is in the negative. In answer to question No. 3, we are of the opinion that the entire proceeds of the \$0.69 rate should not be apportioned to the State for state purposes. Nor is the county legally entitled to any part of the proceeds from the \$0.69 rate.

Section 6636, N.C.L. 1929, provided a tax rate whereby collections of personal property taxes can be made currently. That is to say, the section provides that the previous year's rate shall be used during the period prior to the fixing of a new rate and its levy by the County Commissioners.

Chapter 444, 1955 Statutes, provides that for the fiscal year commencing July 1, 1955, the tax rate for state purposes shall be \$0.42.

Under Section 6636, N.C.L. 1929, the only reason for using the previous year's tax rate is because a new one has not been set. If, therefore, a new rate has been set there is no reason to resort to the rate set for the previous year. Exactly this situation has occurred. Under Chapter 44 the rate for state purposes for the fiscal year 1955-1956 has been set and there could be no reason to have resorted to the previous year's rate. Moreover, with nothing more than the effective dates of the two Acts, Chapter 444, 1955 Statutes supersedes Section 6636, N.C.L. 1929. By the mandatory requirements of Chapter 444 a \$0.42 tax rate is to be levied.

The collection of taxes on personal property for the fiscal year 1955-1956 commenced in June of 1955 at the time the current motor vehicle registration started. Chapter 444, 1955 Statutes became effective March 29, 1955. Thus the rate of \$0.42 for state purposes should have been levied and collected beginning in June 1955. It is our understanding that in some cases the rate for the previous year, \$0.69 was collected. We are of the opinion that there was no authority to make such a collection. The fact that the collection of the extra \$0.27 per \$100 of valuation was made ostensibly for state purposes in no way provides the authority to apportion the proceeds to the State. There is no authority for the apportionment to any of the taxing entities of the money improperly collected. We are of the opinion that the proceeds from the collection of the extra 27 cents should be refunded to the taxpayer or placed to his credit.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-123. Las Vegas Valley Water District—District, under powers granted by Chapter 167, Statutes of 1947, as amended, has power to install water meters in city of Las Vegas, notwithstanding Section 6112 of Public Service Commission Act, Chapter 109, Statutes of 1919, as amended.

CARSON CITY, October 26, 1955.

MR. THOMAS A. CAMPBELL, *President, Las Vegas Valley Water District, Las Vegas, Nevada*.

MY DEAR MR. CAMPBELL: You have requested of this office an official opinion as to whether the Las Vegas Valley Water District is legally empowered to install water meters within that portion of the district embraced within the boundaries of Las Vegas, Nevada.

You state in your letter that the plan of the District to meter water in the Las Vegas area arises as the result of the necessity to conserve the supply of water, to eliminate its waste, and to bring about an equalization of charges.

OPINION

When bonds were sold in April of 1954 to provide funds for the assumption of Las Vegas water production and distribution facilities and for the purpose of supplementing the dwindling underground supply of water with water from Lake Mead, the District stated that in their belief a flat rate for water results in uncontrollable waste of that commodity and that in view of the fact that substantial quantities could be saved by the installation of water meters, it was their intention to install meters if within the law.

This office in an opinion dated February 7, 1955, which dealt with the jurisdiction of the Public Service Commission over property not acquired by the Las Vegas Valley Water District, set forth the reasons for the Act creating the District, and as that portion of the opinion is relevant to a decision in the present matter, we repeat it:

The rapid growth in population in the Las Vegas area made it apparent as early as 1940 that something would have to be done to implement the water supply of the Las Vegas Valley. The depletion of artesian water and a startling drop in the artesian water levels indicated that a new and increased source of water would have to be found to meet the growing demand.

It was natural that the emergency should be met with an appropriation of the waters of Lake Mead. This, of course, meant the construction of lines and pumping stations at a great cost, only a part of which could be met by selling legally authorized bonds of the District. The legislature wisely foresaw that the District would have to have a great latitude in the administration of the water system and in the establishment of rates which would enable the system to survive.

The Act of 1947 as amended in 1949 and 1951, is so far-reaching as to create an autonomy insofar as the Las Vegas Valley Water District is concerned, and insofar as its powers with regard to water are concerned. All cities within the District, and all boards and commissions, including the Public Service Commission, have

powers subordinate to those of the District, once the District has acquired works or property in accordance with law.

The State Engineer has stated, after careful examination of the Southern Nevada area, that water meters are greatly to be desired as a conservation measure in view of the low water-level table in the Las Vegas Valley.

The legal question that must be answered before an opinion may be given is this: Is the prohibition against public utilities installing, operating or using water meters in any city or town containing more than 7,500 inhabitants (Chapter 258, 1955 Statutes, amending Section 6112, N.C.L. 1931-1941 Supp.) applicable to the status and powers of the Las Vegas Valley Water District?

As heretofore stated, the Legislature in creating the Las Vegas Valley Water District gave to it the broadest conceivable powers. The reason for this must be apparent to the most casual observer. Here in Southern Nevada is an arid area which cannot depend upon rain or snow for water. The subterranean reaches of the earth which lie beneath the Las Vegas Valley have treasured water from unknown sources. The water level has in the past 10 years diminished so as to forewarn of a severe shortage in the future, and therefore the Legislature created the District so as to enable it to bring water from Lake Mead into the Valley and to cooperate with other Nevada agencies "for the purpose of conserving said waters for beneficial use within said district."

That the Legislature did not intend to curtail the broad discretionary powers of the District is evidenced by the clear and unambiguous language therein contained to this effect:

SEC. 19 This act shall in itself constitute complete authority for the doing of the things herein authorized to be done. The provisions of no other law, either general or local, except as provided in this act, shall apply to doing of the things herein authorized to be done, and no board, agency, bureau or official, other than the governing body of the district [and the public service commission of the State of Nevada], shall have any authority or jurisdiction over the doing of any of the acts herein authorized to be done * * *.

The 1951 Legislature struck from Section 19 the phrase "and the public service commission of the State of Nevada," as bracketed out in the preceding paragraph, a strong indication that the District was not to be subject to any of the laws or regulations pertaining to public utilities as found in the Act creating and setting forth the duties of the Public Service Commission (Sections 6100-6167, N.C.L. 1929, as amended).

This view is further fortified by the fact that the District is given exclusive power under Section 16d of the Act to establish water rates and charges, a power usually reserved to the Public Service Commission. This section reads in part, "The board shall from time to time establish reasonable rates and charges * * * and no board or commission other than the governing body of the district shall have authority to fix or supervise the making of such rates and charges."

It is our view that the metering provision of the Public Service Commission Act is not applicable to the District. Section 6112 of the Public Service Commission Act refers specifically to the regulation of "public utilities" as defined in that Act. The rule of statutory construction is well established that the State, its subdivisions, agencies, counties, cities and districts are not bound by general words in a statute which would operate to limit the sovereign rights of the State or its agencies, or to injuriously affect the capacity of the State or its agencies or subdivisions to

perform their functions, unless the intent so to bind clearly appears. (3 Sutherland Statutory Construction, 1943, 3 Ed., Sec. 6301.) The rule is well stated in 82 Corp. Jur., Sec. 554:

The government, whether federal or state, and its agencies are not ordinarily to be considered within the purview of a statute, however general and comprehensive the language or act may be, unless intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. This general doctrine applies, or applies with special force, to statutes by which prerogatives, rights, titles, or interests of the government would be divested or diminished.

In the case of the Sierra Pacific Power Company v. City of Reno, 33 Fed. Supp. 878, the court sustained Section 6112 of the Public Service Commission Act, but the court noted that the utility had not contended that its water supply was inadequate or endangered by lack of meters. The court noted that the utility's source of water since most of the water taken from the Truckee River returned to it either by sewage channels or by seepage. It is significant that the court made its order denying the utility's right to injunction without prejudice to any rights which might in the future arise by reason of changed conditions.

Perhaps nowhere in reported cases is there a more clear and explicit explanation of the need for water meters under certain circumstances than is contained in the opinion of Justice Ellison in the case of Mallon v. Water Commissioners, 128 S. W. 764:

It is a matter of common knowledge that where water is supplied without limit, at a stated price, many consumers waste it. The knowledge that the quantity used will not affect the price begets indifference and encourages negligence. Nothing affords a better check on this fault of a large part of the human family than self interest. So, therefore, the installation of devices through which it may be known what quantity of water a person uses, and whereby he may be required to pay in proportion to the quantity, are considered to be reasonable regulations. The good effect of such regulation is double; it leads to the payment by each person for the quantity he consumes, and it protects the general supply.

While this office is hesitant in issuing an opinion which must necessarily meet with some public resistance, a practical view ought to be taken of all the conditions surrounding the situation, and the rights of the few sacrificed to the welfare of the many where such opinion is legally justified.

To rule in view of the statutes that the Las Vegas Valley Water District is prohibited from installing water meters would amount to destruction rather than a protection of the rights and benefits of future users.

It is, therefore, the opinion of this office that Section 6112 of the Public Service Commission Act, as amended, is not applicable to the Las Vegas Valley Water District and that said District, under the broad powers of the Act creating it, can install water meters in the city of Las Vegas.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-124. Dental Examiners, State Board of—Dental laboratory not authorized to produce artificial teeth (except for use out of State) in absence of a written prescription issued by a duly licensed dentist.

CARSON CITY, November 4, 1955.

NEVADA STATE BOARD OF DENTAL EXAMINERS, DR. ROSS WHITEHEAD, *Secretary, Suite No. 232, Masonic Annex, 40 West First Street, Reno, Nevada.*

DEAR DR. WHITEHEAD: We are in receipt of your letter of November 2, 1955, requesting an opinion of this department. You have called attention to a portion of Section 2(a), of Chapter 152, Statutes of 1951, page 212.

We here quote the entire Section 2(a), with the part that we have italicized, representing the portion that you have called to our attention. Section 2(a) of the Act reads as follows:

“Practice of Dentistry.” Any person shall be deemed to be practicing dentistry who uses words or any letters or title in connection with his or her name which in any way represents him or her as engaged in the practice of dentistry, or any branch thereof, or who advertises or permits to be advertised by any media that he can or will attempt to perform dental operations of any kind, or who shall diagnose, profess to diagnose, or treat or profess to treat any of the diseases or lesions of the oral cavity, teeth, gums or the maxillary bones, or shall extract teeth, or shall correct malpositions of the teeth or jaws, or shall take impressions or shall supply artificial teeth as substitutes for natural teeth, or shall place in the mouth and adjust such substitutes, or do any practice included in the curricula of recognized dental colleges, or administer or prescribe such remedies, medicinal or otherwise, as shall be needed in the treatment of dental or oral diseases, or shall use an X-ray for dental treatment or dental diagnostic purposes; provided, however, that nothing in this section shall prevent a qualified dental assistant or X-ray technician from making radiograms or X-ray exposures, for diagnostic purposes only, and nothing in this section shall prohibit the performance of mechanical work, on inanimate objects only, by any person employed in or operating a dental laboratory upon the written prescription of a licensed dentist, nor prevent students from performing dental operations, under the supervision of competent instructors within a dental school or college or dental department of a university or college recognized by the Nevada state board of dental examiners, nor shall it prevent a licensed dentist from another state or country from appearing as a clinician for demonstrating certain methods of technical procedures before a dental society or organization, convention, or dental college.

