

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1972

The following opinions have been furnished by this office in response to inquiries submitted by the various state officers and departments, district attorneys and city attorneys.

58 Property Taxation—The principal or dominant use to which real property owned by an [NRS 361.135](#) charitable organization is put determines whether the property is exempt from taxation.

CARSON CITY, February 4, 1972

DENNIS E. EVANS, ESQ., *District Attorney of Churchill County*, 10 West Williams Avenue, Fallon, Nevada 89406

DEAR MR. EVANS:

You have asked for an interpretation of [NRS 361.135](#), which provides for exemption from property taxation of property owned by any lodge of the Elks, Eagles, Masons, Odd Fellows, Knights of Pythias, Knights of Columbus, or other similar charitable organization or society.

A lodge of one of the organizations listed has requested exemption for its real property, which is improved with a combination dance hall, kitchen, dining facility and meeting room. In addition to using the property for its own purposes, the lodge rents the property to other organizations and groups for meetings, parties, dances, etc.

QUESTION

Is the real property of an organization listed in [NRS 361.135](#) exempt from taxation when the property is, on occasion, rented to others?

ANALYSIS

Subsection 1 of [NRS 361.135](#) grants a limited (\$5,000 assessed valuation) exemption to the funds, furniture, paraphernalia, and regalia of any organization or society there listed. Your question, however, requires an interpretation of subsections 2 and 3, which read as follows:

2. The real estate and fixtures of any such organization or society shall be exempt from taxation, but when any such property is used for purposes other than those of such organization or society, and a rent or other valuable consideration is received for its use, the property is used shall be taxed.

3. Where any structure of parcel of land is used partly for the purposes of such organization or society and partly for rental purposes, the area used for rental purposes shall be assessed separately and that portion only shall be taxed.

It can be seen that subsection 2 refers to the situation where the same real estate and fixtures are used by the charitable organization or society and by others, although at different times. This is the context of the situation that has given rise to your request for this opinion. On the other hand, subsection 3 appears to cover the situation where only a portion of the organization's real property is rented to others, the remainder being used for the purposes of the organization.

The effect of each of the three subsections of [NRS 361.135](#) depends upon the use to which the property is put. The courts of many jurisdictions have faced the issue of whether an exemption from property taxation is lost when the property is used both for exempt and nonexempt purposes. The general rule which is followed is that the "dominant use" or "primary use" or "principal use" to which the property is put determines whether the exemption is retained or lost. In other words, if the property is primarily used for exempt purposes it is exempt from taxation, even if it is incidentally used for nonexempt purposes; likewise, if the property is primarily used for nonexempt purposes the exemption is lost, even if it is incidentally used for exempt purposes. *Brockton Knights of Columbus Bldg. Assn. v. Assessors of Brockton*, 72 N.E.2d 406 (Mass. 1947); *People v. Rockford Masonic Temple Bldg. Assn.*, 181 N.E. 428 (Ill. 1932); *Lincoln Woman's Club v. City of Lincoln*, 133 N.W.2d 455 (Nev. (1965); *Sahara Grotto and Styx, Inc. v. State Bd., of Tax Com'rs*, 261 N.E.2d 873 (Ind. 1970); *Oklahoma County v. Queen City Lodge No. 197, I.O.O.F.*, 156 P.2d 340 (Okla. 1945); *Albuquerque Lodge, No. 461, B.P.O.E. v. Tierney*, 42 P.2d 206 (N.M. 1935); *Morning Cheer v. Board of County Com'rs*, 71 A.2d 255 (Md. 1950); *Willamette University v. State Tax Commission*, 422 P.2d 260 (Ore. 1966). There is nothing in [NRS 361.135](#) that would require a rejection of this general rule of law. There is no requirement set forth in the statute that the property be exclusively used for exempt purposes. In fact, the Willamette University case, *supra*, construed a statute requiring that property be "exclusively used" for exempt purposes in order to be entitled to exemption as merely calling for the primary use to be for an exempt purpose.

Thus, where the same property, owned by an [NRS 361.135](#) charitable organization or society, is used at various times for both the organization's purposes and by others for their own purposes, the principal or primary use made of the property determines whether the exemption is retained or lost.

Subsection 3 of the statute provides for separate assessment of the rented portion of such a charitable organization's real property when a portion of the property is used for rental purposes and a portion for the organization's purposes. This separating or splitting of property into taxable and exempt parts is recognized in other jurisdictions. See *St. Paul's Evangelical Lutheran Church v. Board of Tax Appeals*, 182 N.E.2d 330 (Ohio 1955), where a statute provided for such splitting, and *Oklahoma County v. Queen City Lodge No. 197, I.O.O.F.*, *supra*, where splitting was held proper even in the absence of statute. The primary use test, discussed above, must be used to determine whether a portion of the property is being used for rental purposes. If the answer is negative, the whole property would be entitled to exemption. If the answer is affirmative, [NRS 361.135](#), subsection 3 requires the county assessor to separately assess the rented portion and place it on the tax roll, while the rest of the property remains exempt.

CONCLUSIONS

Where real property owned by an [NRS 361.135](#) charitable organization is used at various times by the organization for its own purposes and by others for their own purposes, and rent is received from such others, the principal or dominant use to which the property is put determines whether the property, treated as a whole, is taxable or exempt.

Where the principal use of a portion of realty owned by an [NRS 361.135](#) charitable organization is for the purposes of the organization, while the remainder is rented for other purposes, said remainder should be separately assessed and placed on the

tax roll, whereas the portion used principally for the organizations' purposes remains exempt.

Respectfully submitted,

ROBERT LIST, *Attorney General*

59 Motor Vehicles; Implied Consent Law—Invoking the Implied Consent Law is discretionary with the arresting officer, but this law applies only to intoxicating liquors; Schmerber guidelines still apply to tests for drugs.

CARSON CITY, February 22, 1972

ROY A. WOOFER, ESQ., *Clark County District Attorney*, 200 East Carson Street, Las Vegas, Nevada 89101

Attention: WILLIAM S. SKUPA, *Deputy District Attorney*

GENTLEMEN:

QUESTION

Your office has inquired whether an investigating or arresting police officer may exercise his discretion in invoking the procedures under the Implied Consent Law found in [NRS 484.383](#) and [484.385](#); and also whether the Implied Consent Law applies to both intoxicating liquors and drugs and if not, whether when a test is performed to determine if the driver of a vehicle is under the influence of drugs the results of this test would be admissible as evidence to show whether or not the driver was under the influence of intoxicating liquor.

ANALYSIS

The invoking of the Implied Consent Law is always at the discretion of the arresting or investigating police official since the test may be given only at the direction of a police officer having reasonable grounds to believe that an individual was driving a vehicle while under the influence of intoxicating liquor. Therefore, the decision to invoke the law and administer the test is always based on the judgment and discretion of the police officer.

While the United States Court in the case of *Schmerber v. California*, 384 U.S. 853 (1966) decided that it was not unconstitutional to withdraw blood from an individual in spite of the fact that the individual and his attorney objected to this course of conduct this has merely set the outer limits to which the police may resort to gathering evidence without violating the Constitution.

Subsequent to the *Schmerber* opinion the Nevada Legislature during the 1969 session added the implied consent rules to the traffic laws of this State. The Legislature incorporated the requirement found in the *Schmerber* case into the procedure for administering tests to determine whether an individual is operating a motor vehicle under the influence of alcohol and also added the requirement found in [NRS 484.385](#), subsection 1 that "If a person under arrest refused to submit to a required chemical test as directed by a police officer under [NRS 484.383](#), none shall be given; * * *." This legislation is plain on its face and evidences a desire on the part of our State Legislature that they intended to impose a different standard upon the police officials of this State than that initially delineated by the Supreme Court in *Schmerber*. For this reason any police officer invoking the implied consent section of the traffic law of the State of

Nevada must comply with the various enumerated requirements found in [NRS 484.383](#) and, if upon so doing, the individual to be tested refuses to take a test the test shall not be given. If after the officer has complied with the requirements of Nevada Revised Statutes, the individual refuses to submit to a chemical test for blood alcohol, urine, or breath, the individual is subject to a suspension of his operator's license for a period of 6 months. This occurs upon notification of the Department of Motor Vehicles as outlined in [NRS 484.385](#).

Also the refusal to take a test should not preclude conviction of an individual who apparently is driving a motor vehicle under the influence of alcohol since testimony as to the individual's conduct, ability to walk and speak correctly, his physical appearance, and other evidence indicating inebriation would still be admissible in a court proceeding, as would the fact that the person has refused to submit to a chemical test as provided for in [NRS 484.383](#).

The implied consent sections of Nevada Revised Statutes by their own language apply only to chemical tests to determine intoxication due to the consumption of alcoholic beverages and do not appear to apply to the testing of an individual for operating a motor vehicle under the influence of drugs. Thus, it appears, that if the procedure outlined in Schmerber is adhered to the drug test may continue to be conducted by the standards established in that case. However, if the test for drugs determines that the individual was not under the influence of alcohol this result would not be admissible in a court of law unless the individual had consented to be tested for both drugs and alcohol.

As noted in Schmerber this type of testing is a "search" within the meaning of the Constitution. Thus, if the "search" and testing procedure for drugs meets the judicially determined minimum standards and does not reveal evidence of the abuse tested for the testing results may not be used for another or different purpose such as the implication of the tested subject for driving under the influence of alcohol when the test did not meet the statutorily determined minimum requirements for this type of procedure.

CONCLUSION

The invoking of the Implied Consent Law is at the discretion of the arresting officer; the procedures outlined in [NRS 484.383](#) and [484.385](#) apply, by their own language, only to testing for consumption of intoxicating liquors and therefore the testing procedures outlined in Schmerber may still be followed in testing an individual to determine whether the individual was operating a motor vehicle under the influence of drugs; unless the individual has consented to being tested for both drugs and liquor the results of any test conducted only for the purpose of determining whether the individual was operating a vehicle under the influence of drugs would not be admissible to prove that the individual was operating a vehicle under the influence of liquor.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By ELLIOTT A. SATTLER, *Deputy Attorney General*

60 Discriminatory Employment Practices—A state employee, suffering from discriminatory employment practices, may elect to pursue his grievance either through the administrative remedies provided by his agency or by filing a complaint with the Nevada Commission on Equal Rights of Citizens.

CARSON CITY, February 1971

MR. THOMAS D. BEATTY, *Chairman, Commission on Equal Rights of Citizens*, State Office Building, 215 East Bonanza Road, Las Vegas, Nevada 89101

DEAR MR. BEATTY:

You asked this office for an opinion on the following question:

QUESTION

Where an employee of a state agency or a political subdivision, including employees of educational institutions, alleges discrimination in discharge, compensation, terms, conditions, or privileges of employment, may the commission act prior to and whether or not the complainant has exercised his administrative remedies via grievance committee, employment rules, etc.

ANALYSIS

This problem was treated obliquely by Attorney General's Opinion No. 288, dated December 14, 1965. In that matter the chairman of the State Apprenticeship Council wished to know if the council had exclusive jurisdiction to hear and determine complaints of apprenticeship employment discrimination. The law creating the council gave it the authority to so act.

The Attorney General's Opinion noted that the 1964 federal Civil Rights Act provided that the United States would not act on matters of discrimination if the states passed effective civil rights, legislation. In response to this, Nevada passed a Civil Rights Act in 1965, Chapter 332, 1965 Statutes of Nevada. This provided that an aggrieved person could take his complaint of discrimination either directly to the courts or to the Nevada Commission on Equal Rights of Citizens.

The opinion went on to state that the apprenticeship program was enacted before the Nevada Civil Rights Act and that no specific steps were outlined as to what the State Apprenticeship Council could do to eliminated discrimination.

* * * It is clear that a substantial amount of time would be consumed in the administrative process in the attempt to do so. To hold that the State Council has exclusive jurisdiction to investigate and make a decision in regard to discrimination in apprenticeship programs would be to so disembowel the purpose of the 1965 Civil Rights Act in this area as to eliminate effective state action and invite federal intervention. This was not the intent of the legislature.

We do not say that the State Apprenticeship Council may not act if a complaint is submitted to it. However, such action will not preclude resort by the aggrieved individual to the remedies provided by the 1965 state Civil Rights Law.

* * *

The Attorney General concluded that the remedies were cumulative rather than exclusive.

A cumulative remedy is one created by statute in addition to a remedy which still remains in force. When the statute creating the new remedy does not eliminate, expressly or impliedly, the old remedy, the new one is cumulative and a party may elect between the two. *State of Utah v. Barboglio*, 63 Utah 432, 226 P. 904 (1924); *Bowles v. Neely*, 280 Okla. 556, 115 P. 344 (1911).

This office concludes that a state employee, suffering from discriminatory employment practices, has cumulative remedies. To deny him his choice of remedies, and, instead, to require the Commission on Equal Rights of Citizens to act only after the complainant has exercised his administrative remedies, would be to destroy the effectiveness of the 1965 Nevada Civil Rights Act. For the administrative remedies of state agencies are so time-consuming involving as they do various levels of administrative review and appeal, that some time would pass before the commission

would be entitled to act. The Legislature must be presumed to have intended to enact an effective act. Otherwise, it would “* * * invite federal intervention.”

CONCLUSION

A state employee, suffering from discriminatory employment practices, may elect to pursue his grievance either through the administrative remedies provided by his agency or by filing a complaint with the Nevada Commission on Equal Rights or Citizens, or both. If a complaint is filed with the commission, the commission may act “* * * prior to and whether or not the complainant has exercised his administrative remedies. * * *”

Respectfully submitted,

ROBERT LIST, *Attorney General*

61 The State Aid to the Medically Indigent Program must pay, subject to certain limitations, for the cost of diagnosis, treatment, or care of “categorically” qualified mentally ill indigent persons at specified types of facilities.

CARSON CITY, February 29, 1972

MR. ROGER TROUNDAY, *Director, Department of Health, Welfare, and Rehabilitation,*
308 North Curry Street, Room 205, Carson City, Nevada 89701

DEAR MR. TROUNDAY:

In what type of facility is the cost, or any part thereof, of diagnosis, treatment, or care of mental illness fundable under the State Aid to the Medically Indigent Program (the state plan) pursuant to Title XIX of the Social Security Act?

ANALYSIS

Section 1905(a) of the Social Security Act provides that, for purposes of Title XIX, medical assistance includes payment of part or all of the cost of the following care and services:

- (1) inpatient hospital services (other than services in an institution for * * * mental diseases);
- (2) outpatient hospital services;
* * * * *
- (4)(A) skilled nursing home services (other than services in an institution for * * * mental diseases) for individuals 21 years of age or older; * * *
* * * * *
- (14) inpatient hospital services and skilled nursing home services for individuals 65 years of age or over in an institution for * * * mental diseases;
* * * * *
- (16) intermediate care facility services (other than such services in an institution for * * * mental diseases) for individuals who are determined, in accordance with [the independent professional review requirement of] section 1902(a)(31)(A), to be in need of such care; except that such term [i.e.: medical assistance] does not include—
 - (A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for * * * mental diseases.

It should be noted that Section 1905(a) of the Social Security Act makes its distinction not on the basis of the patient's diagnosis (mental or physical), but on the *type of institution* from which he is receiving treatment.

The federal regulations at 45 C.F.R. § 248.10(d)(2) state federal financial participation is available in payments for medical care and services provided under the state plan to any financially eligible individual who is "categorically" eligible

* * * but excluding any such care or services provided to any individual who is an inmate of a public institution (except as a patient in a medical institution), or who is under age 65 and a patient in an institution for * * * mental diseases.

[NRS 428.270](#) provides state aid to the medically indigent shall be in effect only for an individual who is qualified for one of the categorical aid or child welfare services programs of the Welfare Division as specified in said statute. Categorically qualified individuals over 65 years of age in state mental institutions are expressly included.

The U.S. Department of Health, Education, and Welfare, Social and Rehabilitation Service, August 5, 1970, policy guide to state agencies administering federal medical assistance programs, provides:

a. Inpatient hospital services, which includes psychiatric units in general hospitals, must be available to the mentally ill on the same basis as the State plan makes inpatient hospital services available to other eligible title XIX recipients. States may set administrative controls, such as requiring prior authorization. * * *

b. Outpatient hospital services similarly must be provided to the eligible mentally ill on the same basis as this service is provided to other individuals under the plan. Outpatient hospital services includes outpatient clinics which are a part of institutions for the treatment of mental diseases and which meet the requirements of 45 CFR Section 249.10(b)(2).

c. Physicians' services generally must be available to the mentally ill as they are provided to other eligible recipients. The services of psychiatrists must be included in physicians' services.

Thus, these authorities authorize Title XIX funding under the State Aid to the Medically Indigent Program for the diagnosis, treatment, or care of mental illness only for individuals qualified for Welfare Division categorical aid or child welfare service programs, who may be under the care of a psychiatrist or other physician, and who are:

- (1) Outpatients of either a medical institution or an eligible outpatient clinic which is a part of a mental institution;
- (2) Inpatients in a medical institution, including those in a skilled nursing home (if 21 years of age or older), or in an intermediate care facility; or
- (3) Inpatients over 65 years of age in a state mental institution.

The federally approved and accepted Nevada State Plan for Medical Assistance, which includes the Welfare Division Regulations, at Chapter IV, paragraph B(1), provides:

The following are the type of institutions for mental diseases in which medical assistance is provided in behalf of patients therein who are 65 years of age or older:

- (a) State Mental Hospital.

This authorized federal funding may be subject to administrative controls as indicated above. It is subject to utilization review requirements of Social Security Act § 1901(a)(30); 45 C.F.R. § 250.20; [NRS 428.260](#), subsection 4; and Welfare Division State Plan for Medical Assistance regulation Chapter V, paragraph I.

This federal funding is also subject to the requirement of exhaustion of prior resources. A prior resource is an existing legal responsibility of other parties or entities for the diagnosis, treatment, or care of mental illness as required by Social Security Act § 1902(a)(25)(B); 45 C.F.R. § 250.31; [NRS 428.290](#), subsection 2; and Welfare Division State Plan for Medical Assistance regulation Chapter III, paragraph B(3).

Existing funds or resources legally responsible for the costs of hospitalization of the mentally ill are specified in [NRS Chapter 433](#). [NRS 433.698](#) provides that payment of hospitalization costs of voluntary patients and nonprotesting persons shall be as follows:

No person may be admitted to a hospital pursuant to [NRS 433.665](#) [Voluntary Hospitalization] or 433.669 [Nonprotesting Persons] unless mutually agreeable financial arrangements relating to the costs of hospitalization are made between the hospital and the patient or person requesting his admission.

[NRS 433.6981](#) provides that payment of hospitalization costs prior to commitment shall be as follows:

1. The expenses of hospitalization of:
 - (a) A mentally ill person prior to commitment; or
 - (b) A person who is admitted to a hospital pursuant to this chapter and released without commitment; shall be paid by the county in which such person resides, unless voluntarily paid by such person or on his behalf.
2. The county may recover all or any part of the expenses paid by it, in a civil action against:
 - (a) The person whose expenses were paid;
 - (b) The estate of such person; or
 - (c) A relative made responsible by [NRS 433.699](#), to the extent that financial ability is found in such action to exist.

[NRS 433.699](#) provides that payment of maintenance costs after commitment shall be as follows:

1. When a person is committed to a hospital under one of the various forms of commitment prescribed by law, the parent or parents of a mentally ill persons who is a minor or the husband or wife or adult child of a mentally ill person, if of sufficient ability, and the estate of such mentally ill person, if of sufficient ability, and the estate of such mentally ill person, if such estate is sufficient for the purpose, shall pay the cost of such mentally ill person's maintenance, including treatment and surgical operations, in any hospital in which such person is hospitalized under the provisions of this chapter:
 - (a) To the superintendent, if such person is committed to the Nevada state hospital;
 - (b) To the chief, if such person is committed to the Southern Nevada comprehensive mental health center; or
 - (c) In all other cases, to the hospital rendering the service.

2. If such persons and estates liable for the care, maintenance and support of a committed person neglect or refuse to pay the superintendent, chief or the hospital rendering service, the state is entitled to recover, by appropriate legal action, all sums due plus interest at the rate of 7 percent per annum.

Thus, where commitment proceedings are started against a mentally ill person, [NRS 433.6981](#) requires the county of the patient's residence to pay the hospitalization expenses until a commitment is ordered. The county has a right to recovery against the patient, his estate, and his responsible relatives. This statutory liability of the county is a prior resource to Title XIX funding.

[NRS 433.698](#) and [433.699](#) place the responsibility for the hospitalization expenses after an admission or commitment on the person requesting the patient's admission, the patient himself, his estate, or his enumerated responsible relatives. When these legally responsible individuals become unable to pay, as certified by the committing district court, [NRS 433.500](#) provides the patient shall then be placed on indigent status. And as you know, indigents committed to the care of the Mental Hygiene and Retardation Division are provided or from that division's budget. See Attorney General's Opinions No. 444, dated October 3, 1967, and No. 473, dated December 14, 1967, which are hereby modified to the extent they are now inconsistent with subsequent legislative amendments to the payment of costs of hospitalization section of [NRS Chapter 433](#). This statutory liability of the Mental Hygiene and Retardation Division is a prior resource to Title XIX funding.

CONCLUSION

It is the opinion of this office that the cost of diagnosis, treatment or care of mental illness is fundable under the State Aid to the Medically Indigent Program pursuant to Title XIX of the Social Security Act for the medically indigent person:

1. Who is eligible for one of the categorical aid or child welfare services programs of the Welfare Division; and
2. Who may be under the care of a psychiatrist or other physician and who is:
 - (a) An outpatient of either a medical institution or an eligible outpatient clinic which is part of a mental institution;
 - (b) An inpatient in a medical institution, including a skilled nursing home (if 21 years of age or older) or intermediate care facility; or
 - (c) An inpatient over 65 years of age in a state mental institution.

However, this funding is subject to administrative limitations such as prior authorization, utilization review, and exhaustion of prior resources.

Respectfully submitted,

ROBERT LIST, *Attorney General*

62 Elections—Political Parties—Citizens 17 years of age, who are properly registered voters and who meet other statutory requirements, may fully participate in the precinct meetings and county or state conventions of the political party in which they are registered.

CARSON CITY, March 3, 1972

THE HONORABLE FRANK YOUNG, *Assemblyman, Clark County*, 2113 Barry Way, Las Vegas, Nevada 89106

DEAR MR. YOUNG:

This is in response to your letter of February 24, 1972, in which you ask for an opinion on the following:

QUESTION

Are voters not yet 18, but who will be 18 on or before the next election for which they are registered to vote, eligible to participate in precinct meetings and county or state political party conventions?

ANALYSIS

Under [NRS 293.129](#) added to the election code by the 1971 session of the Legislature, the law in Nevada is now that "Registered voters between the ages of 18 and 21 years of age are entitled to political party participation and membership under [NRS 293.130](#) to [293.170](#), inclusive, in the same manner as other registered voters."

While it appears that on its face this section would preclude electors of the age of 17 from participating in the precinct meetings and county and state party conventions, reading this section in light of the fact that [NRS 293.127](#) provides that the title on elections should be liberally construed so that all electors shall have an opportunity to participate in elections, it is the position of this office, for the reasons outlined in detail below, that an individual age 17 who is properly registered in a political party of his choice may participate in precinct meetings and county and state party conventions.

[NRS 293.129](#) by its own terms includes "registered voters" and this term is defined by [NRS 293.090](#) to be "* * * an elector who has completed procedure prescribed by law for registration as a voter." As elaborated on more fully in Attorney General's Opinion No. 55, dated December 21, 1971, an elector who has completed the prescribed procedure for registration may, under the provisions of [NRS 293.485](#), subsection 2, include a citizen 17 years of age.

Necessarily, under [NRS 293.485](#), subsection 2, there exists a subclassification of properly registered voters who are 17 years of age and will be 18 on or before the next succeeding primary, general, or other election in which they wish to vote. The subclassification of 17-year-olds are still, legally speaking, registered voters under our statutes and as such are entitled to the participation extended by [NRS 293.129](#). This is true providing that the elector who is a registered voter and wishes to attend a precinct meeting or participate in a county or state party convention meets the other requirements elaborated in the election code such as those state in [NRS 293.135](#). This section of the Nevada Revised Statutes conditions participation in a precinct meeting on the fact that the elector is registered in the political party holding the precinct meeting, resides in the precinct, and is entitled to be a delegate in the county convention. To deny an individual properly registered in a political party and residing within the precinct a right to participate in a precinct meeting solely because of his age would appear to be a type of "fencing out" from the political process which the 26th Amendment intended to preclude.

Further, since the number of delegates to the state convention of each party is chosen based on the number of registered voters in that party (as elaborated on in [NRS 293.145](#)) to include 17-year-olds registered in the party in an enumeration to determine the number of delegates which will represent that county at the state convention and then to exclude these same individuals from actual participation in precinct matters would appear to be an unfair and unreasonable method of choosing delegates for the parties' various conventions.

CONCLUSION

Individuals who are not yet 18, but who will be 18 on or before the next succeeding primary, general, or other election in which they wish to vote, who are registered in a political party, and who meet the other statutory requirements for membership and participation in political party activities must be permitted to participate in precinct meetings and county and state party conventions on the same basis as those 18 years of age and older.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By ELLIOTT A. SATTLER, *Deputy Attorney General*

63 Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave from their jobs at full pay in addition to military pay. Attorney General's Opinion No. 63, issued March 9, 1972, is hereby withdrawn.

CARSON CITY, May 2, 1972

THE HONORABLE DONALD R. MELLO, *Member of the Assembly*, 2590 Oppio Street,
Sparks, Nevada 89431

DEAR ASSEMBLYMAN MELLO:

You have requested an opinion of this office on the following questions:

QUESTION NO. 1

Is [NRS 412.078](#) applicable only to members of the Nevada National Guard or is it applicable to all military reserve units?

ANALYSIS

[NRS 412.078](#) by its own language directs the granting of 15 days military leave only to a local government employee "who is an active member of the Nevada National Guard." In face of the explicit limitation, the statute cannot be construed to apply to members of other military reserve units.

The Legislature has extended the benefits of military leave to state employees who are members of all recognized military reserve units, including the Nevada National Guard. [NRS 284.370](#).

One might argue that the Legislature's failure to extend similar military leave benefits to local government employees who are members of other reserve units discriminates between the city employee member of the National Guard and the city employee member of another reserve unit.

The Legislature may constitutionally classify the subjects of legislation provided such classification of persons and things is reasonable for the purpose of the legislation. 16 Am.Jur.2d, Constitutional Law, § 494.

The Nevada National Guard also serves as the state militia and as such is closely affiliated or identified with state programs and objectives. Article XII of the Nevada Constitution requires the Legislature to provide by law "for effectual encouragement" of participation in a volunteer militia. By extending military leave benefits only to local government employee members of the Nevada National Guard, the legislative purpose of encouraging and favoring those who serve in the Nevada National Guard cannot be viewed as an unreasonable or discriminatory classification.

QUESTION NO. 2

Is a city employee attending a summer National Guard training entitled to his full pay as a city employee while so attending in addition to military pay, or is he entitled to only a fraction of his civilian pay reduced by the amount of military pay received?

ANALYSIS

The language in [NRS 412.078](#), which states “* * * without loss of his regular compensation,” is specific that the employee is not to lose his regular compensation; and therefore, the Legislature must have intended that he would not lose any of his regular compensation. In addition, the Legislature must have been aware of the fact that the federal government makes payment to compensate individuals attending military training and if the Legislature had intended an employee to have received only a fraction of his compensation, the Legislature would have specifically made that clear in the statute. Furthermore, both the statutes state that the military absence is not to be deemed the employee’s annual vacation; and thereby, this would indicate that the Legislature did not intend that the city employee is to have his regular compensation affected in any way.

CONCLUSION

Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave from their jobs at full pay in addition to military pay. Attorney General’s Opinion No. 63, issued March 9, 1972, is hereby withdrawn due to consideration of further information received by this office.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES H. THOMPSON, *Chief Deputy Attorney General*

64 When a medically indigent individual in the custody of a law enforcement official is taken to a medical facility by the law enforcement official for treatment, the State Program for Aid to the Medically Indigent is not responsible for the costs of that medical treatment.

CARSON CITY, March 13, 1972

MR. GEORGE E. MILLER, *State Welfare Administrator, Welfare Division, 201 South Fall Street, Carson City, Nevada 89701*

DEAR MR. MILLER:

You have requested an opinion on the following question:

QUESTION

When a medically indigent individual in the custody of a law enforcement official is taken to a medical facility by the law enforcement official for treatment, is the State Program for Aid to the Medically Indigent (SAMI) responsible for the costs of that medical treatment?

ANALYSIS

When the State of Nevada established a state plan for assistance to the medically indigent, pursuant to Title XIX of the Social Security Act, [NRS 428.150](#) to [428.370](#), inclusive, the Legislature defined the eligibility requirements of recipients.

The state plan for assistance to medically indigent individuals provides, in [NRS 428.270](#), that the following people will be eligible:

Any individual is eligible for assistance who:

- (a) Qualified for aid or service under chapters 425, 426, or 427 of NRS, including individuals over 65 years of age in state tuberculosis or mental institutions; or
- (b) Would qualify under such chapters except for duration of residence, lien requirements or responsible relative requirements; or
- (c) Would qualify for aid or service as totally disabled pursuant to Title XIV of the Social Security Act (42 U.S.C. §§ 1351-1355), if such a program were in effect in this state; or
- (d) Is under the age of 21 years, medically indigent, not eligible for assistance under chapter 425 of NRS, and who belongs to a group classification which the board has determined can benefit by medical or remedial care.

Each of these eligibility sections of [NRS 428.270](#), subsection 2, has its basis in the relevant federal regulations. 45 C.F.R. § 248.10(b) provides:

A state plan under title XIX of the Social Security Act must:

- (1) Provide that medical assistance will be available to the following groups of “categorically needy” persons:
 - (i) All individuals receiving aid or assistance under the State’s approved plans under titles I, IV-A, X, XIV, and XVI of the Act; this includes all individuals who (a) are essential persons under the State plan and (b) could be recipients, if the State plan were as broad as permitted for Federal financial participation;
 - (ii) All individuals under 21 years who are, or would be, except for age of school attendance requirements, dependent children under the State’s approved AFDC plan;
 - (iii) All persons who would be eligible for aid or assistance under one of the other approved State plans except for any eligibility condition or other requirements in such plan that is specifically prohibited in a program of medical assistance under title XIX of the Act.
 - (2) Specify any other groups of “categorically needy” individuals (not covered by subparagraph (1) of this paragraph), that will be included in the program. These may include:
 - (i) Persons who meet all the conditions of eligibility, including financial eligibility, of one of the State’s other approved plans, but have not applied for such assistance.
 - (ii) Persons in a medical facility—skilled nursing home, hospital, institution for tuberculosis, or mental disease—who, if they left such facility, would be eligible for financial assistance under another of the State’s approved plans. * * *
- * * * * *
- (iv) All individuals under 21 who qualify on the basis of financial eligibility, but do not qualify as dependent children under a State’s AFDC plan; or groups of such individuals if based on reasonable classifications.

It is important to note that for all of the eligible persons under the Nevada state plan, federal financial participation is available. See 45 C.F.R. § 248.10(d). The Nevada

Legislature, in adopting the SAMI program, was specifically trying to keep the program within limits which would allow for federal matching funds to help pay for the cost of the program. See also [NRS 428.150](#), [428.260](#), subsection 3, and 428.360.

To be eligible for federal matching funds for the SAMI program, the State is required to administer the program in compliance with relevant federal regulations. 45 C.F.R. § 248.60(a)(1) provides:

Federal financial participation under title XIX of the Social Security Act is not available in medical assistance for any individual who is an inmate of a public institution except as a patient in a medical institution. See also 45 C.F.R. § 248.10(d)(2).

An inmate of a prison or jail does not lose his status as an inmate of a public institution when he becomes ill and is temporarily transferred to a medical facility for care. He legally remains in the custody of law enforcement officials and continues to be the responsibility of said law enforcement authority. [NRS 211.020](#), subsection 3, and [NRS 211.030](#), subsection 1; *Sisters of Charity of Providence in Oregon v. Washington County*, 244 Ore. 499, 419 P.2d 36 (1966); *Thomas v. Williams*, 105 Ga. 281, 124 S.E.2d 409, 413 (1962); *Spicer v. Williamson*, 191 N.C. 430, 132 S.E. 291, 293, 294 (1926); *Ex parte Jenkins*, 26 Ind.App. 238, 58 N.E. 560, 561 (1906); *Kusah v. McCorkle*, 177 Cal. 31, 170 P. 1023 (1918); Anno. 14 A.L.R.2d 353. The medical services provided him are not matchable under the Title XIX Program. 45 C.F.R. § 248.60(a)(1).

CONCLUSION

While a medically indigent individual is in the custody of a law enforcement official and is taken to a medical facility by the law enforcement official for treatment, the State Program of Aid to the Medically Indigent is not responsible for the costs of that medical treatment.

Respectfully submitted,

ROBERT LIST, *Attorney General*

65 Veterans' Property Exemption—[NRS 361.090](#), providing that to obtain property tax exemption, a veteran must either (1) have entered the service from Nevada or (2) have been a resident for at least 3 years prior to December 31, 1963, is not an unreasonable or arbitrary classification and is therefore constitutional.

CARSON CITY, March 15, 1972

THE HONORABLE ROBERT E. ROSE, *District Attorney of Washoe County*, Washoe County Courthouse, Reno, Nevada 89501

Attention: CHAN G. GRISWOLD, *Chief Civil Deputy*

DEAR MR. ROSE:

You have requested the opinion of this office on the constitutionality of paragraphs (a) and (b) of subsection 1 of [NRS 361.090](#).

QUESTION

Do the provisions of [NRS 361.090](#), requiring an individual to be a resident of the State of Nevada for a period of more than 3 years before December 31, 1963, or be a resident at the time of the individual's entry into the Armed Forces, constitute an arbitrary and unconstitutional discrimination so as to invalidate those provisions of [NRS 361.090](#) as to a person now a bona fide resident of the State of Nevada and who otherwise qualifies for the veteran's property tax exemption?

ANALYSIS

The general rule is that exemptions from general taxing statutes are to be strictly construed and where a taxpayer seeks to escape the impact of a tax law he has the burden of pointing out some specific exemption under the taxing statutes. *Republic National Gas Company v. Axe*, 415 P.2d 406, at 411 (Kan. 1966).

Wyoming enacted a statute in 1955 which provided tax exemption for certain veterans who were residents of Wyoming at the time of entry into the service. The statute, however, excluded certain other veterans of World War I and prior wars unless they were residents on or before March 1, 1955.

The constitutionality of the Wyoming statute was challenged in 1959 in *Miller v. Board of County Commissioners of Natrona County*, 337 P.2d 262, by a World War I veteran.

The Supreme Court of Wyoming held the statute was to unconstitutional, recognizing the difference in treatment of the two groups of veterans was based upon a justifiable distinction and that the difference in treatment had a reasonable basis. The court reasoned:

At the time of the earlier tax-exemption statutes, [in 1917 and 1921] the legislature among other things was interested in colonization in the State and desired to give some incentive therefor, while the later legislature [in 1955] being less interested in that phase of the problem was seeking a limitations to the ultimate liability which would be assumed by the State in permitting the continued exemptions. To that end they provided a * * * cutoff date as to residence which would tend to limit the number of veterans who might participate. Inasmuch as a requirement of pre-service residence was listed for veterans of the later wars, it became from a practical standpoint unnecessary to set up any other residence limitation for them. In order to circumscribe the number of other veterans who might partake of the exemption, it was essential to create a dividing line between those who might be eligible and those who might not. The date of residency which would allow the exemption was a discretionary decision; but inasmuch as it coincided with the date of the passage of the law it would seem to be reasonable. * * * [Bracketed material added.]