You have propounded three questions to be answered, as follows:

- (1) Is a written prescription required in every case by the terms of the foregoing provision?
- (2) Can any person employed in or operating a dental laboratory perform mechanical work on inanimate objects directly for patients without a written prescription of a licensed dentist?
- (3) If such work is performed without the written prescription of a licensed dentist, is the person employed in or operating a dental laboratory, presumed to be practicing dentistry?

OPINION

The Act of 1951, which we have cited, we find is the present law regulating the practice of dentistry in Nevada, except that Section 4 of the Act of 1951, has been amended by Chapter 257, Statutes of 1953, page 363. The amendment is in no way pertinent to the matter here to be considered.

Clearly this Section 2(a) defines the "Practice of Dentistry." The latter provisions in the paragraph contain the exceptions, and among other things it is provided that "nothing in this section shall prohibit the performance of mechanical work, on inanimate objects only, by any person employed in or operating a dental laboratory *upon the written prescription of a licensed dentist.*" (Italics supplied.)

The effect of this provision then is to set up the exception, i.e., it is to state that a certain operation which appears to be and normally would be considered the "practice of dentistry," shall not be prohibited when done by a person not licensed to practice dentistry if such work is done "upon the written prescription of a licensed dentist."

This construction that we have given to the pertinent portion of the Act is strengthened by, but in no way or manner dependent upon another portion of the paragraph that we have quoted. Among other things included and defined as the "practice of dentistry" are the following: (Any person who) "shall take impressions or shall supply artificial teeth as substitutes for natural teeth, or shall place in the mouth and adjust such substitutes, * * *." We feel that if anyone works in the operation of a laboratory performing mechanical work on inanimate objects, "directly for patients," as you have stated in your question No. 2, that he must of necessity "take impressions" or "supply artificial teeth as substitutes for natural teeth." These acts of course fall directly within the definition of the "practice of dentistry."

Section 3 of the Act provides for penalty of illegal practice of dentistry, and reads as follows:

Penalty. Any person who shall engage in the illegal practice of dentistry in this state as in this act defined, or who practices or offers to practice dental hygiene in this state without a certificate, or who, having such certificate, practices dental hygiene in a manner or place not permitted by the provisions of this act, shall be guilty of a misdemeanor.

Conceivably a dental technician or industry could be set up in Nevada for the making of dental plates to be used by patients who do not reside within the State. As to such operation, if and when it exists, it could not under the present law be regarded as the "practice of dentistry," when work would be done without a written prescription of a licensed dentist of Nevada and licensed under the Act. With this single exception, however, we are of the opinion that your question No. 1 must be answered in the affirmative. For the reasons given, with the possibility of the exception noted, your question No. 2 is answered in the negative. Under the definition that we have quoted as to what constitutes the practice of dentistry, we are of the opinion that with the sole exception noted, namely, the production of work and artificial teeth within Nevada for use out of the State and by persons who do not reside within the State at the time of such production, the manufacture or production in Nevada of the normal products of a dental laboratory, without the written prescription of a dentist duly licensed in Nevada, would constitute the practice of dentistry, on the part of the person employed in or operating such dental laboratory.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General.*
By: D. W. PRIEST, *Deputy Attorney General.*

**OPINION NO. 1955-125. Public Officers—Employment Security Department—
Authority of public officers to enter into contracts in behalf of State, must be clear
and express or reasonably inferrible from powers expressly given.**

CARSON CITY, November 14, 1955.

HONORABLE HARRY A. DEPAOLI, *Executive Director, Employment Security Department, P. O.
Box 602, Carson City, Nevada.*

DEAR MR. DEPAOLI: We have your letter of November 1, 1955, propounding certain questions which require an opinion of this department.

You state that your department is considering having an office building constructed in Reno to facilitate the operations of your department located in that area; that the Federal Bureau of Employment Security has suggested that private capital be obtained to construct a building in a suitable location in Reno and in accordance with your requirements and specifications. You also advise that the Bureau of Employment Security whose function it is to authorize grants for the administrative expenses of your department by congressional appropriations looks with favor upon the providing of funds to be used in lieu of rent to acquire title to office space or buildings, wherever required.

You also advise that the site, advantageously located in Reno, when added to the cost of construction of a suitable building in Reno would require an investment of about one-quarter million dollars and that the agreed purchase price plus interest would be amortized over a period of either 10 or 20 years.

Upon this statement of facts and projected plans you propound three questions, as follows:

QUESTIONS

1. Is there any legal prohibition that would prevent our Department from entering into a rental purchase agreement whereby title of the real estate would pass to the State of Nevada upon completion of the terms of the rental purchase agreement?
2. Is there any legal prohibition preventing the State of Nevada from accepting title to such real estate, if a contract of this nature was entered into between the parties with the capital to buy the real estate and construct the building, and the Employment Security Department of the State of Nevada.
3. Who should execute on behalf of the State,
 - a. The rental purchase agreement?
 - b. The acceptance of title to the property?

OPINION

The Act creating the Employment Security Department is Chapter 129, Statutes of 1937, page 262 (2825.02-2825.22, N.C.L. 1931-1941 Supp.). We find that the Act has been amended in each subsequent session of the Legislature. See Statutes of 1939, Chapter 109, page 115; 1941,

185,412; 1943, 175, 239; 1945, 187, 299; 1947, 112, 413; 1949, 134, 257; 1951, 176, 253; 1953, 362, 677; 1955, 382, 698.

In our reflection upon this series of questions we have considered the question of what other agencies, bureaus or commissions have been faced with a similar question and the manner in which it has been resolved. We know of one commission only in which it carries on its functions in an office building in which title is vested in the Commission. We refer, of course, to the Nevada Industrial Commission. Although this example perhaps casts little light upon the questions here presented, a glance at this comparable situation we feel is of some value.

The Nevada Industrial Commission was created by an Act of the Legislature of 1913, Chapter 111, page 137. Ten years later the Commission was authorized to purchase the present facility, i.e., building. See: Chapter 177, Statutes of 1923, page 315. It therefore appears that we have no precedent in this State upon this precise question, namely, the power of a State Commission to purchase or contract for the construction of and purchase of an office facility suitable to its functional needs, in the absence of express statutory authority. We must therefore rely upon general law and the rules of statutory construction. From the foregoing it is clear that express power to build or purchase suitable office facilities in Reno or elsewhere could be, by legislative Act, delegated to the Executive Director of the Employment Security Department, which it at present has not done.

We next explore the question of authority and powers of public officers. We quote from Section 102 (Officers) 67 C.J.S., page 365, as follows:

The powers and authority of public officers are usually fixed and determined by law. Subject to such limitations as may be imposed by the constitution, the legislature with power to create an office may prescribe and limit its powers and may from time to time increase or diminish them. * * *.

Public officers have only such power and authority as are clearly conferred by law or necessarily implied from the powers granted.

On page 366 of the same work we find:

The acts of public officers are binding only when they act within the scope of their authority. While officers are presumed to have acted within their authority, statutes delegating powers to public officers must be strictly construed.

Page 368 of the same work we find:

In addition to powers expressly conferred on him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom.

On the other hand, no powers will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred and imposed, * * *.

Upon the question of contracts, page 370, same work, we find the following:

A public officer can make only such contracts or agreements as are expressly or impliedly authorized, and persons contracting with him must take notice of the extent of his authority.

In *State v. Erie Railroad Company*, 42 A.(2d) 759, the railroad company paid upon delinquent taxes upon which interest and penalty was also due at the time of payment. The company requested that the payment be applied to the payment of principal. This was done, upon concurrence of State Comptroller, Treasurer and Attorney General, although not authorized by statute. Held that the State was not estopped to deny the authority under which its officers acted. Held that the money paid must first be applied to the payment of the interest and penalties, and balance to reduction of the principal indebtedness.

Under the statutes there is no question but that the authority to enter into a contract similar to that proposed in your question No. 1 has not been conferred by the Legislature upon anyone, expressly or by necessary implication, and that the authority to enter into such a contract does not exist.

The above answer has equal force and applicability to question No. 2.

As to question No. 3, we feel that a legislative Act could clearly spell out the procedure to be followed and that such a legislative Act would remove the danger of the Executive Director being criticized or perhaps charged with malfeasance in office under the provisions of Section 4860, N.C.L. of 1929.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-126. Banks, Superintendent of—"Domestic Lender" as used in Chapter 228, Statutes of 1955, may include foreign lending corporation, duly qualified to "do business" in Nevada. Opinion No. 102, of September 12, 1955, modified.

CARSON CITY, November 21, 1955.

MCNAMEE AND MCNAMEE, ESQS., *Attorneys at Law, P. O. Box 472, Las Vegas, Nevada*.
Attention: Mr. Leo A. McNamee.

DEAR MR. MCNAMEE: We have your letter of November 9, 1955, calling attention to our Opinion No. 102 of September 12, 1955, defining "Domestic Lender" as used in Chapter 228 Statutes of 1955, page 361.

In that opinion we stated:

The "object in contemplation" here is lending of money and providing of credit upon a state wide basis. "Domestic" as here used is therefore construed to mean those entities of business of Nevada residence. This definition and limitation excludes those foreign corporations that are qualified legally to do business within the State.

Your letter in which you have advanced persuasive argument and cited authorities is to ask this office to review the opinion with reference to the exclusion of foreign corporations duly qualified to "do business" in Nevada. As we understand your position the remainder of the opinion is not objectionable, nor are you in disagreement with it.

QUESTION

The question is therefore presented, does the term “Domestic Lender” as used in Chapter 228, Statutes of 1955, page 361, include, a corporation duly organized under the laws of a foreign jurisdiction, to make, discount, purchase, assign or participate in loans, and duly qualified currently to “do business” in the State of Nevada?

OPINION

We are of the opinion that the question must be answered in the affirmative, and to this extent the former Opinion No. 102 is in error and must be modified.

A full understanding of this situation and of the purpose of the statute requires a review of what has gone before as appertaining thereto.

On August 2, 1954, the Attorney General’s Office released Opinion No. 343, which held that “A foreign corporation which transacts a substantial part of its ordinary business in a continuous manner, and not as a casual transaction, is doing business in Nevada.” From this conclusion it was concluded that a foreign corporation so operating in Nevada would be required to qualify to do business under the provisions of Chapter 228, Statutes of 1949; and would be required to obtain a license from the Superintendent of Banks, as a condition precedent to engaging in such business of lending money, as provided in Section 747.46, N.C.L. 1929, 1931-1941 Supp.; and in the absence of so qualifying to do business in Nevada would be disqualified to commence, maintain or defend an action at law, as provided in subdivision 3 of Section 1843, N.C.L. 1929; and that in the absence of so qualifying that a banking corporation would be disqualified to serve as executor, administrator, guardian of infants or estates, etc., as provided in Chapter 63, Statutes of 1943.