The Wyoming Supreme Court quoted with approval from *State v. Sherman*, 18Wyo. 169, 105 P.299, 300, which discussed classification by the legislature regarding taxation as follows:

* * * it cannot at all times be easy to determine what is reasonable or unreasonable in the matter of classification. The rules applies that all reasonable doubts are to be resolved in favor of the validity of the statute, and that the Legislature is presumed to have acted upon knowledge of the facts, and to have had in view the promotion of the general welfare of the people as a whole; and hence the classification and discrimination involved therein must clearly appear to be unreasonable, and therefore arbitrary, in order to justify the court in declaring an act assailed on that ground to be void. * * *

The Arizona constitutional provision granting tax exemption to certain veterans who were residents of the state prior to September 1, 1945, was construed in *McIntosh v. Maricopa County*, 241 P.2d 801 (1952). The Supreme Court of Arizona held that although a veteran intended to establish domicile prior to September 1, 1945, and even though he sent his family there for that purpose, he did not establish an Arizona domicile, because he did not appear physically in Arizona prior to that date. The fact that he was overseas with the military service and was precluded from physically appearing in Arizona did not alter the holding.

The Kentucky Veterans' Bonus Law was upheld in *Grise v. Combs*, 342 S.W.2d 680 (1961) which decided that "the General Assembly did not act unreasonably in generally classifying or confining qualified veterans to those who were residents of the State at the time of electorate approval. The limitation as to residence for six months prior to the entrance into the armed services was also tacitly approved."

An argument for tax exemption might be advanced based on the holding in *Shapiro v. Thompson*, 394 U.S. 618 (1969). In that case, the Supreme Court of the United States held unconstitutional a state statutory provision which denied welfare assistance to residents who have not resided within the state for at least 1 year prior to application for such assistance. The majority opinion in *Shapiro* held that the state statute was a violation of the equal protection clause of the 14th Amendment by imposing an invidious classification upon the welfare applicants.

Following *Shapiro*, the Eighth Judicial District Court adhered to the *Shapiro* case. In *Carroll v. Clark County General Assistance Services, et al.*, July 29, 1971, it was held that [NRS 428.040](#), section 2.48.40 of the Clark County Code, and section 103.410 of the "Criteria" of the Clark County General Assistance Services were unconstitutional because each requires that in order for a person to be eligible for county welfare assistance, that person must be a state resident for 3 years. In *Carroll*, the trial judge held that the effect of enforcing the residency requirements is to create two classes of needy resident families indistinguishable from each other, except that one is composed of residents who have resided for at least 3 years in the State, and the second of residents who have so resided less than that period. On this basis, the first class is granted and the second class is denied welfare aid upon which may depend the very ability of the families to subsist—food, shelter, and the other necessities of life.

The question then appears to be whether or not the application of *Shapiro*, in the welfare field, would be extended to tax exemption laws for veterans under the provisions of [NRS 361.090](#). It should be noted that the granting of benefits under welfare laws is dependent upon need of the applicant. On the other hand, eligibility requirements under [NRS 361.090](#) are not based on need. In *Hendel v. Weaver*, [77 Nev. 16](#), 359 P.2d 87 (1961) the Supreme Court of Nevada declared [NRS 361.090](#) constitutional even though the tax exemption statute was not limited to needy veterans. *Hendel* stated "the legislature is presumed to have investigated the facts on which the legislation is based," and, that "The statute comes to us clothed with a presumption of validity."

Welfare aid is granted in fulfillment of an obligation owed to the indigent. However, regarding tax exemption laws, it has been held that the state does not have a legal obligation to veterans. *People v. Westchester*, 132 N.E. 241 (N.Y.). Therefore, it is clear that the two types of laws are conceptually different. The granting of benefits to veterans is based on no more than a moral obligation. Such contention can best be characterized by the language in *Miller* as follows:

We * * * indicated our approval of the legislature's Act [Veterans' Tax Exemption Statute] in attempting to promote the public welfare by expressing gratitude to persons who served the Nation in time of war.

Attorney General's Opinion No. 159, dated July 30, 1964, responding to an inquiry regarding the correct interpretation of [NRS 361.090](#), subsection 1, concluded that

in absence of having been a resident of Nevada at the time of entering the service, a veteran filing an exemption must have been a resident of Nevada for the 3 years immediately preceding December 31, 1963.

CONCLUSION

There appears to be no reason to alter the conclusion reached in Attorney General's Opinion No. 159. See also Attorney General's Opinion No. 563, dated February 18, 1969, Attorney General's Opinion No. 605, dated July 31, 1969, and attorney General's Opinion No. 647, dated March 10, 1970. It is the opinion of this office that paragraphs (a) and (b) of subsection 1 of [NRS 361.090](#) are constitutional.

Respectfully submitted,

ROBERT LIST, *Attorney General*

66 School districts are required to prescribe regulations for various types of leave and may provide such leave with or without compensation. The only limitation on accumulation of sick leave is that only 15 days may be accumulated in one school year.

CARSON CITY, March 16, 1972

MR. JOHN R. GAMBLE, *Deputy Superintendent of Public Instruction, Department of Education, Carson City, Nevada 89701*

DEAR MR. GAMBLE:

Is it within the authority and responsibility of a county board of school trustees to prescribe regulations for sick leave, sabbatical leave, personal leave, professional leave, military leave, and such other leave as may be deemed desirable, and can county school district boards of trustees grant leave described above without deduction of salary?

ANALYSIS

Prior to the 1971 amendments to [NRS 391.180](#), subsections 2 and 4 read as follows:

2. A school month in any public school in this state shall consist of 4 weeks of 5 days each, and, *except as otherwise provided*, a teacher thereof shall be paid only for the time in which he is actually engaged in teaching or in other educational services rendered the school district.

* * * * *

4. The per diem deduction from the salary of a teacher because of *absence from service for reasons other than those specified in this section* shall be made on the basis of the monthly payment of such salary. (Italics added.)

Subsection 5 of this statute provided for the payment of sick leave and for a maximum accumulation of sick leave, with certain conditions.

Subsection 2 of [NRS 391.180](#), prior to amendment in 1971, was construed by Attorney General's Opinion No. 10, dated February 16, 1971, to require the teacher to render an educational service to the district when on leave with pay, unless it was sick leave.

The 1971 amendments to [NRS 391.180](#) amended subsections 2, 4, 5, and 6 to read as follows:

2. A school month in any public school in this state shall consist of 4 weeks of 5 days each, and, *except as otherwise provided in this section*, an employee thereof shall be paid only for the time in which he is actually engaged in services rendered he school district.

* * * * *

4. The per diem deduction from the salary of an employee because of *absence from service for reasons other than those specified in this section* shall be made on the basis of the monthly payment of such salary.

5. Boards of trustees *shall prescribe* such rules and regulations for sick leave, sabbatical leave, personal leave, professional leave, military leave and such other leave as they determine to be necessary or desirable for employees.

6. The salary of an employee unavoidably absent because of personal illness or accident, or because of serious illness, accident or death in the family, may be paid up to the number of days of sick leave accumulated by the individual employee. An employee shall not be credited with more than 15 days of sick leave in any 1 school year. Rules and regulations regarding accumulation of sick leave may be promulgated by boards of trustees. Accumulated sick leave up to a maximum of 30 days may be transferred from one school district to another. (Italics added.)

Please note that subsection 2 still contains the caveat “* * * except as otherwise provided * * *”; and the deduction from salaries provision in subsection 4 still contains the caveat “* * * absence from service for reasons other than those specified in this section.” You will note subsection 5 now requires the board of trustees to prescribe rules and regulations for sick leave, sabbatical leave, personal leave, professional leave, military leave, and such other leaves as they determine to be necessary or desirable for employees. You will note that sick leave is included with all other types of leave, and that subsection 6 still provides of payment of sick leave with limitations on the amount that may be accumulated in any one year.

Boards of trustees must prescribe rules and regulations for at least sick leave, sabbatical leave, personal leave, professional leave, and military leave. Regulations concerning such leave may or may not provide for deductions from the annual salary of the employee, except in the case of military leave. Please note that the requirements of subsections 2 and 4 do not apply to regulations concerning leave promulgated pursuant to subsection 5.

SECOND QUESTION

Is there a limitation on the accumulation of sick leave as described in [NRS 391.180](#), subsection 6?

ANALYSIS

The only limitation on accumulation of sick leave is that provided in subsection 6 above. This statute merely limits the accumulation of sick leave to 15 days in any one school year. However, there is no statutory limitation on the number of years that sick leave may be accumulated.

THIRD QUESTION

May a school district board of trustees establish regulations that would provide an employee access to more than the regularly prescribed accumulation of sick leave days?

ANALYSIS

Sick leave does not vest in an individual until he, in fact, becomes sick. See *Halek v. St. Paul*, 227 Minn. 477, 35 N.W.2d 705 (1949). He has no fixed property right absent his own personal qualifications for sick leave at the time of his own illness.

The statutes provide that an employee cannot be credited with more than 15 days of sick leave in any one school year. Therefore, the school district would not be at liberty to promulgate a regulation that would provide for additional sick leave credits in any one year.

Under subsection 5, before amendment, it took a vote of the school trustees and approval of the Superintendent of Public Instruction to grant sick leave for longer than the statutory limitation of up to 75 days in 5 years. Subsection 5, as amended, has left the entire area of sick leave accumulation to the school district. A review of these statutes indicates that the school district may now permit accumulations of sick leave without consideration of the previous 75 day limitation, so long as no more than 15 days are credited in any one year, whether past or present year.

The school district's regulations concerning military leave must be in conformity with [NRS 412.078](#), as follows:

Any officer or employee of any department, agency or institution, or of any county, city or other political subdivision of the State of Nevada, who is an active member of the Nevada National Guard shall be relieved from his duties, upon request, to serve under orders on training duty without loss of his regular compensation for a period not to exceed 15 working days in any 1 calendar year. Any such absence shall not be deemed to be such employee's annual vacation provided or by law.

See also Attorney General's Opinion No. 32, dated July 20, 1971.

CONCLUSION

County boards of school trustees are required to promulgate regulations for sick leave, sabbatical leave, personal leave, professional leave, and military leave. These regulations may provide for leave with or without compensation except for military leave. The only limitation on accumulation of sick leave is that only 15 days of sick leave may be accumulated in one school year. Therefore, school district employees may accumulate sick leave during the entire time of their employment with the school district if so prescribed by the school district's rules and regulations. School districts may not prescribe regulations that provide for credit of sick leave for more than 15 days in any one school year although they may grant sick leave accumulations for previous years.

Respectfully submitted,

ROBERT LIST, *Attorney General*

67 Election of Soil Conservation District Directors—All occupiers of land within a Soil Conservation District are eligible to serve as directors and elect directors of the district.

CARSON CITY, March 21, 1972

MR. JOHN C. BUCKWALTER, *Chairman, Tahoe-Verdi Soil Conservation District*, P.O.
Box 653, Incline Village, Nevada 89450

DEAR MR. BUCKWALTER:

This is in reply to your inquiry as to eligibility requirements for holding the office of Soil Conservation District Supervisor.

QUESTION

Must a Soil Conservation District Supervisor be an occupier of *agricultural* lands?

ANALYSIS

Chapter 548 of Nevada Revised Statutes has some omissions and inconsistencies pertaining to election of and eligibility for the office of district supervisor. While the statutes are very thorough as to the election of the first board of supervisors after formation of the district, they are, however, silent as to subsequent elections.

There are two pages of legislative policy for the formation of the Soil Conservation District set out in the statutes. The pertinent portion here is [NRS 548.110](#), as follows:

It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

There is no mention of agricultural lands in its policy statement.

The petition for organization of a district is to be signed by ten “occupiers of land” ([NRS 548.185](#), subsection 1). All “occupiers of land” may be heard at the hearing on the petition ([NRS 548.190](#), subsection 2). All “occupiers of land” within the district are eligible to vote in the referendum to form the district ([NRS 548.205](#), subsection 4). Petitions nominating persons for the first board of directors are signed by “occupiers of land” within the district ([NRS 548.250](#)). “Occupiers of land” is defined in [NRS 548.050](#) as follows:

“Occupier of land” includes any person, firm or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this chapter, whether as owner, lessee, renter, tenant or otherwise.

There is no mention of agricultural lands in this definition. The only reference to agricultural lands in Chapter 548 is found in [NRS 548.265](#), which reads as follows:

All owners of record and all tenants for a term of 1 year or longer of agricultural lands lying within the district shall be eligible to vote in such election. Only such land occupiers shall be eligible to vote.

This statute only pertains to persons eligible to vote in the organizational election of the board of directors. It is entirely inconsistent with the statutory scheme of the chapter to restrict the application of this statute to a strict interpretation of agricultural lands. Whenever possible, statutes should be construed as reasonable and be given the effect intended. If a strict interpretation were applied to agricultural land, it could result in a district being fully formed by occupiers of land with no one being eligible to vote for district supervisor because the district contained no agricultural land.

It is clear from the overall statutory scheme of the Soil Conservation Districts law ([NRS Chapter 548](#)) that [NRS 548.265](#) is not intended to limit voting privileges in district

supervisor elections to any group other than the members of the district. The law also permits district boundaries to encompass communities of interest, even to the extent of not requiring its territory to be contiguous ([NRS 548.195](#), subsection 3).

CONCLUSION

All occupiers of land within a Soil Conservation District are eligible to serve as directors and elect directors of the district.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

68 Inspection of Juvenile Records—[NRS 62.270](#), subsection 1, permits inspection of juvenile records by interested persons only by order of the court.

CARSON CITY, March 22, 1972

MR. DAVID M. SCHREIBER, *Deputy District Attorney, Juvenile Court Services*, 3401 East Bonanza, Las Vegas, Nevada 89101

DEAR MR. SCHREIBER:

You have requested an opinion on the interpretation of [NRS 62.270](#), subsection 1, relating to disclosure of a juvenile's records. Your question, recognizing that a juvenile's records are confidential with respect to the general public, is whether such records may be disclosed to law enforcement agencies, including the district attorney's office, in connection with case investigations.

ANALYSIS

[NRS 62.270](#), subsection 1, is quite clear on this point:

The court shall make and keep records of all cases brought before it. The records shall be open to inspection only by order of the court to persons having a legitimate interest therein. The clerk of the court shall prepare and cause to be printed forms for social and legal records and other papers as may be required.

Thus, although the intent of the Legislature was to keep such records confidential, this confidentiality is not exclusive. Records may be disclosed to "persons having a legitimate interest therein." Law enforcement agencies seeking further information to resolve their cases would appear to qualify as having such a legitimate interest.

However, a juvenile's records may not be disclosed to such law enforcement agencies as a matter of course. Records may be disclosed only upon court order, and it is incumbent upon the court to determine the legitimacy of the agency's interest in the juvenile's records.

Courts have generally held that the purpose of juvenile court law is not to conflict punishment, but to seek education, correction and probation. It is not penal in nature, but remedial. It seeks to promote the welfare of the child. In the Matter of Short, [74 Nev. 250](#), 338 P.2d 299 (1958); *Stewart v. State*, 110 Tex.Crim. 145, 8 S.W. 2d 140 (1928); *Thomas v. United States*, 121 F.2d 905 (1941); *People v. Colkins*, 48 Cal.App.2d 33, 119 P.2d 142 (1941); *In re Santillanes*, 47 N.M. 140, 138 P.2d 503 (1943); *Zambrotto v.*

Jannette, 160 Misc. 558, 290 N.Y.S. 338 (1936). In *Thomas v. United States*, supra, the District of Columbia Court of Appeals stated:

Thus the primary function of juvenile courts, properly considered, is not conviction or punishment for crime, but crime prevention and delinquency rehabilitation. It would be a serious breach of public faith, therefore, to permit these informal and presumably beneficent procedures to become the basis for criminal records which could be used to harass a person throughout his life.

When considering a request from a law enforcement agency for access to a juvenile's records, the court should bear these principles in mind and subject the law enforcement agency's request to a close scrutiny to determine if its request will jeopardize the purposes of the Juvenile Court Act.

CONCLUSION

Under [NRS 62.270](#), subsection 1, juvenile court records may be disclosed to law enforcement agencies, but only upon court order. The court, in considering the order, should closely scrutinize the "legitimate interests" of the agency making the request for disclosure.

Respectfully submitted,

ROBERT LIST, *Attorney General*

69 Tips—Crediting tips toward the statutory minimum wage is unlawful in Nevada.

CARSON CITY, March 22, 1972

MR. STANLEY P. JONES, *Labor Commissioner*, 111 West Telegraph, Carson City, Nevada 89701

DEAR MR. JONES:

This is in reply to your letter concerning the legality of crediting tips toward the minimum wage.

QUESTION

May Nevada employers apply tips as a credit toward the statutory minimum wage received by employees?

ANALYSIS

Subsection 1 of [NRS 608.250](#) establishes the statutory minimum wage, which is now \$1.60 per hour with various exceptions. Subsection 4 of [NRS 608.250](#) provides as follows:

The provisions of subsection 1 do not apply to male persons whose minimum wages are established by the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 201-219).

The Fair Labor Standards Act of 1938 (F.L.S.A.), at 29 U.S.C. § 206 (1970), establishes the minimum wage to be essentially the same as in Nevada. It was amended in 1966 to permit the employer to credit tips up to 50 percent of the employee's wages if he

is actually receiving the amount credited. See 29 U.S.C. § 203(m) (1970). This statute is interpreted in 29 C.F.R. 531.27(c) (1971) as follows:

Tips *may* be credited or offset against the wages payable under the Act in certain circumstances, as discussed later in this subpart. See also the record keeping requirements contained in Part 516 of this chapter. (Italics added.)

The regulation makes it clear that tip crediting is optional and not mandatory. See also *Bingham v. Airport Limousine Service*, 314 F.Supp. 565 (1970). Therefore, an employer covered by the F.L.S.A. may be in conformity with both [NRS 608.250](#) and the F.L.S.A. as pertains to minimum wages if he pays at least 80 cents per hour and the employee receives at least 80 cents per hour from tips.

The F.L.S.A. also provides in part at 29 U.S.C. § 218(a) (1970) as follows:

No provision of this Act or any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a *minimum wage* higher than the minimum wage established under this Act. * * * (Italics added.)

The Code of Federal Regulations provides at 26 C.F.R. 531.26 (1971) as follows:

Various Federal, State, and local legislation requires the payment of wages in cash; prohibits or regulates the issuance of scrip, tokens, credit cards, “dope checks” or coupons; prevents or restricts payment of wages in services of facilities; controls company stores and commissaries; outlaws “kickbacks”; restrains assignment and garnishment of wages and generally *governs the calculation of wages* and the frequency and manner of paying them. Where such legislation is applicable and does not contravene the requirements of the Act, nothing in the Act, the regulations, or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. (Italics added.)

Interpretation of the F.L.S.A. by the Administrator of the Wage and Hour Division of the Department of Labor was adopted in the U.S. Supreme Court case of *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

The Nevada Legislature specifically addressed itself to the question of applying tips toward the minimum wage in the 1971 session. Crediting tips toward the statutory minimum hourly wage was specifically made illegal by the amendment of [NRS 608.160](#), subsection 1 (Chapter 582), 1971 Statutes of Nevada), as follows:

It is unlawful for any person to:
(a) Take all or part of any tips or gratuities bestowed upon his employees.
(b) Apply as a credit toward the payment of the statutory minimum hourly wage any tips or gratuities bestowed upon his employers.

This statute makes the crediting of tips toward the statutory minimum wage unlawful, notwithstanding both the F.L.S.A. and [NRS 608.250](#). It is clear from the F.L.S.A. and regulations thereunder that tip crediting is optional and therefore a state prohibition of it would not be in contravention to the F.L.S.A. It is also specifically provided in the F.L.S.A. and the regulations thereunder that employers must comply with higher state minimum wages and other state statutes that do not contravene the requirements of the F.L.S.A.

CONCLUSION

Nevada's prohibition of applying tips toward the statutory minimum wage ([NRS 608.160](#)) does not contravene any provision of the Fair Labor Standards Act and therefore should be enforced irrespective of coverage by the Fair Labor Standards Act. There is no conflict between [NRS 608.160](#) and [608.250](#).

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

70 Highway Department—The bidding procedures set forth in [NRS 408.880](#) are to be strictly followed.

CARSON CITY, March 22, 1972

MR. DONALD J. CROSBY, *Deputy State Highway Engineer, State of Nevada Department of Highways*, 1263 South Stewart Street, Carson City, Nevada 89701

DEAR MR. CROSBY:

You have asked for an opinion regarding the submission of bids under the provisions of [NRS 408.880](#).

STATEMENT OF FACTS

A prospective bidder on Nevada Project T-170(6), Contract NO. 1422, did not submit a sealed bid to the department at its offices in Carson City prior to the time set by advertisement for the opening of bids on the project. The bidder states that he was prevented from submitting a timely bid by circumstances beyond his control and that therefore, a submission of a certified copy of the bid to the district office in Las Vegas should be deemed compliance with Nevada's bid procedures.

QUESTION

Must a bid by a prospective contractor be submitted in strict compliance with the provisions of [NRS 408.880](#) to be considered responsive and therefore to be considered by the department?

ANALYSIS

The applicable portions of [NRS 408.880](#) are as follows:

1. All bids *shall* be submitted under sealed cover and received at the office of the department in Carson City, Nevada, and *shall* be opened publicly and read at the time stated in the advertisement.
2. No bid *shall* be received after the time stated in the advertisement even though bids are not opened exactly at the time stated in the advertisement. No bid *shall* be opened prior to such time. (Italics added.)

We have emphasized the word "shall" in light of [NRS 408.090](#) which expressly construes "shall" whenever used in Chapter 408 of NRS to be mandatory.

Attorney General's Opinion No. 67, dated June 2, 1955, was in response to a question with regard to the language contained in [NRS 408.875](#) and as to whether or not the Board of Directors of the Highway Department could waive as a technicality the

failure of a bidder to submit a bid undertaking at the time of presenting the bid. The opinion concluded:

* * * The Board of Highway Directors may not waive as minor technicalities, the plain requirements of Section 5337, Nevada Compiled Laws 1931-1941 Supplement (see [NRS 408.875](#)). 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.

We further view as pertinent, language found in [NRS 408.100](#)—Declaration of Legislative Intent:

4. * * * [T]he legislature places a high degree of trust in the hands of those officials whose duty it shall be * * * to plan, develop, operate, maintain, control and protect the highways. * * *

5. To this end, it is the express intent of the legislature to make the board of directors of the department of highways custodian of the state highways and roads and to provide sufficiently broad authority to enable the board to function adequately and efficiently in all areas of appropriate jurisdiction, *subject to the limitations of the constitution and the legislative mandate in its chapter.* (Italics added.)

Adherence to such stringent bidding requirements may, from time to time, result in hardship to a prospective bidder. When it does so, it is not because another bidder is favored. Equality of treatment of prospective bidders underlies the entire bidding process and preserves its competitive nature.

It should also be noted that failure to comply with the foregoing rigid standards would subject the state to an action for damages from an aggrieved competitor who, but for the State's laxity, would have been awarded the contract in question.

CONCLUSION

It is therefore the opinion of this office that submission of a bid by a prospective contractor under the provisions of [NRS 408.880](#) must be in strict compliance with the provisions thereof. We believe the language contained therein must be strictly construed.

Respectively submitted,

ROBERT LIST, *Attorney General*

By WILLIAM M. RAYMOND, *Deputy Attorney General*

71 Nevada Fair Housing Law—Chapter 384, 1971 Statutes of Nevada, prohibits the refusal to sell, rent, or otherwise make unavailable any dwelling to any person because of race, religion, color, national original, or ancestry.

CARSON CITY, March 24, 1972

MR. THOMAS D. BEATTY, *Chairman, Commission on Equal Rights of Citizens*, State Office Building, 215 East Bonanza Road, Las Vegas, Nevada 89101

DEAR MR. BEATTY:

You have asked this office for an interpretation of the Nevada Fair Housing Law, Chapter 384, 1971 Statutes of Nevada, in terms “* * * such that a layman can understand it.”

ANALYSIS

Section 3 of Chapter 384, 1971 Statutes of Nevada, declares:

It is hereby declared to be the public policy of the State of Nevada that all people in the state shall have equal opportunity to inherit, purchase, lease, rent, sell, hold and convey real property without discrimination, distinction or restriction because of race, religious creed, color, national origin or ancestry.

The purpose of the Fair Housing Law, then, is to insure that all of Nevada's citizens may purchase or rent whatever homes or apartments they can afford, in whatever area they wish to live. In this way, it is hoped that the enforced grouping, or segregation, of citizens of particular national, racial or religious groups into areas of substandard or low quality housing will be prevented. *Minutes of the Committee on Health and welfare of the Nevada State Assembly*, February 25, 1971.

I. SCOPE OF THE ACT (Sections 4-10 and 16-17)

This act applies to the sale or rental of any dwelling or real property. It also applies to the lending of any sum for the purpose of purchasing, constructing, improving, or repairing a dwelling.

“Dwelling” is defined in the act as any building or structure, or part of any building or structure, designed or intended for use as a residence by one or more families. The term “family” includes a single individual. In addition, the act applies to, and the term “dwelling” for the purposes of the act is also defined as, any vacant land which is offered for sale or rental for the construction of any building, structure, or part of a building or structure intended as a family residence.

Not all dwellings, however, are included in the act. A single family residence is not included if its owner does not own more than three single family residences at the same time. Nor is a single family residence included in the act if its owner is not entitled, by any means, to any proceeds from the sale or rental of more than three single family houses at one time.

A single family residence is not included in the act if its owner does not utilize the services of a real estate broker in its sale or rental. Finally, a single family residence is not included in the act if it is sold or rented without the use of a printed notice or advertisement which indicates that such residence will not be available for sale or rent to any person of a particular religion, race, or nationality. In the last two categories, then, regardless of how many houses a person owns or leases, if he sells or rents such a residence through a real estate broker or by use of advertisements which indicate an intent to discriminate, that house is included within the prohibitions of the act.

A multiple family residence is not included in the act only if it contains living quarters for no more than four families living independently of each other *and* if the owner maintains and occupies one of the living quarters as his own residence. In addition, such an owner must not have been the principal in the sale or rental of three or more dwellings within the preceding 12 months. Nor may such an owner have been the agent in the sale or rental of two or more dwellings, not his own residence, in the preceding 12 months.

With regard to lending sums for housing, banks, savings and loan associations, insurance companies, “or other person[s] whose business consists in whole or in part of making commercial real estate loans” are included in the act.

Finally, the act applies to all persons. The term “person” means not only individuals, but “* * * partnerships, associations, corporations, legal representatives,

trustees, trustees in bankruptcy, receivers, unincorporated corporations, any owner, lessee, proprietor, manager, employee or any agent of such person, the State of Nevada, and all cities, towns, and political subdivisions and agencies thereof.” So, when the act prohibits any person from discriminating against any other person, it speaks of prohibiting an individual, partnership, association, corporation, and etc. from discriminating against any other individual, partnership, association, corporation, and etc.

However, nonprofit, fraternal, educational, or social organizations or clubs are exempt from the act, but only if such clubs or organizations do not have the purpose of promoting discrimination in the matter of housing. In this matter the actual fact situation, rather than form, will govern. Thus, a group of home owners or condominium owners who have ostensibly banded together for social purposes, but who actually intend to discriminate in the matter of housing, will fall under the provisions of the act.

II. PROHIBITIONS OF THE ACT (Sections 11 and 16-18)

To achieve the objectives of section 3 of the act, section 11 provides that,

No person may, because of race, religious creed, color, national original or ancestry do the follow:

- (1) Refuse to rent, sell or negotiate to rent or sell a dwelling to any person.
- (2) Make the terms or conditions of a sale or lease of dwelling more difficult or stringent because of race, religion or nationality. For example, increasing the sale price or rental fees, increasing breakage fees or deposits, or denying access to services or facilities that accompany the sale or lease of a dwelling, such as membership in a country club or usage of a swimming pool and other recreational facilities.
- (3) Publishing or causing to be published, advertisements or notices of the sale or rental of a dwelling which indicate that the dwelling for sale or rental is not available to persons of certain racial, religious or national groups.
- (4) Informing persons of certain racial, religious or national groups that a dwelling is not available for inspection when, in fact, it is available for inspection by all other persons.

Finally, section 11 prohibits “block-busting.” This is the practice by which a person frightens a homeowner into selling his property at less than market value by spreading rumors that certain racial groups will move into the neighborhood. The person to whom the house is sold then resells it at market value, or higher, for a profit.

Section 16 of the act contains a flat prohibitions that “No person may refuse to rent, lease, sell or otherwise convey any real property solely because of race, religious creed, color, national original or ancestry.” In view of section 3’s avowed purpose to insure that all Nevada’s citizens may “* * * inherit, purchase, lease, rent, sell, hold and convey real property * * *,” it would seem this section applies to all real property and not just that property containing dwellings or intended solely for the construction of dwellings.

Section 17 of the act declares it unlawful for a lender to deny loans, on the basis of “race, color, religious creed, national original, ancestry, or *sex*” to any customer who desires a loan for the purpose of purchasing, building or repairing a dwelling. (Italics added.) Nor may a lender make the terms of such a loan more difficult, for the same reasons, by, for example, increasing the interest rate, or down payment. Note that the Legislature has added another category to the prohibition. A lender may not discriminate on the basis of sex, in addition to the other categories. Furthermore, not only may a lender not deny a loan to a customer because of race, religion, nationality, or sex, but may not deny it to a customer because of the race, religion, nationality, or sex of any persons associated with the customer in connection with the loan or the purpose for which the loan is sought. Nor may such a loan be denied because of the race, religion, nationality, or

sex of the present or future owners, lessees, tenants, or occupants of the dwelling for which the loan is sought.

Finally, section 18 makes it unlawful, on account of race, religious creed, color, national origin, ancestry, *or sex*, to “Deny any person access to a membership or participation in any multiple listing service, real estate brokers’ organization or other service or facility relating to the sale or rental of dwellings.” Nor may such persons be discriminated against in the terms and conditions of access or membership, such as increasing dues.

III. ENFORCEMENT OF THE ACT (Sections 12-18)

Enforcement of the act lies in four state offices, the commission on Equal Rights of Citizens, the Attorney General, the various local district attorneys, and the Real Estate Advisory Commission. The person discriminated against also has the right to enforcement by private action.

Section 12(3) authorizes the Commission on Equal Rights of Citizens to investigate complaints, or to initiate its own investigations, of any discriminatory practices forbidden by the act. On the basis of its investigation the commission may seek to eliminate discriminatory practices by “* * * formal methods of conference or conciliation * * *,” or it may hold public hearings at which it will make findings of fact relating to the existence of discrimination, or it may do both.

Within 10 days of the conclusion of any public hearings on the matter, the commission will serve a copy of its findings of fact upon persons practicing discrimination. Then, if the grievance is not ended by conciliation or if the person practicing the discrimination “* * * does not cease and desist from the unfair practice as found within 20 calendar days * * *.” Section 12(3) authorizes the commission to apply, in the appropriate district court, by and through the Attorney General, for a permanent injunction against the discriminatory practice, compelling the person engaged in that practice to cease and desist from engaging in it. In effect, this order would be a mandatory injunction compelling the person engaged in the discriminatory practice to rent or sell, or whatever the case may be.

In addition to this, section 12(2) also permits the commission, by and through the Attorney General, to seek, in the appropriate district court, a temporary restraining order preventing persons engaged in discriminatory acts from making the dwelling, which the complainant seeks, unavailable to the complainant by selling or renting it to another person. The purpose of the section is to prevent the person engaged in the discriminatory act from depriving the complainant of his rights, during the course of the investigation before the commission, by making the dwelling unavailable. However, the temporary restraining order may be sought only *after* public hearing in which the commission finds *evidence* that discrimination has occurred and mediation has failed. Note, that only evidence of discrimination is sufficient to ask for a temporary restraining order and not an actual finding of discrimination.

Finally, sections 12(4) and (5) permit the person discriminated against to take private action in the courts to enforce the act. Section 12(4) thus permits the citizen to “* * * apply directly to the district court for an *order* granting or restoring to such person the rights to which he is entitled * * *” under the act. (*Italics added.*) This appears to give the private citizen the same rights to seek the temporary restraining order and permanent injunction that the act allows to the commission. Section 12(5) then permits the citizen to seek damages for discriminatory practices against him, within 180 days after *either* his own private action to seek an order under section 12(4) *or* after the commission’s action denoting findings of fact or seeking injunction under section 12(3), whichever is final.

Language for this interpretation is found in section 12(5) which states that such damage actions may be brought by the “complainant * * * within 180 days thereafter * * *,” thereby referring not only to actions institute by private citizens under section 12(4), but to section 12(3) which requires commission action whenever “* * * any

complaint is filed with the commission. * * *” Under section 12(5) the citizen may be awarded actual damages, general damages, and not more than \$1,000 punitive damages, plus costs and attorney’s fees.

The only criminal penalties contained in the act are found in sections 16 and 17. Both sections are added to [NRS Chapter 207](#).

Miscellaneous Crimes. By virtue of [NRS 193.170](#),* a violation of section 16, which prohibits the refusal to sell, rent, or convey real property because of race, religion, or nationality, is punishable as a misdemeanor. Misdemeanors are punishable by not more than 6 months imprisonment in the county jail, or by a fine of not more than \$500, or by both. [NRS 193.150](#). Section 17, which applies to loans, makes violations of the section misdemeanors for the first and second violations, and gross misdemeanors for third and subsequent offenses. Gross misdemeanors are punishable by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$1,000, or by both. [NRS 193.140](#). Jurisdiction over these criminal offenses vests in the local district attorneys’ offices.

Section 18, which applies to discrimination in joining multiple listing services, real estate broker’s organizations and the like, is made by the act part of [NRS Chapter 645](#), Real Estate Brokers and Salesmen. The Real Estate Advisory Commission is authorized by section 18 to levy a fine of \$500 for the first offense involving discrimination, and for the second, to revoke the broker’s license.

CONCLUSION

The above analysis, therefore, constitutes this office’s interpretation of the Nevada Fair Housing Law, Chapter 384, 19971 Statutes of Nevada.

Respectfully submitted,

Robert List, Attorney General

*[NRS 193.170](#)—Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor.

72 Voting—Registration of Person Dishonorably Discharged—Unless restored to civil rights, one who has received a dishonorable discharge from military service for an offense recognized by the State of Nevada as a felony may not register to vote.

CARSON CITY, March 30, 1972

MR. THOMAS A. MULROY, *Registrar of Voters*, 400 Las Vegas Boulevard South, Las Vegas, Nevada 89101

DEAR MR. MULROY:

You have requested our assistance in answering the question whether or not one who is dishonorably discharged from military service may register to vote and otherwise enjoy the rights of suffrage set forth in Article 2, Section 1 of our Nevada Constitution.

ANALYSIS

Article 2, Section 1 of the Nevada Constitution states:

All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, [the minimum voting age was lowered to eighteen by an amendment of June 28, 1971, pursuant to a special election authorized and held on June 8, 1971] who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; provided, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no idiot or insane person shall be entitled to the privilege of an elector. There shall be no denial of the elective franchise at any election on account of sex.

Any person possessing the qualifications described in Article 2, Section 1, and not disqualified by any of the provisions thereof, is entitled to exercise the right of suffrage. A dishonorable discharge is not listed as one of the disqualifying disabilities. Thus, assuming one is otherwise qualified, the only relevant disability that may pertain to a dishonorable discharge would be the "conviction of a felony" provision. In the case of a dishonorable discharge from military service, the crucial issue is whether or not the offense for which the person is discharged constitutes a "felony" under Nevada law. The answer requires a dual perspective into both military law and Nevada law.

Military courts-martial jurisdiction is established under the constitutional power of Congress to make rules for the government and regulation of the Armed Forces of the United States. Article 1, Section 8, United States Constitution. Although a court-martial has exclusive jurisdiction over purely military offenses, a person subject to the Uniform Code of Military Justice is, as a rule, also subject to the law applicable to persons generally, and if by act or omission, he violates the code and the local criminal law, the act may be made the basis of a prosecution either before a proper civil tribunal. Manual for Courts-Martial, paragraph 12, 1069, Revised Edition.

Where there has been a dishonorable discharge imposed by a general court-martial composed of a law officer and not less than five members in accordance with Title 10 of the United States Code, Section 186, and the law of the registration state considers the offense a felony, then a court-martial *conviction* of that offense would prohibit that person from voting, unless his civil rights have been restored. A conviction is defined as an adjudication of guilt and the imposition of sentence. 36 A.L.R.2d at 1238. An adjudication of guilty with the *suspension* of sentence is not necessarily considered a conviction under a statute denying a convicted felon of his right to vote. *People v. Weinberger*, 251 N.Y.S.2d 790 (1964).