As we stated in Opinion No. 50 of April 26, 1955, the statute in question of 1955, is a result of the said Opinion No. 343. In that opinion, to quote from the syllabus, we held:

That foreign corporations of finance in conjunction with domestic lender:

1. Not required to file Articles.
2. Not required to publish or advise assessors of last year’s business.
3. Not required to incorporate as banks or trust companies.
4. Not permitted to serve as executors, administrators, etc.
5. Not required to obtain license from Superintendent of Banks.
6. Permitted to institute and defend suits.
7. Must file list of officers and directors and pay fee as a condition precedent.
8. Must file list of officers and directors on or before June 30 thereafter and annually thereafter and pay statutory fee.

As heretofore stated, our Opinion No. 102, defining “Domestic Lender” was released on September 12, 1955. In effect that opinion makes Nevada residence of the “Domestic” lending institution or entity one of the requirements for qualification, and in those cases in which the lending entity is corporate the opinion has stated that, or in effect that, a corporate entity of another state, duly qualified as such where formed, after qualifying in the manner required by

law to “do business” in Nevada, does not and cannot qualify as a “Domestic Lender” under the provisions of Chapter 228, Statutes of 1955. In this latter conclusion of Opinion No. 102, *supra*, we feel that we were in error.

We have formerly set out the essential portions of the statute in the said Opinion No. 50, to which reference is hereby made. We therefore do not copy it again at this time.

We said in Opinion No. 102:

We do not find from the Act that the Legislature has contemplated that in any eventuality a liability to the State attach upon the “domestic lender” by reason of the acts of commission or omission of the foreign corporation or association.

In spite of this conclusion we distinguished between the rights and privileges of a “domestic corporation” and a foreign corporation qualified to do business in Nevada. We felt that the term “domestic lender” as used in Section 1(1) was a term of specific designation. In this respect we now feel that the conclusion was correct. We felt that the term “domestic lender” being specific, was intended to distinguish a domestic corporation or other lender of Nevada residence from a lender legally qualified to do business in Nevada, but foreign by incorporation. In this respect we now feel that we were in error, and that another construction more in keeping with the purpose of the Act must be adopted.

It will be observed that two lenders are contemplated by the Act, viz: (1) the one that makes the loan originally taking the proper security therefor, and (2) the one that takes the “loan by purchase or assignment,” or by participation with a “domestic lender.” The “domestic lender” is therefore numbered 1 above, and the lender who takes the loan, numbered 2, above. The latter is usually a distant corporation of one of the larger cities of the country, and the distinction that we now understand the Legislature to have intended becomes logical, sensible and in keeping with the spirit of the Act.

We are inclined to the belief that no violence can come from this construction and that the construction formerly adopted has carried a negative impact upon the economy of the State and upon certain building then in progress, by reason of the fact that summarily the opinion had cut off the finance that the domestic lender had believed to be available to him. This we regret. Then, only the one construction appeared. Now the other construction has been advanced and appears more logical.

We are strengthened in this conclusion by the general law of corporations. We find that when a corporation duly incorporated under the laws of a state which constitutes its legal domicile, regularly acquiring therein certain corporate powers, thereafter duly qualifies to do business in another state, in the absence of some of those powers and functions being forbidden by the law of the state in which it has qualified, it carries with it into the state in which it has qualified all of the powers which it could lawfully exercise in the state of domicile. See 23 Am. Jur., Section 385, page 392; 18 A.L.R. 131; 126 A.L.R. 1503. In this respect a domestic and domesticated corporation are indistinguishable and a general statute authorizing a foreign corporation to enter a state and “do business” therein which makes no distinction between the powers of the domestic corporation and the foreign corporation so authorized, in legal effect grants to the latter the powers of the former. We quote from 14a C.J. (Corporations) Article 3928, at page 1218, as follows: “Upon compliance with such statutes (authorizing a foreign corporation to enter a state and do business therein) the foreign corporation may transact business with the state as if under a franchise from the state, and ordinarily in the same manner as if it were a domestic corporation.” We quote further from Section 3929: “A foreign corporation will not be recognized as a corporation, or its acts upheld in the exercise of comity, when to do so would be contrary to local

laws or policy or prejudicial to local interests, and the rule is generally expressed with this limitation.” See also, *Commonwealth Acceptance Corporation v. Jordan* (Cal.), 246 P. 796.

A foreign corporation with powers to make loans upon real property in the state of incorporation, which duly qualifies to do business in Nevada, then, carries those powers within this State upon qualifying, there being nothing in the local law to infer a limitation of this power. After having made such loans and to this point there can be no doubt about the power of such corporation, may it lawfully assign or otherwise participate in such loans as provided in Chapter 228, Statutes of 1955, with a foreign corporation or insurance association not generally qualified to do business in the State of Nevada. We conclude that it may, so long as the foreign corporation or insurance association has duly complied with the provisions of Chapter 228, Statutes of 1955.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-127. University of Nevada—Agricultural Extension Department—Motor Vehicles—Motor vehicles paid for from Agricultural Extension Fund of a county become the property of that department. Chapter 94, Stats. 1947 Attorney General’s Opinion No. 712. December 28, 1948.

CARSON CITY, November 22, 1955.

HONORABLE MINARD W. STOUT, *President, University of Nevada, Reno, Nevada*.

DEAR DR. STOUT: We have your letter of November 8, 1955, requesting an opinion of this department, which we quote in part as follows:

Chapter 94 of the 1947 Statutes of Nevada provides for county cooperation in financing county extension work in Nevada.

Dean John Bertrand, of our College of Agriculture, has requested clarification of the status of cars purchased from county funds for use in county extension work. Are these cars the property of the University of Nevada or county?

We find that by Section 2 of Chapter 94, Statutes of 1947, it is provided that a special fund be set up in the county treasury of each county participating under the Act to be known as the “Agricultural Extension Fund.” In Section 8 of the Act it is provided for the return to the County Agricultural Extension Funds of moneys remaining in the State Treasury on December 31, 1947, as the same may have previously stood to the credit of the respective county funds. It therefore appears that the cars in question are not procured by the expenditure of the general funds of the county, but are procured by the expenditure from the Agricultural Extension Fund of the several participating counties. This fact we think justifies a rephrasing of the question as follows:

QUESTION

When cars are purchased from the Agricultural Extension Fund of a county, for use in county extension work, do such cars so purchased become the property of the University of Nevada or of the Agricultural Extension Department of that county?

OPINION

Section 2 of Chapter 94, Statutes of 1947, provides for preparation and submitting of a budget by the Director of Agricultural Extension to Boards of County Commissioners, appertaining to the subject matter of this chapter, adoption by the County Commissioners, the levy of a tax for the support of the County Agricultural Fund, the manner in which such fund shall be expended, record keeping with reference to such funds, segregated by counties by the Comptroller of the University of Nevada, contributions by the State to such county funds, and other pertinent matter as to the cooperative contributions from local, state and national governments. All of this would give some basis for the belief that cars so purchased should vest, in title, in the University of Nevada.

However, Section 7 of the Act is much more direct and specific in provisions and we feel clearly and specifically answers the question here presented. The Section 7, hereinabove referred to, reads as follows:

SEC. 7 All supplies, materials, equipment, property, or land acquired for the use of county agricultural extension offices under the provisions of that act of the legislature known as "An act to provide for cooperative agricultural and home economics extension work in the several counties in accordance with the Smith-Lever act of Congress, approved May 8, 1914; providing for the organization of county farm bureaus; for county and state cooperation in support of such work; making an annual appropriation therefor, levying a tax and for other purposes," approved April 1, 1919, as amended, *shall remain the property of the county extension offices* set up under the provisions of this act; and provided particularly that any and all contracts for the purchase of equipment or property, or land of any type or description made thereunder shall remain in full force and effect until the completion of such contract. (Italics supplied.)

It is therefore the opinion of this department that when cars are purchased and paid for from the Agricultural Extension Fund of a county for use in county extension work, that the title to the cars so purchased vests in the Agricultural Extension Department of the county that purchased same. We find the wording of the statute, namely, "county extension offices" somewhat awkward, as regards the taking of title to a motor vehicle and feel that "Agricultural Extension Department.....County" would meet the intent of the provisions of the statute fully and would better describe a legal entity for purposes of taking title to a motor vehicle.

In no event would ownership of such cars vest in the county, for the county is a distinct legal entity from the Agricultural Extension Department of the county and the manner of obtaining and disposing of funds of each differs from the other. This opinion is in conformity with Opinion No. 712 issued by this department on December 28, 1948.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-128. Public Schools—Subsistence not allowable for high school pupils residing in abolished or disorganized school districts who attend schools in adjoining county, district, or state, unless such pupils attend school in which county school board of county in which pupil resides have contract allowing subsistence.

CARSON CITY, November 23, 1955.

HONORABLE GLENN A. DUNCAN, *Superintendent of Public Instruction, Carson City, Nevada.*

MY DEAR MR. DUNCAN: You have submitted to this office a request for an opinion interpreting the School Code as it applies to certain facts which we shall set down here. In view of the fact that the Honorable Peter Breen, District Attorney of Esmeralda County, has submitted the same question, we shall deal with the matter in one opinion.

To take the matters presented in their logical sequence we shall restate each problem, discuss the applicable law, and then answer the specific questions posed.

You set forth the first problem as follows:

Case No. 1.

Statement of facts: One high school student whose parents reside at Dyer (Esmeralda County), Nevada, is attending the Hawthorne High School (Mineral County). This student is presently living with a relative in Mina (Mineral County) and rides the school bus which is furnished to that community by Hawthorne which is a distance of 90 miles from Dyer. The parents of this child object to sending him to the Tonopah (Nye County) High School, 68 miles from Dyer, with which the Esmeralda County High School Board has a contract and pays tuition for all high school students residing in Esmeralda County. The high school at Hawthorne has not been charging either tuition or travel for this child.

Your question with regard to this problem is "is it possible under existing law to pay subsistence to the parents of this child?"

First let us consider the law under which most of the Esmeralda students of high school grade are securing their education. Chapter 90 of the 1951 Statutes of Nevada provides as follows:

Discontinuance of County or District High Schools. Whenever it shall appear feasible and practicable that any Nevada high school be discontinued because of small enrollment of pupils or because better educational facilities may be provided the students thereof at other nearby high school, the governing board of the former may enter into a written agreement with the governing board of the latter high school in the same or any adjoining county in this state for the education of all the students of such high school so to be discontinued in such other nearby high school in the same or in an adjoining county in this state, if and when such written agreement is approved by the boards of county commissioners of the county or counties in which such contracting high schools are situated and by the superintendent of public instruction of this state.

Any such agreement shall be for the period of one (1) year only, but subject to renewal from year to year at the option of the school boards affected. The agreement shall recite the annual per capita amount to be paid to the school receiving the high school students by the school from which they come, and shall specify the time for such payments. Such agreement shall further indicate definite arrangements for the transportation of the high school pupils to and from the high school to which they are so transferred, and for the payment of the expenses of such transportation; provided, that in any county in this state wherein a county or district high school has been discontinued or has become dormant, and the governing board thereof has entered into an agreement with the governing board of a comparable school in an adjoining county for the education of all the students of such high school so discontinued or dormant and such agreement has been renewed

from year to year, as provided in this section, such agreement may provide, in lieu of the transportation of such students from the county where such high school has been discontinued or has become dormant to the high school of the adjoining county, that the reasonable cost of the board, lodging and subsistence of such students at the place where such school is held shall be paid by the governing board of the said discontinued or dormant high school.

It is apparent from reading and studying this law that where a child of high school age resides at a point in Esmeralda County so far removed from the town in which high school facilities have been provided by contract, as to make it burdensome and impracticable to travel to and from such town each school day, that the reasonable cost of board, lodging and subsistence of such students at the place where school is held may be paid in lieu of transportation.

The Board of Education in Esmeralda County has entered into an agreement, pursuant to this law, with the Board of Education of Nye County to educate pupils of high school grade at Tonopah, Nevada, and pursuant to that agreement, pupils residing in Esmeralda County at a point so far removed from Tonopah as to make daily transportation impracticable could receive in lieu of such transportation, their board, lodging and subsistence. This benefit would be available to the student whose home is in Dyer in Esmeralda County.

Under Section 132 of Chapter 306 of the 1953 Statutes, the following amendment to the School Code appears:

Whenever resident students of high school grade of a county outside an established district or county high school territory cannot be served by a district or county high school in the county, the board of county commissioners upon recommendation of the deputy superintendent of public instruction in that educational supervision district may contract with a nearby high school in another county or district of another state to educate the aforesaid students at reasonable costs per student tuition, the total amount per year of which may be charged to the "County Aid to District High School Fund" of the county by the board of county commissioners.

It can be determined here that the type of contract cited is to be entered into by the Deputy Superintendent of Public Instruction at his or her discretion, and that only the cost of tuition is involved. Tuition is defined as the charge or payment for instruction. There is no provision for transportation or subsistence allowances.

The only other applicable law is Section 163 1/2 of Chapter 306 of the 1953 Statutes which is as follows:

In any county in this state wherein there is situate unorganized school district territory and it is determined by the deputy state superintendent of schools of that county that it is impracticable and uneconomical to establish a school district or districts in such unorganized territory, and that there are children of school age residing therein entitled to receive the educational facilities of the nearest school, whether it be in the same county or an adjoining county or an adjoining state, the deputy superintendent may certify such facts to the board of county commissioners of the county containing such unorganized territory and therein petition such board to include in its county budget sufficient funds to pay the costs of transportation of such children to the nearest accessible school, and such tuition fees as will reimburse the school district wherein the students are attending for its per pupil costs based on its own per pupil cost.

The board of county commissioners to whom such petition is presented may budget such funds and authorize such transportation costs and fees as may be necessary to carry out the purposes of this section.

Here again we find provision only for transportation and tuition. If the parents of the child in Dyer, Nevada, wish to take advantage of the contract entered into between Esmeralda and Nye Counties, they may do so, but failing so to do, they cannot be heard to complain at a denial of the county of Esmeralda or the State of Nevada to pay subsistence for their child's attendance at the school in Hawthorne. It is also to be remembered that Dyer is only 68 miles from Tonopah where schooling for the child has been contracted for, while Hawthorne, in Mineral County, is 90 miles distant from the child's home.

Your second problem arises as a result of the following facts:

Case No. 2.

Statement of facts: Another high school student whose parents likewise reside in Dyer (Esmeralda County) is presently attending high school at China Lake, California. This town is 192 miles from Dyer. There is another high school at Bishop, California, which is 70 miles from Dyer. Again, the parents object to sending their child to Tonopah and she is living with relatives at China Lake. Again, according to these parents, the California school is not charging any tuition.

Your question is as follows:

Can the Esmeralda County High School board legally pay subsistence to the parents in question?

The same answer as to the preceding question is applicable. Here again, if we read Section 163 1/2 of Chapter 306 of the 1953 Statutes, the Board of County Commissioners of Esmeralda County, if petitioned so to do by a Deputy Superintendent of Public Instruction, may budget sufficient funds to defray the cost of transportation of Dyer pupils to the nearest accessible school. But in this case the nearest accessible school is Tonopah which is 68 miles from Dyer, and the school, under the contract hereinbefore mentioned, is available to such pupil. The school at China Lake, California, is not even the nearest accessible school in California; China Lake is 192 miles from Dyer. The high school at Bishop is, according to your statement, 70 miles from Dyer. But under all the circumstances it is clear that the only point at which subsistence can be paid is at Tonopah.

OPINION

It is therefore the opinion of this office that the answer to both question No. 1 and question No. 2 must be in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-129. Public Employees Retirement Act—Public Employees Retirement Board has right to make administrative determination as to persons entitled to come within the purview of the Act.

CARSON CITY, November 23, 1955.

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

MY DEAR MR. BUCK: You have requested an opinion from this office which is posed by the following question:

Is it within the authority and discretion of the Retirement Board, and consistent with the applicable statute, for the Board to grant or deny service credit under Chapter 407 based upon the official records of the agencies concerned as to whether service was in "administrative" or "project" capacity?

In order to answer your question it is necessary to analyze Chapter 407 of the 1955 Statutes of Nevada, and for that reason we here set forth the provisions of the Act:

SECTION 1. The above-entitled act, being chapter 181, Statutes of Nevada 1947, at page 623, is hereby amended by adding thereto a new section designated section 2.5, which shall immediately follow section 2 and shall read as follows:

Section 2.5. Service in the State of Nevada in the agencies formerly known as the Nevada emergency relief administration, the Civil Work Administration, the Federal Emergency Relief Administration, the Works Progress Administration and the Public Works Administration shall be considered as service accreditable toward retirement under the provisions of this act. Employees of any or all of the agencies specified in this section, who have remained in an administrative capacity in full-time employment, without any break in service, shall be considered to qualify for retirement credit under the provisions of this act. In order to determine the qualifications of such employees, the board may require documentary evidence, or affidavits sworn to by two responsible persons having direct knowledge of such employees' service.

SEC. 2. This act shall become effective upon passage and approval.

It would appear from your letter that the General Services Administration, Federal Records Center, St. Louis, Missouri, is the repository for official federal records of the agencies listed in Chapter 407 of the 1955 Statutes, and that certification of employment service received from the records center distinguish between "administrative" service and "project" service.

The difficulty lies in determining how far the Legislature intended to go in bringing within the purview of the public employees retirement benefits those who had theretofore been determined to be ineligible.

The word "administrative" is defined as "pertaining to administration" and "administration" is defined as "the act of administering." To administer is to have the charge or direction of, to manage. There can be little doubt that the "administrative" service which you refer to in your letter was composed of those men and women who had executive charge of the listed agency programs. But the serious question that enters our mind is whether the Legislature intended to shut out from the benefits of the Act those persons who, while they might be classified as in the "project" service, yet had charge of important phases of the agency programs.

However, the administration of the system has been placed in the hands of the Public Employees Retirement Board. As such administrators they must necessarily make determinations as to those entitled to the benefits under the applicable Act with its amendments. This office

feels, however, that such a determination does not bar a person who believes himself entitled to come under the Act from taking appropriate court action to determine judicially his status.

OPINION

It is the opinion of this office that it is within the discretion and authority of the Public Employees Retirement Board to grant or deny service credit based upon their interpretation of the records from the General Services Administration and Chapter 407 of the 1955 Statutes of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-130. Motor Vehicles—Taxation—Mandatory that registration of motor vehicle be made in county of registrant's residence; violation a misdemeanor.

CARSON CITY, November 29, 1955.

HONORABLE E. R. MILLER, JR., *District Attorney, White Pine County, Ely, Nevada*.

DEAR MR. MILLER: This office is in receipt of your letter dated October 27, 1955, relative to the registration of motor vehicles in counties other than in the county within which the registrant resides. The considerable delay in answering your query has been occasioned by the press of work upon this office.

You state that there are a number of persons registering their vehicles in other counties for the purpose of obtaining a lower tax rate.

We quote your questions from your letter as follows:

Under the present state of the law, if a resident of County X registers his car in County H and not being the owner of real estate and improvements in either county, pays the personal property tax forthwith at a lower rate than in his home county, is the car legally registered?

If not, and there has been a violation of the law, of the subsection above quoted, is the hypothetical motorist subject to arrest for operating a motor vehicle without proper registration?

OPINION

We are of the opinion that vehicles so registered are not legally registered. Moreover, whether or not the person is subject to arrest for operating a motor vehicle without proper registration, he is subject to arrest for having registered the vehicle in the county other than that in which he resides.

This office is in complete accord with your opinion that Section 6 of the Motor Vehicle Registration Law (Section 4435.05, N.C.L. 1943-1949 Supp.) provides in mandatory language that the application for registration shall be made in the county of the applicant's residence.

Section 36 of the same Act (Section 4435.35, N.C.L. 1931-1941 Supp.) provides that a violation of any provision of the Act shall constitute a misdemeanor.

See also Section 24 (subparagraph numbered “fifth”) of the same Act (Section 4435.23, N.C.L. 1931-1941 Supp.).

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-131. Nevada State Prison—State Planning Board—Money allocated by the Legislature for the construction of three separate and distinct structures at the Nevada State Prison cannot be diverted to the construction of only one of such structures.

CARSON CITY, December 1, 1955.

MR. GEORGE BISSELL, *Engineer Manager, State Planning Board, Carson City, Nevada*.

MY DEAR MR. BISSELL: In a letter dated November 25, 1955, you ask in effect the following question: May the funds made available by Chapter 434 of the 1955 Statutes, for the construction of three separate and distinct structures at the Nevada State Prison, be allocated to only one of these projects?

STATEMENT

With regard to the use of funds arising as a result of Chapter 434 of the 1955 Statutes, it is clear from reading the title of said Act that the Legislature intended that moneys raised through the issuance of bonds should be expended to provide for the construction, furnishings and equipment of a women’s cell block, a security cell block, and personnel quarters at the Nevada State Prison, and for the purchase of equipment in connection with such construction.

I have no way of knowing the amount that Mr. Bernard requested from the Legislature, but whatever the amount he requested it for the purpose of securing all three components set forth in the Act. The Legislature evidently thought that all these could be built for \$120,000. To allow your Board, the Prison Commissioners and the Warden to now determine that a maximum security cell block should be built and that the women’s cell block and personnel quarters should be eliminated would be to circumvent the legislative intent clearly expressed in Chapter 434 of the 1955 Statutes.

As to the portion of the funds that can be allotted to each project that is a matter to be determined by your Board, provided all three are built, and consistent with the theory of cost and facilities presented to the Legislature through its appropriate committee.

OPINION

It is the opinion of this office that funds allocated by the Legislature, through a bond issue, for the construction of a women’s cell block, a security cell block, and personnel quarters at the Nevada State Prison, cannot be diverted to the construction of only one of these components.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-132. State Planning Board, University of Nevada—Chapter 404, 1955 Statutes, authorizes construction of new building to replace existing Agricultural Extension Building on University of Nevada Campus at Reno.

CARSON CITY, December 5, 1955.

STATE PLANNING BOARD, *State Office Building, Carson City, Nevada.*
Attention: Mr. M. George Bissell, Engineer Manager.