Some of the offenses which constitute a felony in the State of Nevada include the following: Treason; bribery; burglary; robbery; rape; homicide; assault and battery; kidnapping and mayhem. These are defined in Title 16 of the Nevada Revised Statutes along with numerous other felony offenses. If any of these offenses were committed while in military service, and a general court-martial imposed a dishonorable discharge as a result of the commission and conviction of one of these felonies, then the offender would be prohibited from registering to vote in the State of Nevada.

CONCLUSION

Premised on the foregoing, it is concluded that unless a person has been restored to civil rights, he may not be registered to vote in the State of Nevada if he has been dishonorably discharged from military service for the commission and conviction of an offense recognized under Nevada law as a felony.

In deciding whether to register a person who indicates he has received a dishonorable discharge from military service, a voter registrar should determine if that

person has been pardoned in accordance with Article V, Section 14 of the Nevada Constitution, and Chapter 213 of the Nevada Revised Statutes.

[NRS 213.020](#) allows an application for pardon to be made to the State Board of Pardons. If the pardon is granted and it includes a restoration to citizenship, then, in conformity with Article 2, Section 1 of the Nevada Constitution, the person receiving the pardon has been “restored to civil rights” and is eligible to become an elector. The board has the power to restore rights lost under a state constitution, even though the person was convicted of a crime under federal law. 59 Am.Jur.2d, Pardon & Parole, Section 23.

So that a proper determination may be made, the registrar should refer to Chapter XXV of the Manual for Courts-Martial, paragraph 127, or 10 U.S.C.A. 856 et seq. These sections indicate for what offenses one can receive a dishonorable discharge. If the offense is recognized by the State of Nevada as a felony, based on Title 16 of our Nevada Revised Statutes, then a conviction of that offense will constitute a disability under Article 2, Section 1 of our Constitution and prevent that person from qualifying as an elector.

Respectfully submitted,

ROBERT LIST, *Attorney General*

73 Public Service Commission—Regulatory Fee Assessment—The gross operating revenues derived from the water and sewer facilities of a general improvement district organized or reorganized under Chapter 318 of Nevada Revised Statutes are subject to the annual assessment on public utilities of [NRS 704.033](#).

CARSON CITY, April 13, 1972

MR. NOEL A. CLARK, *Chairman, Public Service Commission of Nevada*, 222 East Washington Street, Carson City, Nevada 89701

DEAR MR. CLARK:

You have requested an opinion on certain sections of Chapters 318 and 704 of the Nevada Revised Statutes. You are specifically interested in the application of [NRS 704.033](#), directing the Public Service Commission to levy and collect an annual assessment of all public utilities subject to the jurisdiction of the commission, and to [NRS 318.140](#) and [318.144](#), which accord to the Public Service Commission the power to regulate the rates charged and services and facilities furnished by general improvement districts in regard to their water and sewer systems.

ANALYSIS

[NRS 704.033](#) to [704.039](#), inclusive, directs the Public Service Commission to levy and collect an annual assessment from all public utilities subject to its jurisdiction; limits the amount of annual assessment to no more than 3 mills per dollar of gross operating revenue; provides standards for the determination of the gross operating revenue; and controls the amount, and the use of, the regulatory fund into which are paid the amounts collected. The fund is a continuing nonreverting one and may be used only to defray the costs of maintaining a staff and equipment to adequately regulate public utilities subject to the jurisdiction of the commission. [NRS 704.037](#), [704.039](#).

The words “public utility” have been defined to include: “any plant or equipment within the state for the * * * delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, * * * water for business,

manufacturing, agricultural or household use, or sewerage service, whether within the limits of municipalities, towns, or villages, or elsewhere.” [NRS 704.020](#), subsection 2 (b).

Each general improvement district, organized or reorganized under the provisions of [NRS 318.010](#) et seq., is defined as “a body corporate and politic and a quasi-municipal corporation.” [NRS 318.015](#). Although not specifically designated “public utility” each such district has the basic power to provide a sanitary sewer system and a system for the supply, storage, and distribution of water. [NRS 318.140](#), [318.144](#).

The sections granting to these districts the power to provide water and sewer facilities also provide that with respect to rates, services, and facilities, such district shall be under the jurisdiction of the Public Service Commission of Nevada in the same manner as a public utility as defined in [NRS 704.020](#).

The property of any county, domestic municipal corporation, irrigation, drainage, or reclamation district or town in this State is exempt from taxation. [NRS 361.060](#).

If the property of a general improvement district subject to the jurisdiction of the commission is a “public utility,” then it is subject to the regulatory assessment, unless such assessment is a tax and the property is exempt from such a tax.

Two previous Attorney General’s Opinions dealt with the same question as it applies to similar districts, and to which the Legislature conferred jurisdiction upon the Public Service Commission of Nevada by identical language as that which confers such jurisdiction in Chapter 318 of Nevada Revised Statutes. One opinion assumed such districts to be “public utilities” and found such districts subject to the regulatory assessment. Attorney General’s Opinion No. 58, dated August 1, 1963. Another Attorney General’s Opinion held that such districts were not “public utilities,” but assumed that the [NRS 704.033](#) assessment was a “tax” and refused to extend the “taxing” statute to include the assessment against such “political subdivisions” of the State. Attorney General’s Opinion No. 199, dated January 18, 1965.

On closer analysis, the resolution of this question does not require a determination of whether or not an assessment upon the gross revenues of a public utility is exempted under a statutory provision ([NRS 361.060](#)) exempting “property” owned by a domestic municipal corporation from taxation. This is so because even if such property were exempted from taxation, the exemption would not apply if the assessment was not a tax.

Thus, we turn to a determination of whether the regulatory fee assessment imposed upon public utilities by [NRS 704.033](#) is a tax. The assessment provided for under Chapter 704 has parallels in other statutes providing for the maintenance and support of state regulatory agencies.

Attorney General’s Opinion No. 207, dated October 28, 1925, ruled that the assessment on each stand of bees by and for the State Apiary Commission, solely for the regulation of the bee industry, was not a tax within the meaning of the soldier’s exemption from taxation. Presently, the annual special tax imposed under [NRS 552.130](#) on each stand of bees is for the State Department of Agriculture and can be sued only for the general control of all matters pertaining to the apiary industry. [NRS 561.135](#).

Attorney General’s Opinion No. 342, dated August 14, 1946, held that the assessment for the regulation of the livestock industry under the supervision of the State Board of Stock Commissioners was for the regulation of the livestock industry, and not for the support of the government and the State and counties and, therefore, was not a tax within the meaning of the tax exemption statutes.

It has to be noted that the sums to be raised pursuant to [NRS 704.033](#) for the regulation of public utilities are not derived from a general ad valorem tax upon all the taxable property in the State; but is instead, as in the case of bees and livestock, a special fund derived solely from the proceeds of providing some service, and in this instance, public utilities services. It is, therefore, strictly an assessment of a “fee” paid for a service and not a tax. Our view that the regulatory assessment is not a tax is bolstered by the provisions of [NRS 704.039](#) which restricts the fund’s use to that necessary to defray the expenses incurred in the regulation of public utility services and properties, and by [NRS](#)

[704.037](#), providing that the moneys so collected shall not be placed in the general fund of the State.

On the issue relating to the status of a district as a public utility, it is noted that the regulatory assessment is imposed only upon the gross operating revenue of “public utilities” subject to the jurisdiction of the commission. Certainly, mains, laterals, wyes, tees, meters, and collection, treatment, and disposal plants ([NRS 318.140](#)), fall within the categories described as “any plant or equipment, or any part of a plant or equipment, * * * for the delivery or furnishing for or to other persons * * * sewer service * * *.” [NRS 704.020](#), subsection 2.

Similarly, the words “a works, system or facilities for the supply, storage and distribution of water for private and public purposes” ([NRS 318.144](#)), falls within the general categories of “any plant or equipment * * * for the * * * delivery or furnishing for or to other persons * * * water for business, manufacturing, agricultural or household use * * *.” [NRS 704.020](#), subsection 2.

Although we recognize that a general improvement district formed under the provisions of Chapter 318 of Nevada Revised Statutes has the basic powers to engage in and provide numerous services that would not come within the definition of a public utility, to the extent that such a district owns or operates water and sewer facilities, the gross operating revenue derived from the operations of what equipment and those facilities necessary to provide the water and sewer services authorized by [NRS 318.140](#) and [318.144](#) are subject to the 3 mill regulatory assessment authorized under [NRS 704.033](#). A different conclusion would create a situation wherein the Legislature would be presumed to have required the Public Service Commission of Nevada, in the exercise of its jurisdiction, to maintain a competent staff and equipment; participated in all rate cases; investigate; inspect; audit; report; publish notices; pay salaries, travel expenses, and subsistence allowances for commissioners and staff ([NRS 704.039](#)), without providing the necessary funds in order to carry out the responsibility.

We further believe that if the Legislature had intended that the expenses of regulating political subdivisions of the State should be borne by those privately owned public utilities who contribute to the fund, it would have said so in clear and convincing language.

CONCLUSION

The gross operating revenues derived by districts formed under Chapter 318 of Nevada Revised Statutes from their water and sewer facilities are subject to the annual assessment provided in [NRS 704.033](#).

Respectfully submitted,

ROBERT LIST, *Attorney General*

By DAVID MATHEWS, *Deputy Attorney General*

74 Issuance of Compliance Seals for Mobile Homes and Travel Trailers—The Department of Motor Vehicles is directed to issue compliance seals to units with another state’s seals, but may void or recall Nevada seals if there is evidence the units do not meet Nevada standards. Further, prior to such issuance, the department may require evidence that units bear another state’s seal and obtain the evidence form either the other state of applicants for Nevada seals. The department may authorize another person or organization to inspect those mobile homes not bearing another state’s certifying seal.

CARSON CITY, April 20, 1972

HOWARD HILL, *Director, Department of Motor Vehicles, 555 Wright Way, Carson City, Nevada 89701*

DEAR MR. HILL:

Under Chapter 489 of the Nevada Revised Statutes, it is illegal to sell a mobile home or travel trailer in Nevada, unless such mobile home or travel trailer bears a seal issued by the State of Nevada certifying that it meets the standards of the United States of America Standards Institute for plumbing, heating, and electrical systems. [NRS 489.030](#), subsection 3, states:

The director of the department of motor vehicles or a person authorized by him may issue a seal either upon an inspection of the plans for, or an actual inspection of, the mobile home or travel trailer.

[NRS 489.040](#) states:

A mobile home or travel trailer which bears a seal or other certification by another state that the plumbing, heating and electrical systems of such mobile home or travel trailer are installed in compliance with the applicable American Standard or its equivalent shall be deemed to meet the requirements of this state, and the director of the department of motor vehicles or person authorized by him shall issue a seal without an inspection of any type for a fee of \$3.

On April 5, 1972, this office sent a letter to you setting forth our conclusion that the Department of Motor Vehicles' procedure for issuing seals was ineffective in meeting the requirements of [NRS 489.030](#) and [489.040](#) in that:

1. There has been no physical inspection of mobile home construction plans or the mobile homes themselves.
2. The affidavits submitted [by the manufacturers testifying to issuance of out-of-state seals] are not accompanied by an official certificate or document from the state of issuance that a state's qualifying seal of a particular number was issued and affixed to a mobile home described by manufacturer's name, model, and serial number.

In light of this, you have requested an opinion from this office on the following questions:

QUESTIONS

1. Under what authority, in accordance with [NRS 489.040](#), is the Department of Motor Vehicles required to refuse to issue a Nevada seal to a mobile home or travel trailer which bears another state's seal that the applicable standards have been met?
2. If authorized to act in such manner, then what action should the department take in cases of noncompliance?
3. Does [NRS 489.040](#) authorize the department to secure evidence from the appropriate out-of-state agency to show that a mobile home or travel trailer manufactured in that state has been inspected by that state's regulatory agency for mobile homes and travel trailers before the department could issue the proper Nevada seal?
4. If so authorized, in what manner may it do so?
5. Does [NRS 489.030](#) give the department the authority to require "third party" inspection of mobile homes and travel trailers offered for sale in Nevada, and which do not bear an out-of-state seal?

ANALYSES

1. If a mobile home or travel trailer bears another state's qualifying seal then the department must issue the Nevada seal to that unit. [NRS 489.040](#) specifically creates a presumption of law that such a unit, which already bears another state's seal certifying that the applicable standards or their equivalence have been met, also meets Nevada's requirements. When such a unit bears another state's seal, the statute mandatorily directs that, * * * the director of the department of motor vehicles or person authorized by him shall issue a seal without an inspection of any type for a fee of \$3." This requirement, however, is subject to the provisions hereinafter discussed.

2. The presumption of law created by [NRS 489.040](#) that a mobile home or travel trailer bearing an out-of-state seal meets Nevada requirements may be rebutted. True, the language of the statute, e.g., "* * * shall be deemed to meet the requirements of this state * * *," would appear to make the presumption of law conclusive. However, a conclusive presumption rests upon grounds of expediency or public policy so compelling in character as to override the evidentiary requirement that questions of fact must be supported by proof. *United States v. Provident Trust Co.*, 291 U.S. 272 (1933); *Amerada Petroleum Corp. v. 1010.61 Acres of Land*, 146 F.2d 99 (1944).

Whatever the reasons of expediency or public policy adopted by the Legislature when it created the presumption, they cannot possibly be so compelling as to override the public policy reasons behind the enactment of Chapter 489 in the first place. Chapter 489 was obviously enacted to provide for the health, safety, and welfare of the public by insuring that any mobile homes or travel trailers purchased by the public would be safe and nondetrimental to the public's health. To meet this public policy, certain standards had to be met by the mobile homes and travel trailers before sale.

Therefore, if it should come to the attention of the Department of Motor Vehicles that units bearing another state's seal do not in fact meet the minimal standards required by Nevada law, then whatever reasons of expedience or public policy that lay behind the creation of the presumption of law by [NRS 484.040](#), must fall before the fact that the overriding public policy of Chapter 489, i.e. the health and safety of the public, has not actually been met. The presumption of law that Nevada requirements have been met may be rebutted in the face of evidence that they have not.

[NRS 489.040](#) provides that Nevada seals shall be issued to units bearing out-of-state seals without inspection. But information of noncompliance may come from a number of sources; consumers, dissatisfied dealers, local law enforcement, or inspection agencies. In the event of evidence of noncompliance with Nevada requirements, the department may void or recall the seals it previously issued to the particular unit or units found to be in noncompliance. Obviously, in such cases, the presumption of compliance has been rebutted, the requirements of Nevada law have not in fact been met, and the units are thus not entitled to Nevada seals.

3. The Department of Motor Vehicles may require evidence that another state's agency has issued its seal to a particular unit in accordance with its inspection procedures before the department issues the Nevada seal to that unit. [NRS 489.040](#) states that the department shall issue its seal when a unit bears another state's seal. Obviously, the department is entitled to evidence that a mobile home or travel trailer does in fact bear such a seal. Before the presumption of law created by [NRS 489.040](#) takes effect, the basic fact, actual issuance of a seal by another state, must be established. A presumption of law must rest upon facts established by direct evidence. 29 Am.Jur., Evidence, § 164. See also [NRS 47.190](#).

4. The department may obtain such evidence directly from the non-Nevada state agency which issued such seals, or if that agency is unable or unwilling to cooperate, may request the applicant for the Nevada seal to supply a copy of the non-Nevada state agency's certificate of compliance or other documents showing the issuance of the other state's compliance seal.

5. If a mobile home does not bear an out-of-state seal, then it must either be actually inspected or its construction plan inspected. There is nothing in [NRS 489.030](#)

which precludes the director from authorizing another person from making the inspection. The statute requires an inspection be made and is silent as to how and by whom it is made. The Director of the Department of Motor Vehicles is authorized by [NRS 480.020](#) to adopt rules and regulations for the enforcement of the minimum mobile home and travel trailer standards. Should the director deem it advisable or expedient for budgetary or other reasons to authorize another person or organization to inspect those units which do not bear another state's certifying seal, he may promulgate rules to that effect.

CONCLUSIONS

1. The Department of Motor Vehicles is directed to issue Nevada seals to mobile homes or travel trailers if such homes or trailers bear another state's seal certifying that they meet applicable standards, subject to the other conditions herein.

2. It is a rebuttable presumption of law that mobile homes or travel trailers bearing another state's seal meet Nevada's requirements for plumbing, heating, and electrical systems. If evidence is discovered that they do not in fact meet Nevada's requirements, the department may void or recall the Nevada seals issued to such units.

3. The department may require evidence that another state's seal actually was issued certifying that the plumbing, heating, and electrical systems are installed with the applicable American standard for a mobile home or travel trailer before issuing a Nevada seal in accordance with [NRS 489.040](#).

4. The department may require such evidence directly from the non-Nevada state agency issuing seals or from the applicants for Nevada seals.

5. The department may authorize another person or organization to inspect those mobile homes not bearing another state's certifying seal.

Respectfully submitted,

ROBERT LIST, *Attorney General*

75 Mining Claims—One copy of proof of labor and two copies of the claim map must be recorded with the county recorder. The recording fee for the claim map is \$3 for the first page and \$1 for each additional page, and these revenues should be deposited in the county general fund.

CARSON CITY, April 20, 1972

THE HONORABLE MUISTO O. BRAWLEY, *County Recorder, Nye County, Tonopah, Nevada*
89049

DEAR MRS. BRAWLEY:

This is in reply to your letter of March 24, 1972, concerning filing fees for the affidavit of labor and the assessment map under the new mining law.

QUESTION NO. 1

Must the affidavit of labor (proof of labor) and accompanying map be filed in duplicate?

ANALYSIS

The requirements for filing the affidavit of labor (proof of labor) are found in [NRS 517.230](#), subsection 1, as follows:

Within 60 days after the performance of labor of making of improvements required by law to be performed or made upon any mining claim annually, the person in whose behalf such labor was performed or improvements made, or someone in his behalf, shall make and have recorded by the county recorder, in books kept for that purpose in the county in which such mining claim is situated, an affidavit or statement in writing subscribed by such persons and two competent witnesses setting forth:

- (a) The amount of money expended, or value of labor or improvements made, or both.
- (b) The character of expenditures of labor or improvements.
- (c) A description of the claim or part of the claim affected by such expenditures or labor or improvements.
- (d) The year for which such expenditures or labor or improvements were made and the dates on which they were made.
- (e) The name of the owner or claimant of the claim at whose expense the same was made or performed.
- (f) The names of the persons, corporations, contractors or sub-contractors who performed the work or made the improvements.