GENTLEMEN: This office is in receipt of your letter dated December 1, 1955, relative to the construction, reconstruction or remodeling of the Agricultural Extension Building on the University Campus in Reno, and requesting an opinion on the following facts and question:

STATEMENT OF FACTS

Chapter 404, 1955 Statutes, authorized the expenditure of public funds in the amount of \$470,000 for the purpose of construction, reconstruction, remodeling, furnishings and equipment of the Agricultural Extension and Hatch buildings on the University Campus. The discretion as to what proportions of expenditures are to be made on each building being lodged in the State Planning Board, a determination as to the amount to be expended in connection with the Agricultural Extension Building has been heretofore made by that agency. It was first contemplated by the State Planning Board that the existing Agricultural Extension Building would be remodeled and new construction added thereto. Efforts were started to that end, but it soon became apparent from the adverse reports of the engineers employed that it would be economically impracticable to use the existing building for this purpose; that to alter the old building to the point of meeting even the minimum building code requirements would entail more expenditure than the results would justify. With this knowledge it was thereafter determined that the existing building should be razed and a new building placed on the same site at a cost not to exceed the amount heretofore determined as the amount to be spent on the Agricultural Extension Building. In this connection the following question has arisen:

QUESTION

Does the authority exist to raze the existing Agricultural Extension Building and to construct a new building on the same site?

OPINION

This office is of the opinion that the authority does exist to demolish the existing Agricultural Extension Building and to construct a new building on the same site.

The precise determination to be made in this matter is the intention of the Legislature to be derived from the construction of Chapter 404, 1955 Statutes.

Section 1 of the Act provides, in part, as follows:

Provision is hereby made for the construction, reconstruction, remodeling, furnishings and equipment of the agricultural extension and Hatch buildings, and additional wings thereof, on the campus of the University of Nevada, at Reno.

Section 4 of that Act provides as follows:

None of the funds in the agricultural extension and Hatch buildings construction fund shall be used for any purpose or purposes other than to construct, reconstruct, remodel, equip and furnish such buildings and wings added thereto.

The title of the Act declares, in part, as follows:

An Act providing for the remodeling and addition of wings to the agricultural extension and Hatch buildings at the University of Nevada; * * *.

It is to be noted that the terminology used in the body of the Act is “construct, reconstruct, remodel” or “construction, reconstruction, remodeling” of these buildings.

The word remodel is defined by Webster to mean “to model anew; to reconstruct.” The word construct is defined as meaning “to build.” According to Webster the words “erect,” “fabricate,” “originate” are synonyms of the word construct.

The cases variously define these words as they are used in context with other wording. Board of Com’rs. of Guadalupe County v. State (N.M.) 94 P. 2d 515, construes the word remodeling as including repairing and ranges from repairing to such alteration as would constitute a new structure, but also draws a distinction between remodeling and building or erecting, and that in common parlance these words are quite distinct in meaning one from the other. The case also states that in the common understanding of the people the phrase, to build a house, means the erection or construction of a new house and not the repair or remodeling of an old one. The Supreme Court of Nevada in State ex rel. King v. Lothrop, 55 Nev. 405, 36 P. 2d 355, drew a sharp distinction between the meaning of the words remodel and build.

We see, therefore, that the word remodeling connotes the reconstruction of some existing thing practically anew. However, the Act under question also uses the word “construct.” This word is defined by the cases and dictionaries as meaning to “erect” or “build.” Thus the significance of the phrase “to construct a building” is to start from the ground and erect a structure.

By the choice of wording in the Act it appears, therefore, that the intent was to give considerable leeway as regards the replacement of the Agricultural Extension Building with something different. Had the Legislature intended only a repair operation or a remodeling operation it could have as readily said so. It did, however, express itself beyond this for the purpose of permitting a flexibility of operation should the occasion require it.

While the title to an Act may be used for the purpose of resolving ambiguities in the body of an Act, it is nevertheless not a part of the Act and is not to be used to alter an intention clearly expressed in the Act. (Authority—Sutherland Statutory Construction, Section 4802). While the title to the Act in question refers only to remodeling, the body of the Act clearly indicates that something more was intended in the event the Planning Board determined that something more than remodeling was necessary.

This office is therefore of the opinion that as a matter of statutory construction the demolition of the old building and the construction of a new building to replace it is authorized by the Act.

Moreover, if this question resolves itself to a question of a strict or liberal interpretation of the statutory authority, we are of the opinion that all of the circumstances involved demand a liberal interpretation. In light of the fact that a new and better building can be constructed for the same price than that which would result from a remodeling of the old building, and in light of the wording used in the statute, it would, in the opinion of this office, be a sacrifice of substance to form to resolve the interpretation strictly and contend that whatever the result the old building must be remodeled.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: WILLIAM N. DUNSEATH, *Chief Deputy Attorney General*.

OPINION NO. 1955-133. State Purchasing Act, Statutes 1951, P. 564—Director must favor in-state suppliers, all other things remaining equal. Director must purchase from out-of-State suppliers, specification, quality and service, as well as time of delivery being equal, upon lower price offering. Purpose of the Act is economy.

CARSON CITY, December 5, 1955.

HONORABLE CHARLES H. RUSSELL, *Governor, State of Nevada, Executive Chambers, State Capitol Building, Carson City, Nevada.*

DEAR GOVERNOR RUSSELL: By conference held in the Governor's office on November 25, 1955, at which the following were present, the Governor, the Executive Assistant to the Governor, the Director of State Purchasing Department, a representative of the Attorney General's office, and seven businessmen of the Reno area, representing seven distinct automobile accessory dealers of that area, it was requested by the Governor that two questions hereinafter set out, be propounded to the Office of the Attorney General, with request for written opinion thereon.

During the conference and by subsequent conversation it has been developed that contracts have been let by the Director, to out-of-state suppliers, for purchase of chattels, despite the fact that in-state suppliers have entered competitive bidding thereon, by reason of a lower price offering by the out-of-state supplier, all other things remaining equal.

The conference also developed the fact that the State Purchasing Department does purchase for all branches of the State Government, and that since the establishment of this department, perhaps less than ten (10%) percent of all purchases have gone to out-of-state suppliers.

The questions propounded to the Office of the Attorney General, by request for written opinion thereon, are as follows:

No. 1. If the materials to be purchased are available by competitive bidding between in-state suppliers, does the director have authority to purchase from out-of-state suppliers?

No. 2. If an invitation bid is opened by the State of Nevada and bids are submitted by in-state suppliers and bids are also submitted by out-of-state suppliers, both types of bids meeting specifications, quality and service being equal, does the director have the authority to accept the out-of-state supplier upon his lower monetary bid?

OPINION

The statute providing for a State Department of Purchasing is Chapter 333, Statutes of 1951, beginning at page 564. Certain amendments appear not material to the questions here presented.

Section 12 of the Act reads as follows:

The director shall have authority to decide whether and to what extent the needs of any using agency shall be supplied from stores of commodities on hand, by transfer of surplus items or stocks from other using agencies, by deliveries under contracts, by open market purchases through the director, or directly by the using agencies; provided, however, he shall have thorough discussions on such matters with authorized representatives of such using agencies. *To the extent practicable, service, price and quality being considered, all purchases shall be made of vendors whose principal places of business are within the state.* (Italics supplied.)

Section 13 of the Act reads as follows:

When office supplies, materials, or any commodity needed by a using agency cannot be purchased from vendors whose principal places of business are within the state, the director, or his authorized representatives shall have the authority to travel to and procure upon open markets.

These parts that we have above quoted, then, when standing alone, mark out a conflict in the provisions of the statute, requiring an application of the rules of statutory construction, by a careful analysis of the entire statute as amended.

On the 14th day of July 1953, the Attorney General's Department released Opinion No. 279, to Honorable Robert A. Allen, Chairman, Public Service Commission. The situation there presented was one in which the Director of the Purchasing Department had accepted a bid for the purchase of an automobile (automobiles) for the use of the State Highway Patrol, which was not as to optional equipment in conformity with the specifications of the Public Service Commission. Among other things the Attorney General wrote the following:

* * * 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. (Italics supplied.)

In the opinion above referred to the Attorney General pointed out that the price was, under the law, not the only factor to be considered, in the exercise of the discretion which the Legislature had vested in the Director of the State Purchasing Department, and closed with the following remark:

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 gave due consideration thereto.

For the purpose of the present questions the opinion referred to we think is significant in that it hold that "competitive bidding" and the "least cost to the state" are items that are the very heart of the Act.

This controversy between "in-state" and "out-of-state" bidders is not new, as shown by a letter of advice, written by the Attorney General's Department, to Kenneth S. Easton, Director of the Nevada State Purchasing Department, on August 13, 1954, upon the following question:

Does the Purchasing Director have the authority to give an in-state bidder a five percent preference over an out-of-state bidder, in the awarding of contracts for supplies and material for the using agencies of the State of Nevada?

The interrogatory was answered in the negative. It was pointed out that the State Director of Purchasing had considerable leeway in awarding a contract. The latter part of Section 12, which we have quoted and italicized, was quoted. Section 13, which we have quoted was there quoted and discussed. Section 23 of the Act was fully quoted. Said section reads as follows:

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 qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the dates of delivery.

The part quoted (Section 23) was then discussed, by way of showing that the section required the letting of the contract to the lowest bidder, only if he was responsible and had the facilities and ability to execute the contract properly. The communication further stated that as between several bidders of equal responsibility no discretion could be exercised. It stated that under Sections 12 and 13 a further discretion was lodged in the Director other than that of selecting the "lowest responsible bidder," and that "To the extent practicable, service, price and quality being considered, all purchases shall be made of vendors whose principal places of business are within the State." In this respect, the letter points out, within the meaning of "practicable" the in-state bidders could be properly granted a preference, within the discretion of the Director. The letter recites further: "Section 13 is an explicit directive to the effect that supplies shall be acquired out of State only when they cannot be acquired in State." This quote makes no mention of price differentials, and perhaps means that so long as price, quality and service are equal, it is a "specific directive." If, as we can hardly believe was intended, in view of the question that was propounded, and the context of the preceding remarks, it was intended that in all cases in which the commodity or merchandise could be purchased in the State, the Director should purchase it there, the price differential being unimportant, then, in such event we could not agree with the conclusion reached, for such would be the singling out of a small portion of a statute and assigning to its literal meaning without reference to the meaning of the statute, construed in all of its parts, each to receive and be assigned a meaning that is in harmony with the meaning of all other parts. In short, it would be to disregard the obvious meaning of the remainder of the statute, and to nullify the statute in its practical application. In short, such is the background of the statutory construction that has previously been placed upon this statute.

A cursory study of the Act will reveal that the principal purpose of the Act was and is economy, i.e., the purchase of the supplies for the State by one central agency, in quantity and with deliberation, at a more favorable price, than would otherwise be the case. (See Sections 10, 12, 18 and 23.)

To construe Section 13, strictly, is to, or would reduce the entire statute to an absurdity, and would be to discard the objection of economy, for it must be kept in mind, and this is of greatest importance, that except for the idea of economy the statute would never have been enacted. See: Sutherland, Statutory Construction, Third Edition, Section 5505.