Please note that there is no requirement here for duplicate copies of the affidavit of labor. Special note should be made of the fact that the affidavit or statement in writing must be signed by the person who is making the statement and two competent witnesses. This means that the “proof of labor” can either be in affidavit form or in statement form, but must be signed by three persons, regardless of the form. It must also be recorded within 60 days of when the assessment work was performed. There is no reference in the statute requiring filing of a proof of labor on September 1st even though September 1st is the last day of the assessment year for federal purposes. This means that when there has been assessment work done in the end of August, the proof of labor may be legally filed as late as the end of October. The fees for recording the proof of labor are provided for in [NRS 247.310](#).

The recording requirements for the claim map are somewhat different than the recording requirements for the proof of labor. These requirements are found in [NRS 517.230](#), subsection 3, as follows:

Each locator shall file two copies of a map prepared in accordance with [NRS 517.030](#) with the county recorder of the county in which the claim is located not later than September 1, 1972.

You will note that two copies of the map must be recorded with the county recorder, and that these maps must be recorded not later than September 1, 1972. This is a one time requirement for all claims located prior to July 1, 1971.

QUESTION NO. 2

What fee should be charged for filing the claim map, and what should be the disposition of this fee?

ANALYSIS

There is no provision for charging a fee for the claim map required by [NRS 517.230](#), subsection 3, in the new mining law. Therefore, the fee for recording this map should be as provided in [NRS 247.305](#), subsection 1. This would be \$3 for the first page and \$1 for each additional page. (See Attorney General’s Opinion No. 38, dated August 2, 1971.) The original and one copy of a one page map would cost \$4. There is no limitation on the number of claims that may be shown on one claim map, nor is there any provision for charging an additional fee if the claim map shows more than one claim. The claim

map should, however, conform to the guidelines published by the Nevada Bureau of Mines and Geology so that the maps are acceptable to the county surveyors.

The recording fees for maps recorded pursuant to [NRS 517.230](#), subsection 3, collected in accordance with [NRS 247.305](#), subsection 1, should be deposited in the county general fund, as are all other fees collected pursuant to [NRS 247.305](#), subsection 1.

CONCLUSION

One copy of the affidavit of labor must be recorded with the county recorder within 60 days of completion of the annual assessment work. Two copies of the claim map must be recorded with the county recorder prior to September 1, 1972. The filing fee for the claim map required pursuant to [NRS 517.230](#), subsection 1, is \$3 for the first page and \$1 for each additional page.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

76 Searches of County Hospital Patients' Possessions—County hospitals may prescribe regulations to ascertain the presence of unknown medicants, illegal drugs, liquor, and firearms; may inquire of prospective admittees whether they possess prohibited items; may search patient's personal possessions whenever the patient presents an immediate danger to his own safety or others' safety; may request police assistance or exclude a patient who refuses to surrender prohibited materials.

CARSON CITY, April 24, 1972

THE HONORABLE ROBERT E. ROSE, *District Attorney*, Washoe County Courthouse, Reno, Nevada 89505

Attention: WILLIAM J. HADLEY, *Chief Deputy*

DEAR MR. ROSE:

You have transmitted to this office a letter, dated January 25, 1972, from Norman E. Peterson, Assistant Administrator, Washoe Medical Center. You requested a legal opinion regarding the question raised therein.

In his letter, Mr. Peterson discussed the problem of county hospital personnel inspecting patients' personal possessions at the time of their admission to the hospital. He was concerned with the safety of the patient and other persons in the hospital in instances where the patient brings unknown medication, illegal drugs, liquor, or firearms into the hospital in a purse, suitcase, etc.

Mr. Peterson asks the following questions:

QUESTIONS

1. Should hospital personnel as a matter of routine ask all patients being admitted if they have in their possession, and are bringing into the hospital, any medications, liquor, firearms, etc.?
2. Should it be a standard procedure to inspect purses, luggage, etc.? If not, under what conditions may we do so?

3. Assuming that under certain conditions we should inspect the patient's belongings, what do we do if the patient refuses? Should a notation be made on the admit sheet and be signed by the patient?

4. If it is suspected that a patient has drugs or firearms, may we ask him to surrender them? If we are unable to get the patient to give up drugs or firearms, what recourse do we have?

ANALYSIS

1. Should hospital personnel as a matter of routine ask all patients being admitted if they have in their possession, and are bringing into the hospital, any medications, liquor, firearms, etc.?

Subsection 3 of [NRS 450.390](#), which pertains to county hospitals, states:

The hospital shall always be subject to such reasonable rules and regulations as the governing head may adopt in order to render the use of the hospital of the greatest benefit to the greatest number.

Obviously, it is a proper concern of the governing head of the county hospital, in order to render the use of the hospital of the greatest benefit to the greatest number, to safeguard the health, safety, and well-being of the patients and other persons within the hospital. To this end, the governing head of the hospital may institute rules and regulations to enable the staff to determine the presence of unknown medications brought into the hospital and to prohibit the possession of illegal drugs, liquor, or firearms within the hospital.

It is perfectly permissible, therefore, for hospital personnel, as a matter of routine, to ask all patients being admitted if they are bringing such material into the hospital. The hospital staff is not obligated to wait upon chance discovery of such material in the possession of patients, but may initially seek enforcement of hospital rules upon the patients' admittance.

2. Should it be a standard procedure to inspect purses, luggage, etc.? If not, under what conditions may we do so?

The hospital staff may not inspect patients' personal possessions, except by their voluntary consent or in situations constituting an immediate and direct threat to the safety of patients and others within the hospital.

The Fourth Amendment of the United States Constitution, with which Section 18 of Article 1 of the Nevada Constitution is virtually identical, provides:

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

The Fourth Amendment is applied to the states by the Fourteenth Amendment to the United States Constitution. *Mapp v. Ohio*, 367 U.S. 643 (1961); *Ker v. California*, 374 U.S. 23 (1962).

The United States Supreme Court, in *Camara v. Municipal Court*, 387 U.S. 523 (1967), stated that the Fourth Amendment was not limited to the typical policeman's search for the fruits and instrumentalities of crime. Instead, the basic purpose of the Fourth Amendment is to " * * * safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Camara*, p. 528. The court held that administrative searches and inspections are:

* * * significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual. *Camara*, at 530.

This opinion was followed with almost identical language by the Nevada Supreme Court in *Owens v. City of North Las Vegas*, [85 Nev. 105](#), 450 P.2d 784 (1969).

There can be no doubt that a search of patients' possessions by the staff members of a county supported hospital is an administrative search or inspection by government officials. The staff members are county-paid officials, charged with the proper administration of a public institution. A routine or standard inspection of patients' possessions without any evidence, suspicion, or hint that such possessions contain prohibited material is an unwarranted intrusion into the patients' constitutional right of privacy.

Such a conclusion, however, does not mean that searches may never be conducted of patients' possessions. The two cases noted above do not prohibit all administrative searches, but only those unaccompanied by constitutional warrant procedure. *Camara*, at 530; *Owens*, at 109. Both the United States and Nevada Constitutions provide that a search warrant will issue only upon a showing of "probable cause" that a prohibited activity has occurred.

"Probable cause" is defined as less than the certainty of proof, but more than a mere suspicion or possibility. *Dean v. State*, 205 Md. 274, 107 A.2d 88 (1954); *Bland v. State*, 197 Md. 546, 80 A.2d 43 (1951). Facts which may be relied upon to show "probable cause" must be such to justify a prudent and cautious man into believing that the offense alleged has been committed. *Dean v. State*, supra; *U.S. v. Zager*, 14 F.Supp. 23 (1936); *Shore v. U.S.*, 49 F.2d 519 (1931). But the courts in *Camara* and *Owens*, supra, recognized that when the public safety and health are involved, those interests must be balanced against the individual's right to privacy. In such cases, the rule of "probable cause" will not be as stringent as in criminal investigations, but instead will be based on a rule of reasonableness. *Camara*, at 539-540; *Owens*, at 110-111.

But should a finding of "probable cause" be made so as to justify a search warrant, and conduct that search. Hospital personnel are not peace officers. Their duties do not include the enforcement of any law. If hospital personnel have "probable cause" to believe that a patient has illegal possession of drugs or firearms, it is their duty to inform the police authorities of this fact and to leave it to the police to obtain the proper warrants and conduct the proper search.

Of course, if the patient voluntarily consents to a search or if the patient is involved in a situation that immediately and directly threatens his own safety or that of others, a search may be conducted by hospital personnel. *Camara*, at 530; *Owens*, at 110-111.

3. Assuming that under certain conditions we should inspect the patient's belongings, what do we do if the patient refuses? Should a notation be made on the admit sheet and be signed by the patient? Or * * *?

This question has already been answered by No. 2 above. Hospital personnel should not search a patient's personal belongings, except when the patient voluntarily consents to such search or when the patient constitutes an immediate and direct threat to his own safety or that of others.

4. If it is suspected that a patient has drugs or firearms, may we ask him to surrender them? If we are unable to get the patient to give up drugs or firearms, what recourse do we have?

If it is known or suspected that a patient possesses prohibited material, he should be asked to surrender them voluntarily. This would be in accordance with hospital rules and regulations designed to protect the safety of all persons within the hospital.

Should the patient refuse to surrender the materials, there are two courses open to hospital personnel. In the case of illegal drugs and firearms, the hospital staff should report to the police authorities and leave it to the police to obtain the proper warrants and conduct the proper searches. In the case of medications and liquor, which may be legal in themselves, but which are still prohibited under hospital regulations, the hospital staff may proceed under subsection 4 of [NRS 450.390](#):

The governing head may exclude from the use of the hospital any and all inhabitants and persons who shall willfully violate such rules and regulations.

The insistence on retaining prohibited materials can only be a willful violation of hospital regulations and patients may, therefore, be excluded. Of course, the staff must, in each case, decide whether the patient's medical condition is such as to justify his exclusion from the hospital. This, however, is a decision which can be decided only by the staff in each particular case.

This is particularly true in the case of patients being admitted to the emergency ward. Generally, they may be in such a condition as to preclude exclusion from the hospital. In cases where the possession of illegal materials is suspected, once again it is the duty of the law enforcement officials to determine if a warrant should issue, and, if so, to conduct the proper search. In the case of legal, but prohibited materials, the patient's condition may require an exception to the exclusion rule.

CONCLUSIONS

This office concludes that, in pursuance of valid hospital regulations, the staff of county supported hospitals:

1. May promulgate rules and regulations governing procedures to be observed by hospital staff in determining whether unknown medication, illegal drugs, liquor, firearms, or explosives are in the possession of prospective admittees or patients consistent with the safeguards set forth herein.
2. May ask all patients, at the time of their admittance, whether they have in their possession material prohibited by the hospital.
3. May not search patients' personal possessions under any conditions except by the patients' consent or in cases where the patient or others are under a direct and immediate threat to the health and safety of others.
4. May request patients to surrender all prohibited materials. In the case of refusal, the staff may request police intervention or exclude the patient from the hospital, depending on whether the prohibited materials are illegal or not. Exclusion is discretionary, depending on the condition of the patient.

Respectfully submitted,

ROBERT LIST, *Attorney General*

77 Assistance to Disabled Voters—The Secretary of State may prescribe regulations permitting election officials to assist physically disabled voters to mark their ballots or operate voting machines, in cases where the disability prevents the voter from doing so himself.

CARSON CITY, April 25, 1972

THE HONORABLE JOHN KOONTZ, *Secretary of State*, State Capitol Building, Carson City, Nevada 89701

DEAR SECRETARY KOONTZ:

You have requested the opinion of this office on the following question:

QUESTION

Does the repeal of [NRS 293.290](#) prohibit assistance by another person to a disabled or handicapped voter in marking his ballot or operating a voting machine?

ANALYSIS

[NRS 293.290](#), prior to its repeal by the 1971 Legislature, authorized the county clerk to provide assistance at the polls, if by reason of a physical disability the voter was unable to mark a ballot or operate a voting machine.

Article 2, Section 1 of the Nevada Constitution provides:

All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election. * * *

Refusal to permit assistance to a physically disabled person, when by reason of that disability he is unable to mark his ballot or operate a voting machine, would disenfranchise the voter. Only those convicted of treason or a felony, or idiots or insane persons are disqualified from voting.

The repeal of [NRS 293.290](#) cannot result in the disenfranchisement of physically disabled voters, otherwise qualified to vote, as the Nevada Constitution guarantees them the right of suffrage.

[NRS 293.247](#) provides that:

The secretary of state shall promulgate rules and regulations not inconsistent with the election laws of this state, for the conduct of primary and general elections in all counties.

The Secretary of State, therefore, to meet the provisions of the Nevada Constitution in regard to the right suffrage, may provide by regulation that election officials assist physically disabled voters to mark their ballots or operate voting machines, in cases where physical disabilities prevent such voters from doing so themselves.

CONCLUSION

Repeal of [NRS 293.290](#) does not prohibit assistance at the polls to handicapped voters and the Secretary of state may prescribe regulations permitting election officials to assist physically disabled voters to mark their ballots and operate voting machines, in cases where the disability prevents the voter from doing so himself.

Respectfully submitted,

ROBERT LIST, *Attorney General*

78 Election—Registration of Military Personnel—Members of the military service who entered the service from outside the State of Nevada may establish residency for voting purposes in the State of Nevada on the same basis as

other Nevada residents and should be registered to vote if they meet other statutory and constitutional requirements.

• CARSON CITY, April 27, 1972

MR. JAMES A. BILBRAY, 302 East Carson Avenue, Las Vegas, Nevada 89101

DEAR MR. BILBRAY:

This opinion is in reply to your recent letter in which you requested an opinion on the following:

QUESTION

Under what circumstances may citizens who are not residents of the State of Nevada at the time they entered the military service but who are currently in the military service and residing in Nevada be entitled to register and vote in elections in Nevada?

ANALYSIS

Attorney General's Opinion No. 48, dated October 20, 1971, treated in great detail the current position of the State of Nevada concerning voter registration. While this opinion and review was specifically directed to a registration of students age 18, 19, and 20, much of the reasoning and many of the citations are germane to the question which you asked and, therefore, will not be treated again in detail in this opinion.

It is sufficient to say that under Article II of the Nevada Constitution and [NRS 10.020](#) and [293.485](#) et seq., that the legal residence for one wishing to vote in the state of Nevada is synonymous with the term domicile and, therefore, in order to acquire a residence for voting purposes in the location in which the individual resides it must be demonstrated that the individual has the intention to make that locality his home coupled with the intent to abandon his former residence or domicile, and this situation must continue for the period prescribed in the Nevada Constitution and the Nevada Revised Statutes.

It must also be remembered, as indicated by the numerous citations appearing on this point in Attorney General's Opinion No. 48, supra, that the Supreme Court of the State of Nevada has consistently interpreted the laws pertaining to registration and voting in such a way as to permit the greatest number of citizens to exercise their time-honored and long-protected franchise to participate in elections.

The most recent formal opinion of this office concerning the right of an individual in the military service to establish a voting residence in the State of Nevada was Attorney General's Opinion No. 276, dated March 7, 1962. This opinion is reaffirmed insofar as it permits a member of the military service to establish residency for voting purposes in the State of Nevada. However, the section of this opinion which intimates that the individual in the military service has an additional or greater burden to establish residency than do other individuals is specifically disaffirmed due to the fact that it is inconsistent with recent case law as well as recent Attorney General's Opinion No. 48, supra, issues by this office.

The recent Michigan Supreme court case of *Wilkins v. Bentley*, Mich. (No. 52953; August 27, 1972) held that a statute similar to [NRS 293.487](#) and Article II, Section 2 of the Nevada Constitution must be treated as not placing a presumption of residency or nonresidency upon the individuals attempting to register when it held that this type of presumption would violate both the 14th and 26th Amendments to the United States Constitution.

As also noted in Attorney General's Opinion No. 48, supra:

Failure to treat all those attempting to secure the right to vote equally would also be in contravention of 42 U.S.C.A. § 1971(a)(2)(A), which reads:

“2. No person acting under color of law:

(A) Shall in determining whether any individual is qualified under state law or laws to vote in any election apply any standard, practice, or procedure different from the standards, practices or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by state officials to be qualified to vote.”

It is noted that this section applies to all forms of discrimination and differs from § 1971(a)(1) in that it is not limited to discrimination on the basis of race, color, or previous condition of servitude.

As a result of these and other holdings cited in Attorney General’s Opinion No. 48, supra, the position of the Attorney General’s Office as stated at page 11 of Attorney General’s Opinion No. 48, supra, was:

* * * previous Attorney General’s opinions which stated that students or other individuals enumerated in either [NRS 293.487](#) or under Article II, § 2 of the Constitution have an additional burden of establishing residency are hereby disaffirmed.

The United States Supreme Court dealt with the problems of members of the Armed Forces attempting to register in the state in which they are stationed in the case of *Carrington v. Rash*, 380 U.S. 89 (1965). While this case apparently approved Nevada Attorney General’s Opinion No. 276 of 1962 in a comment in footnote 3 at pages 91-29, the holding of the case generally was that the state may establish, on a nondiscriminatory basis and in accordance with the constitution, reasonable qualifications for the exercise of the voting franchise. The court also noted that “[t]he declaration of voters concerning their intent to reside in the State and in a particular county is often not conclusive; the election officials may look to the actual facts and circumstances.”

Based on the above-cited cases, a permissible procedure for those who register voters in the State of Nevada to use in determining whether or not a member of the military service is a resident of the State of Nevada for voting purposes would be to question the individual in order to determine his residency. However, this questioning must be on a nondiscriminatory basis and conducted in such a way that the proof required of the individual in the military service to establish residency for voting purposes is the same proof that is required of other individuals who are not members of the military service and involves no additional or burdensome tests or conditions. As noted at page 97 of *Carrington*, supra, “[T]he uniforms of our country * * * [must not] be the badge of disfranchisement for the man or woman who wears it.” (Court’s brackets.)

CONCLUSION

Members of the military service who entered the service from outside the State of Nevada may establish residency for voting purposes in the State of Nevada on the same basis as other Nevada residents and should be registered to vote if they meet the other statutory and constitutional requirements.