Section 13 is an ambiguous section in more than one respect. It follows the latter part of Section 12, which we have formerly quoted and which we believe to mean that so long as service, price and quality are equal, between in-state suppliers and out-of-state suppliers, the purchases should be made from the former. Standing alone this latter part of Section 12 would give us no trouble, but to make it confusing the Legislature added for good measure Section 13, which we have formerly quoted. At first blush, one is inclined to conclude that this section has reference to office supplies only, but such construction is exploded by the language employed,

namely, “any commodity needed by a using agency.” When one considers giving special attention to the word “needed” with the belief that the intent may be to convey the necessity of urgency, immediate need, etc., as distinguished from purchases to replenish inventory and not required for immediate use, this construction appears to have some force in view of the provisions of the former paragraph of discretion to order or to take from stocks, etc. But in short we are not certain at all that this construction has any merit or force. Then there is the confusing language of power of the Director to “travel to and procure upon the open markets.” A question here presents itself: If the materials can be purchased from vendors whose principal place of business is within the State, but the Director can purchase the same materials and services without the necessity of “traveling to” and “procuring” upon the “open markets,” and this at a smaller cost, may he do so? These and other questions present themselves with reference to the construction of the very imperfectly selected wording of Section No. 13. We cannot tell what was the exact intent of this Section No. 13, for it appears to be out of harmony with the spirit and purpose of the remainder of the Act.

However, one thing we do know, and that is this: That if question No. 1 is to be answered in the negative, and to the effect that the Director can buy out-of-state only when he is not able to buy in-state, then the entire purpose of the Act is defeated. With such construction and interpretation the item of cost and economy no longer has any force, and even the item of competitive bidding may have little force.

We refuse to place an interpretation upon the statute which will render the same stupid, useless and puerile. We prefer to construe the statute as a whole rather than to single out a part only and by adopting it, destroy the obvious intent of the entire statute. See: “Whole Statute” interpretation, Sutherland Statutory Construction, Section 4703.

We refuse to emasculate the statute and instead we prefer to assign to it a meaning which will permit it to operate and accomplish the objectives which the Legislature appears to have intended. This construction is the least violent, if in error, the damage done will be little and the Legislature with the undisputed power to modify the work it has created may, if it so desires, do so.

Question No. 1. If the materials to be purchased are available by competitive bidding between in-state suppliers, does the Director have authority to purchase from out-of-state suppliers?

Answer: Yes he does have such authority in the exercise of a judicious exercise of his discretion upon a showing that the quality, service or price of the out-of-state supplier is more favorable than that offered by the in-state suppliers.

Question No. 2. If an invitation to bid is opened by the State of Nevada and bids are submitted by in-state suppliers and bids are also submitted by out-of-state suppliers, both types of bids meeting specifications, quality and service being equal, does the Director have the authority to accept the out-of-state supplier upon his lower monetary bid?

Answer: The limitations enumerated in the statute must be clearly understood and kept most uppermost in mind. These limitations include: (a) specifications, (b) quality, (c) dates of delivery, (d) service, which could include repairs, replacements, parts and adjustments, and (e) price.

If, upon balance of all of these variable quantities, the Director finds that exclusive of the price item, the relative position of the out-of-state supplier is equal to or better than the position of the in-state supplier, and the price offering of the out-of-state supplier is lower, then in such case, it would be the duty of the Director to accept the bid offering of the out-of-state supplier,

and complete purchase from such supplier; otherwise he would under the law be required to purchase from an in-state supplier.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.
By: D. W. PRIEST, *Deputy Attorney General*.

OPINION NO. 1955-134. Board of Regents, University of Nevada—The formation of a foundation to solicit and receive funds for the development of instructional, research, administrative and service programs at the University of Nevada, could not constitutionally include the Board of Regents of the University of Nevada.

CARSON CITY, December 6, 1955.

HONORABLE MINARD W. STOUT, *President, University of Nevada, Reno, Nevada*.

DEAR DR. STOUT: You have cited to this department the need for the creation and development of a University of Nevada Foundation for the purpose of soliciting, receiving and administering funds and property for the development of instructional, research, administrative, and service programs at the University of Nevada.

You call our attention to the fact that similar foundations have been established in recent years at the Universities of Alabama, Georgia, Nebraska, North Dakota, Ohio, Purdue, and Wisconsin, and include brochures on foundations from Miami University, Virginia Polytechnic Institute, University of Georgia, and Kansas University.

The plan for this foundation, as submitted to this office, sets up a board of trustees which includes the Board of Regents and the President of the University of Nevada.

The question which immediately presents itself is this: Is a foundation which includes, in addition to the Board of Regents, the President of the University, and other citizens, and the main purpose of which is to solicit, receive and administer funds for the benefit of the University, constitutional?

OPINION

It is necessary to look first at the fact that any board of directors for a foundation at the University of Nevada, which included, but did not limit membership to, the Board of Regents, would have the power to control the use and distribution of moneys and properties received, whether by solicitation or otherwise.

Section 4 of Article XI of the Constitution of Nevada provides: "The legislature shall provide for the establishment of a state university, which shall embrace departments for agriculture, mechanic arts and mining, to be controlled by a board of regents, whose duties shall be prescribed by law." It is to be noted that control is placed in the Board of Regents and no other body.

Section 7 of Article XI of the Constitution provides:

The governor, secretary of state, and superintendent of public instruction shall, for the first four years and until their successors are elected and qualified, constitute a board of regents, to control and manage the affairs of the university and the funds

of the same, under such regulations as may be provided by law. But the legislature shall at its regular session next preceding the expiration of the term of office of said board of regents, provide for the election of a new board of regents, and define their duties.

In the duties prescribed to the Board of Regents by the Legislature, paragraph eighth of Section 7728, N.C.L. 1943-1949 Supp., prevails. It reads: "To control the expenditures of all moneys appropriated for the support and maintenance of the university, and all moneys received from any source whatsoever."

The other provisions which are here applicable as set forth in Section 7728, N.C.L. 1943-1949 Supp., as prescribing duties of the Board of Regents are paragraphs "Thirteenth" and "Fourteenth" thereof. I set them forth herewith for purposes of clarification and discussion.

Thirteenth—To accept and take in the name of the University of Nevada, by grant, gift, devise, or bequest any property for the use of the university, or of any college thereof, or of any professorship, chair or scholarship therein, or for the library, workshops, farms, students' loan fund, or any other purpose appropriate to the university; and such property shall be taken, received, held, managed, invested, and the proceeds thereof used, bestowed, and applied by said regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest; provided, however, nothing in this act shall be deemed to prohibit the State of Nevada from accepting and taking by grant, gift, devise, or bequest any property for the use and benefit of the University of Nevada.

Fourteenth—To sell or lease any property granted, donated, devised, or bequeathed to the university, except property granted to it by the United States of America; and provided, the sale or lease of such property be not prohibited by or inconsistent with the provisions or conditions prescribed by the grant, gift, devise, or bequest thereof; and provided further, that any such sale or lease be approved by the governor. The proceeds and rents from such sale or lease shall be held, managed, invested, used, bestowed, and applied by said regents for the purposes, provisions, and conditions prescribed by the original grant, gift, devise, or bequest of the property so sold or leased.

It can be readily determined by perusing and studying these legislative directives that the Legislature did not contemplate the formation of a foundation which would include the Board of Regents. To incorporate under Section 1853, N.C.L. 1929, as amended, would subject the actions of the foundation, and thus the Board of Regents, to examination on behalf of the State, and would thus in essence curtail powers now enjoyed by the Board. Let us also suppose that the board of trustees of such foundation should be composed of the five members of the Board of Regents, and the President of the University and five citizens. In the absence of several members of the Board of Regents at a meeting of the foundation's board of trustees, a quorum being otherwise present, the control of funds could be determined by others than those designated by constitutional and legislative provisions.

The problem here confronted is somewhat analagous (analogous) to that encountered in *King v. Board of Regents*, 65 Nev. 533. There the question to be determined was whether the Legislature could constitutionally create a board of advisory regents to act in an advisory capacity to the elected Board of Regents. Justice Badt in a very learned and well-written opinion held that it could not, and that if the proposed Act changed, altered or modified the constitutional powers and functions of the Board of Regents, then under the well-settled rule approved in *State v. Douglass*, 33 Nev. 82, the Supreme Court must hold it to be invalid. The unconstitutionality of the instant case is made even stronger by reason of the fact that in the *King* case it was provided

that the appointive Regents should not have a determining vote on any matter properly under the control of the elected Board of Regents, while under the proposed foundation members of the board of trustees would, under certain circumstances, have a controlling vote on matters properly and legally under the control of the elected Regents.

In the brochures submitted to this office it is to be noted that none of the foundations include the Board of Regents. There can, of course, be no objection to the formation of a foundation which does not include the Board of Regents, and whose purpose shall be to solicit and receive gifts of money or property for the University, but once received the uses, purposes and control of such gifts or donations pass to the only board legally empowered to make such determinations, the Board of Regents of the University of Nevada.

It is therefore the opinion of this office that the formation of a foundation to solicit and receive funds for the development of instructional, research, administrative and service programs at the University of Nevada, could not constitutionally include the Board of Regents of the University of Nevada.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-135. Municipal Corporations—Municipal corporations may be created by legislative enactment or by compliance with the provisions of Sections 1100-1212, N.C.L. 1929. Manner prescribed in city charter for filling office of mayor in case of vacancy, for cities created by Legislative Act, is exclusive.

CARSON CITY, December 7, 1955.

HONORABLE MARIO G. RECANZONE, *City Attorney of City of Yerington, Palludan Building, Fallon, Nevada.*

DEAR MR. RECANZONE: We have your letter of November 23, 1955, requesting an official opinion of this department, upon the following factual situation:

The duly elected mayor of the City of Yerington submitted his resignation as mayor to the city council on the 24th day of October 1955, effective immediately. The mayor pro tem then, as provided by the charter of the city, assumed the duties of office of mayor and immediately requested your opinion, as city attorney, in regard to the legal method to proceed as to the manner of filling the office of mayor. You propound the question which we quote:

QUESTION

“Would the city of Yerington, by virtue of the fact it is a charter city, and does not have a provision for replacement of a mayor, be forced to operate with a mayor pro tem and three councilmen until the next city election; or could the city rely on the provisions of the general laws which do provide machinery for the election of a mayor by the council when the mayor has resigned, died or been removed from office?”

OPINION

You have cited us to certain of the statutory law as follows: Chapter 72, Statutes of 1907, page 150, which is the original city charter.

Section 1119.01 Nevada Compiled Laws, 1931-1941 Supp. (This is Chapter 10, Statutes of 1933, p.7.)

A careful study of the Legislative Act incorporating the City of Yerington, and all amendments thereto, convinces us that no provision has been made in the charter or as amended for the filling of the office of mayor when a vacancy in the office occurs, other than the incumbency by the mayor pro tem as provided in Section 7, Statutes of 1907, page 152.

Under Article VIII, Section 8, of the Constitution of the State of Nevada, it is provided:

The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; provided, however, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.

Under Article VIII, Section 1, of the Constitution of the State of Nevada, it is provided:

The legislature shall pass no special act in any way relating to corporate powers except for municipal purposes; but corporations may be formed under general laws, and all such laws may, from time to time, be altered or repealed.

It has been held that the power exists to form municipal corporations both under general laws as well as by Legislative Act. *City of Virginia v. Chollar-Potosi Gold and S. M. Co.*, 2 Nev. 86; and affirmed in *State v. Swift*, 11 Nev. 29, 142.