Respectfully submitted

ROBERT LIST, *Attorney General*

By ELLIOTT A. SATTLER, *Deputy Attorney General*

79 Agricultural Land—The Nevada Tax commission has exclusive authority to classify and valuate agricultural land. The classification must be based on agricultural productivity and the value must be identified to the classification.

CARSON CITY, May 1, 1972

THE HONORABLE LAWRENCE E. JACOBSEN, *Assemblyman*, P.O. Box 367, Minden, Nevada 89423

DEAR ASSEMBLYMAN JACOBSEN:

This is in reply to your letter of April 24, 19972, wherein you inquired as to the application of [NRS 361.325](#), subsection 2(b), versus [NRS 361.227](#) concerning the valuation of agricultural land.

QUESTION

Is the Nevada Tax Commission permitted to use the methods detailed in [NRS 361.227](#) in evaluating agricultural land? If not, how shall agricultural land be evaluated?

ANALYSIS

The general rule for assessment of all property in the State of Nevada is set out in [NRS 361.225](#), which reads as follows:

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

This statute provides the general rule for assessment of all property in Nevada that is subject to taxation. "Full cash value" is determined by the several different methods set forth in the statutes. "Full cash value" is defined in [NRS 361.025](#) as follows:

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

This definition is controlling on all valuations, with the exception that the assessment of real property must be determined in accordance with [NRS 361.227](#). The method of arriving at "full cash value" for real property is set out in [NRS 361.227](#), subsection 1, as follows:

In determining the full cash value of real property, the *county assessor, county board of equalization and the state board of equalization* shall compute such full cash value by using each of the following factors for which information is available:

- (a) The estimate of the value of the vacant land, plus any improvements made and minus any depreciation computed according to the estimated life of such improvements.
- (b) The market value of the property, as evidenced by:
 - (1) Comparable sales in the vicinity;
 - (2) The price at which the property was sold to the present owner; and
 - (3) The value of the property for the use to which it was actually put during the fiscal year of assessment.
- (c) The value of the property estimated by capitalization of the fair economic income expectancy. The criteria of applicability for each factor shall be prescribed by regulation of the Nevada tax commission. (Italics added.)

You will note that this statute is addressed only to the county assessor, the county board of equalization, and the State Board of Equalization. This means that the three methods of establishing full cash value of real property shown as subsections 1(a), 1(b), and 1(c) above are only binding on the county assessor and the boards of equalization. The concern of the State Board of Equalization is only where the county assessor's valuation under this statute is appealed. You will also note that the criteria of applicability for each of the three factors of valuation are to be prescribed by regulations of the Nevada Tax Commission. *These methods of determining the full cash value of real property pursuant to [NRS 361.227](#) must be distinguished from the method used by the Nevada Tax Commission in exercising its exclusive jurisdiction over the valuation of agricultural lands.*

There are various statutes that give the Nevada Tax Commission the exclusive authority to establish valuations for assessment purposes. Such authority is given to establish the valuation for assessment purposes of property of an interstate and intercounty nature, as described in [NRS 361.320](#). The Nevada Tax Commission is also given exclusive authority to establish the valuations for assessment purposes of livestock, mobile homes and agricultural lands, as set out in [NRS 361.325](#). The pertinent part of this statute is subsection 2(b), which reads as follows:

Classify land and fix and establish the valuation thereof for assessment purposes. The classification of agricultural land shall be made on the basis of crop or forage production, either in tons of crops per acre or other unit, or animal unit months of forage. An animal unit month is the amount of forage which is necessary for the complete sustenance of one animal unit for a period of 1 month. One animal unit is defined as one cow and calf, or its equivalent, and the amount of forage necessary to sustain one animal unit for 1 month is defined as meaning 900 pounds of dry weight forage per month.

You will note that this subsection requires the Nevada Tax Commission to first classify agricultural land and then fix and establish the valuation of each class of agricultural land for assessment purposes. You should also note that the classification of agricultural land must be based on its agricultural productivity. The Nevada Tax Commission, in establishing the valuation of each classification of agricultural land, is not limited to the three methods in [NRS 361.227](#), subsection 1, that limit the county assessor and the boards of equalization. The primary limitation on the Nevada Tax Commission in establishing the valuation of agricultural land is found in Article 10, Section 1, of the Nevada Constitution, which reads in part as follows:

The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a *just valuation* for taxation for all property real, personal and possessory, * * * (Italics added.)

The Nevada Constitution merely requires that the valuation for taxation of all property be "just."

The authority of the Nevada Tax Commission to evaluate property for assessment purposes has been established since 1893, with the early case of *Sawyer v. Dooley*, [21 Nev. 390](#), 32 P. 437 (1893). This case is also cited in *State v. Wells Fargo & Co.*, [38 Nev. 505](#), 150 P. 836 (1915). The Nevada Tax Commission, in establishing classifications and valuations of agricultural land, must be careful to insure that they are uniform throughout the State. The Nevada Constitution, Article 4, Section 20, provides in part as follows:

The legislature shall not pass *local or special laws* in any of the following enumerated cases—that is to say:

* * * * *

For the assessment and collection of taxes for state, county and township purposes; * * * (Italics added.)

The Nevada Constitution also provides in Article 4, Section 21, as follows:

In all cases enumerated in the preceding section [Section 20 cited above] 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.)

The recent case of *Boyne v. State ex rel. Dickerson*, [80 Nev. 160](#), 390 P.2d 225 (1964), cited these constitutional sections at length when it held that the Green Belt act ([NRS 361.313](#) and [361.314](#)) was unconstitutional. This act was considered a special tax law without uniform operation throughout the State.

In view of the above-cited constitutional mandates, legislative enactments and Supreme Court holdings, the options available to the Nevada Tax Commission in valuating agricultural land are quite limited. The specific method of evaluating agricultural land is nowhere detailed to the Nevada Tax Commission, but the valuation must be based on agricultural classifications of the land. In establishing the classifications of agricultural land, the Tax Commission has no alternatives other than those specified in [NRS 361.325](#). The commission may either base the value on crops or forage production per acre or other unit or animal unit months of forage.

Once the agricultural land is classified, then the value of each class so established must be set so that it is “a just valuation” (Nev. [Const. Art. 10, Sec. 1](#)), so that it does not have “local or special” (Nev. [Const. Art. 4, Sec. 20](#)) application, and so that it be of “general and of uniform operation throughout the state” (Nev. [Const. Art. 4, Sec. 21](#)). Valuation also must not be more than “the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.” ([NRS 361.025](#).)

CONCLUSION

The valuation of a property solely based on agricultural productivity must necessarily be referenced to its agricultural worth. Only the value of agricultural land traceable to the agricultural productivity may be assigned a classification established under [NRS 361.325](#), subsection 2(b). In considering market sales of a class of land, influences from urbanization, aesthetics, going-concern business value and other price influencing factors not common to all land of the same land class must be strictly avoided.

Please note the foregoing concerns only the valuation of agricultural land and not real estate subject to valuation by the county assessor pursuant to [NRS 361.227](#).

The Nevada Tax Commission has exclusive authority for classifying and evaluating agricultural land throughout the State. The value established for each class of agricultural land must be a just valuation for the class of agricultural land and must be uniform throughout the State. The only value factors that may be used in setting the value for a class of agricultural land are those common to all land of the class.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

80 Teachers—All teachers must have been employed by the school district for three consecutive years before they are entitled to the benefits of the Professional Practices Act.

CARSON CITY, May 1, 1972

THE HONORABLE WILLIAM MACDONALD, *Humboldt County District Attorney*, Court House, Winnemucca, Nevada 89445

DEAR MR. MACDONALD:

This is in reply to your letter of March 16, 1972, requesting an interpretation of the Professional Practices Act.

QUESTION

Are certificated employees of a school district who are presently teaching in their third year eligible for the benefits of the Professional Practices Act?

ANALYSIS

The Professional Practices Act was extensively amended in the 1971 session of the Nevada Legislature. Chapter 262 of the 1971 Statutes of Nevada, page 379, contains the amendment that we are concerned with in this question. The effective date of this amendment was April 13, 1971, which was prior to the end of the school year or teaching contract period. Under the old statute a certificated employee became eligible for the benefits of the Professional Practices Act after teaching for 2 consecutive contract periods. This is found in [NRS 391.311](#), subsection 4, which, prior to amendment, provided as follows:

“Teacher” means any certificated employee of a board of trustees of a school district who has been employed by such board of trustees for 2 consecutive contract periods.

Under the act only teachers, as defined in the act, are eligible for the benefits of the Professional Practices Act. Clearly the term “2 consecutive contract periods” was intended by the Legislature to mean that the certificated employee became eligible for the benefits of the Professional Practices Act only after he has completed the 2 contract periods. The certificated employee would have to successfully conclude his second year of teaching in order to become a teacher, as defined in the act, and eligible for the benefits of the act.

Prior to the conclusion of the 1970-1971 contract period, the act was amended to require that a certificated employee be employed for 3 years in order to be eligible for the benefits of the Professional Practices Act. [NRS 391.311](#), subsection 4, was amended to read as follows:

“Teacher” means any certificated employee of a board of trustees of a school district who has been employed by such board of trustees on a permanent basis at the end of the probationary periods as provided in [NRS 391.3197](#).

[NRS 391.3197](#), referred to above, was amended to read as follows:

1. Teachers employed by a board of trustees shall be on probation annually for 3 years, provided their services are satisfactory, or they may be dismissed at any time at the discretion of the board of trustees. A teacher

employed on a probationary contract for the first 3 years of his employment shall not be entitled to be under the provisions of [NRS 391.311](#) to [391.3196](#), inclusive.

However, prior to formal action by the board, the probationary teacher shall be given the reasons for the recommendation to dismiss or not to renew the contract and be given the opportunity to reply.

2. The provisions of [NRS 391.311](#) to [391.3197](#), inclusive, are not applicable to a teacher who has entered into a contract with the board as a result of the Local Government Employee-Management Relations Act and such contract provides separate provisions relating to the board's right to dismiss or refuse to reemploy such teacher.

There is no grandfather provision in the act giving tenure to certificated employees as there was in the Pennsylvania Act. See *Malone v. Hayden*, 329 Pa. 390, 197 A. 344 (1938).

The act, as amended, removed any ambiguity there may have been about the period of employment required before a certificated employee was entitled to the benefits of the Professional Practices Act. The certificated employee must complete 3 years of employment before he is entitled to the provisions of the act. It should also be pointed out that in this statute, as set out above, the school board must, prior to formal action by the board, give the certificated employee the reasons for the recommendation to dismiss or not to reemploy the employee, and that the employee be given an opportunity to reply to the board.

The Legislature, through the vehicle of the Professional Practices Act, has bestowed upon the teachers of this State the benefit of tenure upon their satisfactory completion of a probationary period. The Legislature clearly may change the prerequisites for this benefit at any time prior to the time that the benefit has been bestowed upon the teacher. Therefore, if a teacher were teaching in his second contract period but had not as yet completed that second contract period, he would not be entitled to the benefits of the Professional Practices Act. Then, as was the case, if the Legislature changes the requirements for qualifying for the Professional Practices Act prior to the time that the certificated employee completed his probationary period, the certificated employee would be required to comply with the amended prerequisites. The fact that the certificated employee has already signed a contract to teach his third contract period prior to the time that the act was amended is not persuasive. The act speaks of contract periods and the fact that the certificated employee has an excellent expectancy to complete the second contract period and be employed for the third contract period does not in itself vest the benefits of the Professional Practices Act on him.

CONCLUSION

A certificated employee of a school district who was teaching in his second contract period at the time the Professional Practices Act was amended to require 3 years of service to the school district to qualify for tenure is not entitled to the benefits of the Professional Practices Act until he has complied with the amended provisions of the act.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Attorney General*

81 Justice's Court—Small claims jurisdiction.

CARSON CITY, May 1, 1972

THE HONORABLE MARK C. SCOTT, JR., *Elko County District Attorney*, Elko, Nevada
89801

DEAR MR. SCOTT:

You have requested an opinion from this office concerning [NRS 73.010](#), which vests justices' courts with small claims jurisdiction. You have informed us that some justices of the peace adhere to the position that damages in tort cases are not recoverable in small claims courts, while others adhere to the position that they are. You have therefore requested an opinion on the following question:

QUESTION

Are actions sounding in tort cognizable in small claims courts?

ANALYSIS

It is clearly the intent of the applicable statutes to afford concurrent jurisdiction in certain cases to justices' courts sitting as such and to justices' courts sitting as small claims tribunals. The latter are intended to provide a separate division devoted to the summary disposition of certain claims in a manner which is less costly and less protracted than the ordinary justice's court procedures. [NRS 73.010](#) provides:

In all cases arising in the justice's court for the recovery of money, only where the amount claimed does not exceed \$300, and the defendant named is a resident of the township or city and county in which the action is to be maintained, the justice of the peace may proceed as provided in this chapter and by rules of court. (Italics added.)

This statute conferring small claims jurisdiction clearly confers such jurisdiction in all cases in which the justice's court has jurisdiction, provided that the recovery of money is sought and that the amount claimed does not exceed \$300. The jurisdiction of justices' courts is specified in [NRS 4.370](#). Subsection 1 (b) reads as follows:

1. Justices' courts shall have jurisdiction of the following actions and proceedings:

* * * * *

(b) In actions for damages for injury to the person, or for taking, detaining, or injuring personal property, or for injury to real property where no issue is raised by the verified answer of the defendant involving the title to or possession of the same, if the damage claimed does not exceed \$300.

This subsection clearly authorizes justices' courts to entertain actions sounding in tort, so long as the damages sought do not exceed \$300. It is therefore clearly the intent of the Legislature to confer such jurisdiction when justices' courts sit as small claims courts.

Statutory language requiring the recovery of money does not limit the term "money" to contract claims. Since tort damages, as well as contract damages, are money, there is no reason to restrict small claims court jurisdiction to contract cases. This conclusion is also reached in *Leuschen v. Small Claims Court*, 191 Cal. 133, 215 P. 391; *McLaughlin v. Municipal Ct.*, 308 Mass. 397, 32 N.E.2d 266; and *Hopkins v. Parson*, 10 N.J.Misc. 435, 159 A. 308.

You have directed our attention to *Armstrong v. Paul*, [1 Nev. 134](#). This decision, while reaching a similar conclusion, did so on the basis that the justice's court, there exercising jurisdiction in an action in unlawful detainer, did so of necessity, because Nevada had not then been admitted to statehood, and the district courts were not yet

created. The Justice's court exercised its jurisdiction under the Organic Act of the Territory.

CONCLUSION

It is the opinion of this office that small claims courts have jurisdiction to hear actions sounding in tort, provided the damages claimed do not exceed \$300.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By ROBERT A. GROVES, *Deputy Attorney General*

82 Authority to Negotiate Bid—In the enactment of Chapter 467 of the 1971 Statutes of Nevada the Legislature contemplated the authorization of moneys from the General Fund, proceeds of bonds of the University System, and federal grants as constituting an “appropriation” for the purposes of [NRS 341.150](#), subsection 3(c)(1). Therefore, the State Planning Board has the authority to negotiate with a low bidder whose bid was less than the combined total of money authorized by Chapter 467.

CARSON CITY, May 12, 1972

MR. WILLIAM E. HANCOCK, *Manager, State Planning Board*, Carson City, Nevada
89701

DEAR MR. HANCOCK:

In your letter of April 24, 1972, to this office you make reference to [NRS 341.150](#), subsection 3(c), which states:

The [state planning] board shall have authority to negotiate with the lowest responsible bidder on any contract to obtain a revised bid if:

(1) The bid is less than the appropriation made by the legislature for that building project; * * *

The lowest bid received for the construction of the Instructional Building, Elko Community College, Project No. 71-UC-3, was \$497,500. The construction budget approved by the State Planning Board is \$462,000. However, on this project the Legislature appropriated \$375,000 from the General Fund. You state that the Legislature understood at the time of making this appropriation that these funds would be matched by University funds and by a federal grant. By Chapter 467, 1971 Statutes of Nevada, the Legislature authorized the expenditure from all these sources of funds for the project. The total spending authorization for the project, therefore, is \$583,519.

QUESTION

In order to determine if the board has the authority to negotiate with the lowest responsible bidder on the Elko Community College Project under [NRS 341.150](#), subsection 3(c)(1), you wish an opinion on what constitutes an appropriation under that statute—the legislative appropriation of \$375,000 from the General Fund or the total spending authorization of \$583.519.

ANALYSIS

The Supreme Court of Nevada has considered the definition of “appropriation” in several cases before it and has stated:

“Appropriation” is the legislative sanction for disbursement of public revenue. *City of Reno v. McGowan*, [84 Nev. 291](#), 439 P.2d 985 (1968).

and:

To appropriate means to allot, assign, set apart or apply to a particular use or purpose. An appropriation, in the sense of the Constitution, means the setting apart of a portion of the public funds for a public purpose, and there must be money placed in the fund applicable to the designated purpose to constitute an appropriation. *State v. LaGrave*, [23 Nev. 25](#), 41 P. 1075 (1895).

Case law in other states also requires appropriations to come out of the treasury, public funds, the general funds or the public revenue. *Jobe v. Caldwell*, 93 Ark. 503, 125 S.W. 423 (1910); *Menefee v. Askew*, 25 Okl. 623, 107 P. 159 (1909); *Hunt v. Callaghan*, 32 Ariz. 235, 257 P. 648 (1927); *Black and White Taxicab Company v. Standard Oil Company*, 25 Ariz. 381, 218 P. 139 (1923); *State ex rel. Parker v. Youngquist*, 69 S.D. 423, 11 N.W.2d 84 (1943); *Menz v. Coyle*, 117 N.W.2d 290 (N.D. 1962).

The word “appropriation” has, therefore, generally been defined as a legislative grant to public officers to expend public moneys on public projects for a specified period of time. However, when authorizing expenditure of funds for the Elko Community College Project, the Legislature contemplated as a source of these funds more than just the public moneys of the State’s General Fund. For the construction of the Elko Community College Project the Legislature authorized, by Section 2 of Chapter 467 of the 1971 Statutes of Nevada, the expenditure of \$90,000 from the proceeds of bonds issued by the University. By Section 3 of that same act, the Legislature authorized the acceptance and the expenditure of a federal grant of \$68,000. Then in Section 4 of that act the Legislature provided:

There is hereby appropriated from the general fund in the state treasury to the state planning board the sum of \$375,000 for the purpose of acquiring the project together with the proceeds of the bonds or other securities of the university issued pursuant to the provisions of section 2 of this act and the grant moneys specified in section 3 of this act.