Under the authority granted by Article VIII, Section 8, the Legislature of 1907, enacted Chapter 125, p. 241, entitled "An Act providing for the incorporation of cities, their classification, the establishment and alteration of their boundaries, the government and disincorporation thereof, and repealing all Act and parts of Acts in conflict therewith." (Sections 1100-1212 N.C.L. 1929.)

It therefore appears that municipal corporations may be created in Nevada, by Legislative Act, or by proceedings had under the Legislative Act of 1907. The former method appears, however, to be the method used almost uniformly.

Under Section 1257 N.C.L. 1943-1949 Supp., provision is made for the amendment to city charters, in either of three manners. This statute appears to be applicable to cities created in either of the manners heretofore mentioned. It appears that there is no other way or manner to amend the charter of a municipality of either classification, other than the manners herein set.

Having thus analyzed the background and the statutes that appear to have some bearing upon the question here presented, we next turn to the statute that you have cited and the question of whether or not it is applicable in the case presented.

The Act of 1907, Chapter 125, page 241 (Sec. 1100-1212 N.C.L. 1929) was amended by Chapter 10, Statutes of 1933, page 7, by adding thereto Section 19 1/2, which section reads as follows:

Any vacancy occurring in the office of mayor by death, resignation, removal or otherwise, shall be filled by the city council at the first regular meeting after such vacancy, when the council shall by a majority vote elect some competent person

who shall hold said office until the election of his successor at the next general city election, and his qualification.

The wording of the section above quoted is adequate to quickly dispose of this problem, but for the fact that it is an amendment to a statute providing for the creation of a municipal corporation in a manner other than by legislative enactment. The City of Yerington having been created by legislative enactment, we are confronted with the question of whether or not the amendment quoted has any application to a city possessing a charter created by legislative enactment.

We are of the opinion that Section 19 1/2 above quoted has application only to that type of city which is created in the manner outlined in Chapter 125, Statutes of 1907, as distinguished from those cities that are incorporated by Legislative Act. We are supported in this belief by study of certain statutes that make specific provision for the eventuality of resignation or death of the mayor, by providing that the mayor pro tempore shall serve until the next regular city election. See: Chapter 83, Statutes of 1951, p. 91. It will be noted that this statute affecting Reno is subsequent in point of time to the said Section 19 1/2 above referred to. True that this problem does not concern the City of Reno, but suppose it did. Suppose there were a vacancy at this time in the office of mayor of Reno, by resignation or death. Thereafter suppose an officer having proper authority raised the contention that the said Section 19 1/2 should control as to filling the vacancy rather than Section 4 of Chapter 82, Statutes of 1951. (This section of the Reno charter is very similar to the corresponding section of the Yerington charter.) A question directed to this department as to which of the two statutes named would be controlling would cause an opinion to issue to the effect that the Statute of 1951 would control. This for the reason that the latter statute is specific and refers only to the City of Reno, while the earlier statute refers to all cities of a certain classification and is therefore general.

By the terms and provisions of this Section 19 1/2 it will be observed that the manner of filling a vacancy is mandatory. It is also an inescapable conclusion that if the provisions of this section are applicable to the City of Yerington now, under the facts given, those provisions would also be applicable to the City of Reno under the facts supposed, or to any other Nevada city of legislative creation, similarly situated. A study of the municipal corporations created by legislative enactment will disclose that there are corresponding and similar sections in each of the Acts, and that the Legislature in creating each of these cities has made specific provision in each case, for the orderly manner of disposing of a problem which may arise, presenting facts, similar to those here presented.

For the reasons given we are of the opinion that Section 19 1/2, Chapter 10, Statutes of 1933, page 7, has no application to the regulation of cities, with charters emanating from a Legislative Act, and the City of Yerington being such a city, this section may not be invoked in the filling of a vacancy in the office of mayor.

The councilmen who had been elected mayor pro tem, before the resignation of the mayor occurred, as provided in Section 7 of Chapter 72, Statutes of 1947, at page 152, is authorized to preside as mayor pro tem, until the office is duly filled as provided by law.

As formerly suggested the charter may be amended by compliance with the provisions of Section 1257, N.C.L. 1943-1949 Supplement.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General.*

By: D. W. PRIEST, *Deputy Attorney General.*

OPINION NO. 1955-136. Sales Tax—Sororities and fraternities are exempt from the sales tax for the furnishing, preparing and serving of food, meals or drinks, under Section 57 of Chapter 397 of the 1955 Statutes of Nevada.

CARSON CITY, December 12, 1955.

MR. NORMAN CLAY, *Administrator, Sales and Use Tax Division, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. CLAY: You have requested of this office the formal opinion as to whether college fraternities and sororities shall properly be considered as social clubs or fraternal organizations as defined in Sections 5(b) and 5(c) of the Sales and Use Tax Act, and thus subject to tax, or a student organization as defined in Section 57 of the Act, and thus exempt from the tax.

Sections 5(b) and 5(c) are as follows:

Section 5. "Sale" means and includes any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"Transfer of possession," "lease," or "rental" includes only transactions found by the commission to be in lieu of a transfer of title, exchange, or barter.

"Sale" includes:

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

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

Section 57 reads as follow:

Section 57. There are exempted from the taxes imposed by this act the gross receipts from the sale of, and the storage, use, or other consumption in this state of, meals and food products for human consumption served by public or private schools, school districts, student organizations, and parent-teacher associations, to the students or teachers of a school.

OPINION

It is the opinion of this office that the Legislature in subjecting social clubs and fraternal organizations to the tax for the furnishing of food, meals or drinks to its members and others, had in mind those organizations in which adults seek voluntary membership, such as lodges, fraternities and sororities for graduate students or people engaged in the everyday pursuits, business and social, which are not directly connected with an institution of learning.

The fraternity and the sorority have become institutions intimately connected with the social life of nearly every college and university. The membership of each is composed of students of varying degrees of financial support, but in the main they are young men and women who depend for a college education upon outside help of one kind or another. The imposition of a sales tax upon the food, meals, or drinks they consume must be passed on in a way of increased dues or an increased amount for board. This we feel is an obligation the Legislature did not

intend for them to meet until after graduation and the assumption of their place in the business world, and such determination is supported by the language contained in Section 57 of the Act.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

**OPINION NO. 1955-137. California-Nevada Interstate Compact Commission—
Commission members not authorized by law to appoint substitute to represent them
at Commission meetings at which they are not able to be present.**

CARSON CITY, December 27, 1955.

HONORABLE HUGH A. SHAMBERGER, *Chairman, Nevada Commission, California-Nevada Compact Commission, State Office Building, Carson City, Nevada.*

DEAR MR. SHAMBERGER: Under date of December 23, 1955, you have requested an opinion of this office with regard to membership on the California-Nevada Interstate Compact Commission, in order that the Commission may be guided in promulgating and establishing rules of procedure for governing meetings of the Commission.

You call attention to the fact that due to illness or previous business engagements some of the seven members of the Commission might have to miss a meeting, and this gives rise to the question you pose to this office, to wit: Would the commissioners, in working up rules of procedures as to meetings, have the authority to provide that a member who finds himself unable to make a particular meeting might appoint someone to represent him at the meeting, with full voting power, and with entitlement to per diem and traveling expenses.

STATEMENT

In order to answer this query intelligently and cogently it is necessary to study the context of the law which creates the California-Nevada Interstate Compact Commission, Chapter 153 of the 1955 Statutes of Nevada, and especially those sections which provide for the appointment of commissioners and for their tenure of office.

Section 3 of the Act reads as follows:

The commission shall consist of eight members: the state engineer, who shall be a nonvoting member, and seven members to be appointed by the governor. In making such appointment the governor shall appoint two members from the Walker Irrigation District; one member from the Carson River water users above Lahontan Reservoir; one member from the Truckee-Carson Irrigation District; one member from the Washoe County Water Conservation District; one member from the Sierra Pacific Power Company; and one member from the Lake Tahoe area in Nevada. Each member so appointed must be an elector and a water user or an employee of a water user within the State of Nevada. The tenure of office of the commissioners appointed by the governor shall be at the pleasure of the governor, who shall have authority to fill vacancies, and their duties shall terminate when an agreement or compact agreed upon by the commission has been submitted to the legislature of the State of Nevada and has been ratified by it, and also submitted to the Congress of the United States and has been ratified by it; but the terms of the commissioners appointed by the governor shall not extend beyond 4 years from the date of their several appointments, unless reappointed by the governor at the end of the term.

Now it must be clear from a careful study of this section that the Legislature intended to place in the hands of the Governor the power to appoint seven members of the Commission. The only restriction upon the appointive power is as to the section or district from which such commissioners are to be appointed. They serve at the pleasure of the Governor or until such time as our Legislature and the Congress of the United States have ratified any compact entered into by the Commission with a commission representing the great State of California relative to the distribution and use of the waters of Lake Tahoe and the Carson and Walker Rivers and their tributaries. To allow members of the Commission to appoint substitutes to replace them at meetings would deprive the Governor of the power delegated to him, and to no one else, by the Legislature.

Section 4 of the Act is as follows:

Members of the commission who are not in the regular employ of the State of Nevada shall receive a per diem of \$15 for time actually spent on the work of the commission, and reimbursement for board, lodging and traveling expenses incurred while away from their respective places of abode at the legal statutory rate, except when a member or members of the commission is employed by the commission to render special, technical or professional services, in which event such member or members shall receive fees and expenses commensurate with the service rendered. Members of the commission who are in the regular employ of the state shall receive no per diem but shall receive reimbursement for board, lodging and traveling expenses incurred while away from their respective places of abode at the legal statutory rate in lieu of other provisions made by law for reimbursement of their expenses as such state employees.

It can here be ascertained that it is the Commission members, duly appointed and acting, and no others that are entitled to per diem, and reimbursement for board, lodging and traveling expenses incurred while away from their respective places of abode.

While the Commission is empowered under Section 6 to employ such personnel as is necessary to properly administer the Act, there is nothing in this section, or elsewhere in the law, which would authorize a commissioner to appoint a substitute to represent him at any meeting. In this regard let me point out that the same situation exists with regard to many boards and commissions insofar as absences from meetings are concerned, and that in such instances the boards operate with a quorum present.

OPINION

It is therefore the opinion of this office that commissioners of the California-Nevada Interstate Compact, as provided for in Chapter 153, 1955 Statutes of Nevada, would not have the authority under law to appoint a substitute to represent them at Commission meetings.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*.

OPINION NO. 1955-138. Nevada Tax Commission—"Special fuel" tax law (Chapter 364, Statutes 1953, page 683) construed. "Fuel" tax law (Chapter 74, Statutes 1935, page 161) as amended, construed. "Fuel" or "Special Fuel" consumed by internal combustion motor, is not taxable unless the equipment is upon a highway legally

“open to the use of the public, for purposes of traffic.” Whether or not a highway is so open to the public presents a mixed question of law and fact.

CARSON CITY, December 29, 1955.

MR. WILLIAM H. SCHMIDT, *Fuels Tax Supervisor, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. SCHMIDT: Under date of December 2, 1955, you have submitted certain information to this office, with inquiry, requesting a written opinion thereon. Earlier upon the same date the undersigned sat with you in conference, with certain contractors and counsel, in the consideration of this question. You have stated the following as conceded facts:

FACTS

A contractor lays and paves streets, also grades property, digs trenches and sewers, etc., in a property subdivision.

The subdivision has been platted and streets designated on the plat and duly filed.

QUESTIONS

1. Have the streets been dedicated as public streets?
2. If the streets have not yet been accepted is the final act of dedication irrelevant under the statute, because they will eventually be and are intended to be, public streets, and therefore are “highways under construction” as defined by statute?

OPINION

A great deal has been written upon this subject by this office, and we should like to set the matter at rest as a helpful guide to your office, but find it very difficult to do because of the many facets to the problem presented.

The questions stated of course are deemed to have their relevancy under the statute as to the applicability of the motor vehicle fuel tax or special fuel tax laws of the State of Nevada. That is, are such fuels so consumed taxable, or must the tax be refunded, when application for refund is made in accordance with the provisions of the statutes?

We briefly review the opinions of the Attorney General’s Department chronologically as follows:

On May 16, 1925, Opinion No. 186, this office ruled that “Under provisions of Section 4, Chapter 180, Statutes of 1923, as amended by Chapter 131, Statutes of 1925, fuel used in a tractor operated wholly in the construction of a state highway, and not operated upon any highway open for traffic and used by the public, is not subject to the tax.”

On May 29, 1936, in Opinion No. 208, this office ruled that “Users of motor vehicle fuel are not entitled to claim refunds of tax on motor vehicle fuel used on highways open to use of the public.”

On January 4, 1945, in Opinion No. 183, this office ruled with reference to the registration of trucks, which has some similarity to the present problem, in regard to the place of the operation, that “Trucks of X company exempt only when used on private roads and within the confines of Boulder Dam Recreational Area.”

On February 23, 1945, in Opinion No. 191, this office ruled that under the provisions of the Motor Vehicle Tax Act of 1935 (Chapter 74, Statutes of 1935, page 161) a tax rebate should be granted if the owners of the motor vehicles in the use of the fuel have used exclusively their own private roads and roads within the confines of the Boulder Dam Recreational Area not open to the use of the public for purposes of surface traffic.

On November 7, 1955, the Nevada Tax Commission directed an inquiry to this department, in regard to fuel tax rebates to contractors engaged in construction work for the Atomic Energy Commission. As regards the question of use by the public (later discussed) it was urged that the real property involved was owned by the A. E. C., and because of the regulations of that agency was not fully "open to the use of the public, for purposes of traffic," but that being publicly owned, as distinguished from property privately owned, the tax should attach upon motor vehicle fuel and special fuel consumed in vehicles or equipment upon the premises, under the appropriate statute. On November 23, 1955, this office ruled that a requirement for the tax to attach was that the "highway" be "open to the use of the public, for purposes of traffic," and that since this was admittedly not the case as regards the use by the public of the A. E. C. premises, the tax could not attach, and should be refunded. Also it was mentioned that if such determination was not equitable to the taxpayers of the State it was within the power of the Legislature to correct the defect.

Such then is the background of the pronouncements of this department, upon this and related subjects, to this date.

Chapter 364, Statutes of 1953, page 683, except for the amendment to two sections, not important to this opinion, contains the law with reference to taxation upon diesel fuel and liquefied petroleum gas.

Section 2(1) provides: "Motor vehicle" shall mean and include every self-propelled vehicle operated upon a highway.

Section 2(3) provides: "Highway" means every way or place of whatever nature *open to the use of the public, for purposes of traffic*, including highways under construction. (Italics supplied.)

Section 3(1) as amended 1955, page 425, provides: A tax is hereby imposed at the rate of 6 cents per gallon on the sale or use of special fuel, provided that the sale or use of special fuel for any purpose *other than to operate or propel a motor vehicle upon the public highways of Nevada shall be exempt from the application of this tax*. (Italics supplied.)

Section 3(2) as amended 1955, page 425, provides: The exemption as provided in this section shall apply only in those cases where the purchasers or the users of special fuel shall establish to the satisfaction of the commission that the special fuel purchased or used was used for purposes other than *to operate or propel a motor vehicle upon the public highways of Nevada*. (Italics supplied.)

The sections heretofore quoted of course have reference only to special fuel, but we understand that the inquiry has reference to special fuel (diesel) and also motor vehicle fuel (gasoline), and it therefore becomes necessary also to make reference to the statutes appertaining to motor vehicle fuel.

Chapter 74, Statutes of 1935, page 161, which has been amended a number of times, but apparently not material to this study, contains the motor vehicle fuel (gasoline) tax law. Section 1(a) provides the following: "'Motor vehicle' shall mean and include every self-propelled motor

vehicle, including tractors, operated on a surface highway.” We call attention to the fact that this definition contains the word “surface,” which does not appear in the definition appertaining to diesel fuel.

Section 1(h) provides the following: “‘Highway’ shall mean every way or place of whatever nature open to the use of the public, for purposes of *surface* traffic, including highways under construction.” (Italics supplied.)

Section 2 provides for a tax on motor vehicle fuel.

Section 5 of the Act (Chapter 170, Statutes 1955, page 176), which makes provision for the rebate of motor vehicle fuel tax paid upon fuel used in a manner other than the propulsion of motor vehicles upon the highways, in part, reads as follows:

Any person who shall export any motor vehicle fuel from this state, or who shall sell any such fuel to the government of the United States for official use of the United States armed forces, or who shall buy and use any such fuel for purposes other than in and for the *propulsion* of motor vehicles, and who shall have paid any tax on such fuel levied or directed to be paid as provided by the act, either directly by the collection of such tax by the vendor from such consumer or indirectly by the adding of the amount of such tax to the price of such fuel, shall be reimbursed and repaid the amount of such tax so paid by him or it, upon presenting to the tax commission an affidavit, accompanied by the original invoices showing such purchase, and shall state the total amount of such fuel so purchased and used by such consumer otherwise than for the propulsion of motor vehicles, as defined in this act, and the manner and the equipment in which claimant has used the same; and as to motor vehicle fuel purchased and exported from this state, the claimant for refund shall execute and furnish to the tax commission certificate of exportation on such form as may be prescribed by the tax commission, and the tax commission upon the presentation of such affidavits and invoices, written statements, tax exemption certificates or exportation certificates, shall cause to be repaid to such claimant from the taxes collected hereunder, an amount equal to the taxes so paid by the claimant; * * *. (Italics supplied.)

The language of the two statutes, the Diesel Fuel Act and the Gasoline Fuel Act, may therefore be distinguished further in this respect: In the former (Diesel Fuel Act) the tax attaches if the fuel is used by the equipment upon a highway “open to the use of the public, for purposes of traffic” to “operate or propel” such vehicle. Whereas, in the latter designated Act (the Gasoline Fuel Tax Act) the tax attaches only if the fuel has been consumed in equipment being “propelled” on a “surface highway.” In this respect the construction appears to be clear, that if the equipment is stationary, upon a highway, “open to the use of the public, for purposes of traffic,” and there consumes diesel fuel, the tax attaches, as to such fuel so used. The tax of course attaches also to such fuel so consumed by moving equipment upon such a highway. On the other hand, if the equipment is stationary upon a surface highway, and while so operating, consumes gasoline, the tax does not attach, for it is then used otherwise than for the “propulsion” of motor vehicles. We realize that certain equipment both moves upon the highway while it operates, and as to such, facts and figures should be collected by the commission and a pro-rating should be allowed.

We believe that the word “surface” of highways, with reference to the Gasoline Tax Act has been used, where it does not appear in the Diesel Tax Act, for the reason that aircraft at times follow highways, as a matter of bearing, but of course do not use the surface of the highway. Such equipment operates exclusively upon gasoline, never diesel oil. The language is therefore used to exclude them from tax liability.

We are in accord with the contention of counsel that the theory of the tax is not for a use of the fuel, but for a use of the highway. It is placed in a manner contemplated to be a pro-rata charge against those that use and therefore in theory consume the highways. In this respect the Legislature has recognized that certain equipment although stationary may by its vibration destroy and consume the highway. Counsel has cited certain cases which bear out this theory, viz: Oswald v. Johnson, 291 P. 579, Des Moines Asphalt Paving Company v. Johnson, 239 N.W. 575, Allen v. Jones, 201 N.W. 575. As to the tax upon gasoline and the fact that the collection is limited to propulsion of motor vehicles "on the highways of this state," we refer to Section 2.2, Statutes of 1955, page 173. Both taxes are therefore exacted on the theory of highway use as "highways" are defined in the specific Acts.

The question numbered 2, that has been propounded, appears to suggest that "dedication" of a street would render it a "highway" within the meaning of the statute. Then the question appears to suggest that if not dedicated that it nevertheless would be classified as a "highway," under the provisions of the statute, to fix the tax liability, by reason of the fact that it is a "highway under construction." We do not find the word "dedication" within the statute.

If the question suggests that fuel of either type, under the provisions of either statute, is subject to tax when the "highway" is not "open to the use of the public, for purposes of traffic," because it is a "highway under construction," and will be eventually open to the use of the public, we are not in accord with such construction. We hold that Section 2(3) of the Special Fuel Tax Act defining "highway," fixes liability for the statutory tax upon the special fuel, when the equipment consuming same is upon a "way or place" that is "open to the use of the public, for purposes of traffic," even including those highways under construction. The statute is clear that the primary test is answered by the question of whether or not the place is "open to the use of the public, for purposes of traffic."

Under the fuel tax statute, Section 1(h) defining "highway," we hold that fuel of the type defined in this statute, to be taxable must be consumed upon a "way or place" which is "open to the use of the public, for purposes of surface traffic."

We refer to Attorney general's Opinion No. 183, of January 4, 1945, in which certain authorities are cited upon the question of what constitutes a "public road." It is clear that if some "courageous" individual prematurely plows through the mud without consent of the owner, upon a spot that will later be open to the public, by public grant, or dedication, he does not thus render it a "highway" within the meaning of the statutes. The use then must be a legal use.

We also quote from 29 C. J. (Highways) page 370.

A public road is a way established and adopted by proper authority for the use of the public, and over which every person has a right to pass, and to use for all purposes of travel or transportation to which it is adapted and devoted. Whether a road is public depends in a measure on the particular facts; thus it must of physical necessity, be so situated and connected as to be accessible to the public; but it does not depend on its length, nor upon the place to which it leads, nor the number of people who use it; it is enough that the public have actual access to the road, whether by a mere neighborhood or settlement road, or by some established public highway. It is immaterial that one person may be most benefited by it.

With reference to question No. 1, stated as follows: "Have the streets been dedicated as public streets? This depends upon compliance not only with statutory law but also city ordinances appertaining to the subject land where located. Also under the theory of prescription, i.e., estoppel to deny the right of the public to use, the public may gain rights to the use of land for

traffic. In a given case it always presents a mixed question of law and fact, and must be accordingly resolved.

We believe that question No. 2 is fully answered. We summarize as follows: The “way or place” must be legally “open to the use of the public, for purposes of traffic.” This also in a given case presents a mixed question of law and fact. Consumption of any motor vehicle fuel or special motor vehicle fuel, in any internal combustion motor, in any other way or time other than that designated, is not taxable.

Respectfully submitted,

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