The Legislature, therefore, authorized the expenditure of more than just the money appropriated from the State’s General Fund. This total spending authorization can only be considered an “appropriation” as contemplated by [NRS 341.150](#), subsection 3 (c)(1). Whatever may have been the definition of “appropriation” in times past, in this era of grants-in-aid, the definition has been expanded. In support of this view, one need only look at [NRS 341.120](#) which empowers the State Planning Board to receive and accept grants of money or services to carry out its work, [NRS 341.125](#) which empowers the State Planning Board to accept federal grants, and [NRS 341.153](#) in which it is declared that it is the public policy of the State that construction of public buildings:

Involves the expenditure of large amounts of public moneys which, whatever their particular constitutional, statutory or governmental source, involved a public trust.

Finally, there is the definition of “appropriation” found in [NRS 353.299](#) of the Fiscal and Accounting Procedures Law:

“Appropriation” means an authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes for a specified period of time.

The legislative authorization of Chapter 467, 1971 Statutes of Nevada, to expend money from the General Fund, proceeds from University bonds and federal grants for the Elko Community College Project fits perfectly into this definition.

CONCLUSION

Accordingly, it is the opinion of this office that the total spending authorization of \$583,519 from the various sources of funds permitted by the Legislature in Chapter 467 of the 1971 Statutes of Nevada constitutes and “appropriation” for the purposes of [NRS 341.150](#), subsection 3(c)(1).

Respectfully submitted,

ROBERT LIST, *Attorney General*

83 Power of Local Governments to Enact Ordinances Relating to Mobile Home Standards—Chapter 489 of the Nevada Revised Statutes preempts local regulation of mobile home standards for plumbing, heating, and electrical systems. As Chapter 489 makes no provision for construction standards, local ordinances on this subject may apply.

CARSON CITY, May 22, 1972

MR. ROY PAGNI, *Chairman, Washoe County Commissioners*, 130 Pagni Lane, Reno, Nevada 89502

DEAR MR. PAGNI:

You have asked this office for an opinion on whether the Washoe County Commissioners have the power to institute an ordinance demanding that all trailer manufacturers meet the building standards of Washoe County. In particular, you mention a proposed ordinance requiring a 45 minute burn-through time for interior walls.

ANALYSIS

Chapter 489 of the Nevada Revised Statutes requires all mobile homes and travel trailers sold or offered for sale in Nevada after January 1, 1968 to meet the standards of the United States of America Standards Institute for plumbing, heating, and electrical systems. [NRS 489.060](#) of that chapter provides:

Any mobile home or travel trailer which meets the requirements of this chapter and is not taxed as real property is not required to comply with any local building codes or ordinances prescribing standards for plumbing, heating and electrical systems.

By this provision the State has preempted the field for setting standards for plumbing, heating, and electrical systems in mobile homes and travel trailers. Local ordinances on those subjects are not applicable.

Chapter 489, however, makes no provisions relating to construction standards. Local governments are free, within the police powers granted them, to enact ordinances

on this subject. Relating as it does to construction, an ordinance on burn-through time of interior walls would be within the authority of local government.

Respectfully submitted,

ROBERT LIST, *Attorney General*

84 Health Maintenance Organizations—Nonprofit corporations providing prepaid medical and dental services are regulated by [NRS Chapter 695B](#) of the Insurance Code. For-profit medical and dental corporations, which practice medicine, however, are regulated only by [NRS Chapters 78](#) and [89](#), relating to private and professional corporations. For-profit medical and dental service corporations which merely contract for medical services are regulated only by [NRS Chapter 78](#).

CARSON CITY, June 12, 1972

THE HONORABLE JOHN HOMER, *Member of the Assembly*, 306 E. Park Street, Carson City, Nevada 89701

DEAR ASSEMBLYMAN HOMER:

In your April 18, 1972 letter to this office you expressed a concern regarding so-called health maintenance organizations, which are, basically, corporations providing prepaid medical and dental services to subscriber members. You stated that your concern lay in the fact that Nevada apparently had no specific laws or regulations to govern such entities. You, therefore, have requested an opinion from this office regarding the following question:

QUESTION

What agency or department of the State of Nevada has jurisdiction to accept applications from health maintenance organizations (HMO's) to do business and to subsequently regulate such organizations?

ANALYSIS

HMO's are nonprofit or for-profit organizations, usually organized as corporations, which provide medical or dental services to persons who subscribe to the organization's service plan. Services consist of both hospital and physician's and dentist's care. The HMO may provide such care directly from facilities which it owns, controls or rents, or by physicians and dentists who are employees, partners or shareholders in the organization. Services may also be provided to subscriber-members indirectly by means of contracts between the HMO's and hospital facilities or physicians and dentists. Services are purchased by prepayment, the fee being determined on a per capita basis of subscriber-members. Facilities and physicians are compensated usually by capitation, i.e. they are paid a sum equal to a fixed per capital sum for each subscriber-member of the plan, multiplied by the number of subscribers.

The essential differences between HMO's and indemnity type health insurance plans are:

1. The HMO takes the direct responsibility for providing its subscriber-members with comprehensive health care. By controlling or contracting with facilities or physicians and dentists, it insures that whatever service will be needed is immediately available when needed.

2. Unlike usual fee-for-service plans, providers of medical services receive compensation that is not directly tied to services performed, but is a fixed rate of payment based on the number of subscriber-members enrolled. 84 Harvard L.Rev. 887, 890 (1970-1971).

Generally, HMO's have not been considered by the nation's courts to be characterized as providers of insurance because of these differences. It has been held that HMO's do not contain the element of risk essential to a definition of insurance nor do they contain the indemnity aspects of an insurance plan. 84 Harvard L.Rev. 886, 971 (1970-1971). In Nevada, prior to the enactment of the new Insurance Code in 1971, a differing viewpoint was laid out by Attorney General's Opinion No. 44, dated May 4, 1959. Viewing HMO's, not in the light of the technical definition of insurance, but as a practical function, the Attorney General concluded that HMO's, in this case a nonprofit corporation which contracted for medical services, did indemnify subscriber-members for illness and so constituted insurance.

The new Nevada Insurance Code, however, renders this problem moot. [NRS 679A.160](#) of the code provides:

Unless otherwise provided, no provision of this code shall apply to:

* * * * *

2. Hospital, medical or dental service corporations (as identified in Chapter 695B of NRS) except as stated in Chapter 695B of NRS (nonprofit hospital, medical or dental service corporations).

[NRS 695B.020](#) provides:

1. This chapter shall not:

(a) Apply to or govern any corporation which is organized for profit, which contemplates any pecuniary gain to its shareholders or members, or which conducts or is authorized by its articles of incorporation to conduct any business whatsoever on a profit basis.

(b) Authorize or be construed to authorize, directly or indirectly, any corporation to operate a hospital or a medical or dental service plan on a profit basis.

(c) No corporation subject to the provisions of this chapter shall own or operate any hospital or engage in any business other than that of establishing, maintaining and operating a nonprofit hospital, medical or dental service plan.

Nevada, therefore, has placed HMO's under the regulation of its insurance laws, but, by virtue of [NRS 679A.160](#) and [NRS 695B.020](#), only nonprofit HMO's. For-profit HMO's are specifically excluded from the Insurance Code.

This would appear to be the end-result of the history of the common law rule that corporations could not practice medicine. Eventually, courts recognized an exception to this rule, that of the nonprofit corporation. 84 Harvard L.Rev. 886, 962-3 (1970-1971). The Nevada Legislature, like those of many other states, recognized the rule and its exception, providing for the exception a means of regulation through Chapter 695B of the Insurance Code. In the absence of statute, therefore, a for-profit corporation could not practice medicine.

Nevada, however, has such a statute. Chapter 89, the Professional Corporations and Associations Act, permits the organization of associations or corporations to perform professional services, defined in [NRS 89.020](#), subsection 4 as “* * * any type of personal service which may legally be performed only pursuant to a license, certificate of registration or other authorization.” For-profit professional corporations, by [NRS 89.030](#), are also regulated by Chapter 78, relating to private corporations, insofar as not inconsistent with Chapter 89. Two of the prime requirements of Chapter 89 are that all

the shareholders or association members be licensed practitioners of the profession and that the organization may not practice more than one profession. ([NRS 89.050](#), [89.070](#) and [89.230](#).) Applications to organize under these chapters are made to the Secretary of State and it is his office which subsequently regulates such organizations.

The above chapters, of course, would apply to for-profit HMO's which control their own facilities or employ their own physicians. Obviously, this is a case of a corporation or association practicing medicine. An HMO which functions indirectly by contracting with physicians is altogether different. It is not engaged in practicing medicine as it serves solely as a finder. The actual practice of medicine is conducted by other persons or groups. Chapter 89, therefore, would not apply to these organizations. And being for-profit organizations, they are not regulated by the Insurance Code either, by reason of [NRS 679A.160](#). Such HMO's would be regulated only by Chapter 78, the Private Corporation Act; and thus would be under the scrutiny of the Secretary of State.

CONCLUSION

Nonprofit health maintenance organizations are regulated under Chapter 695B of the Insurance Code, and thus are responsible to the Commissioner of Insurance. For-profit health maintenance organizations which control their own facilities and employ their own physicians are regulated by Chapters 78 and 79 of Nevada Revised Statutes. For-profit health maintenance organizations which serve only as finders for health services by contracting with medical groups are regulated only by Chapter 78 of Nevada Revised Statutes. For-profit HMO's are thus responsible to the Secretary of State.

Respectfully submitted,

ROBERT LIST, *Attorney General*

85 Elections; Voter Registration—Nevada constitutional 6 months state residence requirement for entitlement to vote preempted by the provisions of the 14th Amendment to the U.S. Constitution. *Dunn v. Blumstein*, 92 S.Ct. 995 (March 21, 1972).

CARSON CITY, June 19, 1972

MR. STANTON B. COLTON, *Registrar of Voters*, County of Clark, 400 Las Vegas Blvd.
South, Las Vegas, Nevada 89101

DEAR MR. COLTON:

QUESTION

Your predecessor in office, Mr. Thomas A. Mulroy, asked this office for an opinion regarding the effect of the decision of the U.S. Supreme Court in the case of *Dunn v. Blumstein*, 92 S.Ct. 995 (March 21, 1972), on the residence for voting requirement contained in Article 2, Section 1 of the Constitution of the State of Nevada. More specifically, Mr. Mulroy had asked whether any election official registering voters in the State of Nevada may require proof of residence within the State of Nevada for 6 months as required by the Constitution and Statutes of the State of Nevada rather than the 30-day voter processing period discussed and apparently established by the U.S. Supreme Court in *Dunn v. Blumstein*, *supra*. For the reasons stated below, we believe that the Nevada Constitution has been superseded and that it is incumbent upon registrars of voters to enforce only a 30-day voter processing requirement rather than any residence requirement.

ANALYSIS

In proceeding to advise state officials that the State Constitution has been superseded or overruled by the U.S. Supreme Court's interpretation of the provisions of the federal Constitution, the Attorney General must proceed with great care and must be certain that his advice is based upon clear and compelling case law precedent. This is a difficult task and one which this office has evaluated carefully. Unless it is virtually certain that a court of competent jurisdiction would strike down the provisions of the State Constitution, this office would be reluctant to advise any public official not to adhere to the requirements of that Constitution. We note, however, that Article 1, Section 2 of our State Constitution requires:

* * * the Paramount Allegiance of every citizen is due to the Federal Government in the exercise of all its Constitutional powers *as the same have been or may be defined by the Supreme Court of the United States* * * *. (Italics added.)

Article 2, Section 1 of the Nevada Constitution provides eligibility for voting as follows:

* * * All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; * * *.

[NRS 293.485](#), subsection 1, provides:

Except as provided in section 1 of article 2 of the constitution of the State of Nevada, every citizen of the United States, 18 years of age or over, who has continuously resided in this state 6 months and in the county 30 days and in the precinct 10 days next preceding the day of the next succeeding primary or general election, and who has registered in the manner provided in this chapter, shall be entitled to vote at such election.

These are the durational residence requirements which must be examined in light of *Dunn v. Blumstein*, supra. These durational residence requirements apply only to state elections since the federal Voting Rights Act of 1970, 48 U.S.C. § 1973aa-1 established a 30-day requirement for participation in federal elections for president and vice president.

On March 21, 1972, in *Dunn v. Blumstein*, supra, the U.S. Supreme Court upheld the decision of a 3-judge federal district court in Tennessee invalidating that state's 1-year durational residence requirement as well as the 3-month county durational residence requirement for eligibility to vote in Tennessee state elections. The court determined that the provisions of the Tennessee Constitution and the Tennessee Code establishing durational residence requirements did not further any compelling state interest and that they violated the equal protection clause of the 14th Amendment of the United States Constitution. In his opinion for the majority, Mr. Justice Marshall discussed the impact of durational residence requirements, noting that they impinge on the exercise of the right to travel and can act to deprive citizens' fundamental political rights. The opinion is comprehensive. Arguments made by Tennessee regarding the desirability of an educated populace, the preservation of a common interest in matters pertaining to a community's government and the preservation of the purity of the ballot box by preventing dual voting were all discussed and found to be wanting as an adequate explanation for the use of durational residence requirements.

Mr. Justice Marshall noted that 30 days appear to be “an ample period of time for the state to complete whatever administrative tasks are necessary to prevent fraud * * *.” He noted that Tennessee had a registration cutoff point of 30 days before an election and that this reflected the judgment of the Tennessee legislature that election officials can take necessary precautionary measures to insure the purity of the ballot within a 30-day period. Nevada’s registration closes on the fifth Saturday preceding any election. ([NRS 293.560.](#)) This effectively is 30 days.

Subsequent to the Dunn decision, a number of durational residence cases were decided by the U.S. Supreme Court and disposed of in memorandum form. Three of these cases specifically concerned 6-month state constitutional voter residence provisions similar to those established by Article 2, Section 1 of the Nevada Constitution and [NRS 293.485](#), subsection 1. Each of the decisions was in memorandum form indicating that the U.S. Supreme Court had little question about the interpretation it wanted placed on the Dunn decision. In *Amos v. Hadnott*, 92 S.Ct. 1304 (1972), the court affirmed a 3-judge federal court’s ruling that Alabama’s 6-month constitutional durational requirement was unconstitutional. In *Donovan v. Keppel*, 92 S.Ct. 1304 (1972), the court affirmed a 3-judge federal court’s decision that Minnesota’s 6-month constitutional and statutory durational residence requirement was unconstitutional. In *Whitcomb v. Affeldt*, 92 S.Ct. 1304 (1972), the court affirmed a 3-judge federal court’s decision that Indiana’s 6-month constitutional and statutory durational residence requirement was unconstitutional. In the case of *Ferguson v. Williams*, 92 S.Ct. 1322 (1972), the court vacated a 3-judge federal court’s ruling that the constitutional requirement of 4 months’ residence for voting found in the Mississippi Constitution was valid.

In the case of *Cocanower v. Marston*, 92 S.Ct. 1303 (1972), the Supreme Court vacated the judgment of a 3-judge federal court upholding Arizona’s 1-year durational requirement for voting ordering the district court to reconsider the case in light of the Supreme Court’s decision in *Dunn v. Blumstein*, supra. The United States Supreme Court took a similar action in the case of *Fitzpatrick v. Board of Election Commissioners for the City of Chicago*, 92 S.Ct. 1305 (1972), and in *Lester v. Board of Elections for the District of Columbia*, 92 S.Ct. 1318 (1972). Both district courts were advised to reconsider their prior decisions in light of *Dunn v. Blumstein*, supra. In *Davis v. Kohn*, 92 S.Ct. 1305 (1972); *Virginia State Board of Elections v. Bufford*, 92 S.Ct. 1304 (1972); *Canniff v. Burg*, 92 S.Ct. 1303 (1972); and *Cody v. Andrews*, 92 S.Ct. 1306 (1972), the Supreme Court affirmed the action of lower federal courts in overturning the durational residency requirements of Vermont, Virginia, Massachusetts, and North Carolina, respectively. In the 11 memorandum decisions issued by the U.S. Supreme Court as a result of *Dunn v. Blumstein*, supra, constitutional and statutory provisions for durational residency requirements as long as 1 year and as short as 4 months have been directly or indirectly struck down by the court in summary fashion. We would also note the decision of the Supreme Court of California on May 4, 1972, in the case of *Young v. Gnos*, P.2d (1972), in which the 90-day durational residency requirement within a California county and a 54-day durational residency requirement in a precinct were struck down as violative of the equal protection clause of the 14th Amendment as applied in *Dunn v. Blumstein*, supra.

Attorneys General in 14 states have advised appropriate state officials that the standards of *Dunn v. Blumstein*, supra, must be met. We particularly note the opinion of Attorney General Scott of Illinois specifically advising a state’s attorney that the 6-month durational residency requirement of the Illinois Constitution is violative of the equal protection clause of the 14th Amendment to the U.S. Constitution.

Given the language of *Dunn v. Blumstein*, supra, the actions of the U.S. Supreme Court subsequent to its rendering of the Dunn decision, the actions of various Attorneys General and the language of the Nevada Constitution, it appears that there is little alternative but to declare that it is the opinion of this office that any court examining the durational residency requirements of Article 2, Section 1 of the Nevada Constitution and

[NRS 293.485](#), subsection 1, would find that the Nevada Constitution and Statutes violate the 14th Amendment to the U.S. Constitution.

CONCLUSION

The mandate of the U.S. Supreme Court is clear. The Nevada durational residency requirement violates the 14th Amendment to the U.S. Constitution. We therefore advise your office to allow all persons to register to vote if they attempt to register within the time established by [NRS 293.560](#) for the close of registration. We would also note that the provisions of [NRS 298.090](#) to [298.240](#) regarding “new residents” voting in presidential elections would not longer be applicable.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By MICHAEL L. MELNER, *Deputy Attorney General*

86 Effect of a Change of Party Registration on a Candidacy in a Primary Election—[NRS 293.176](#) forbids a person from being a candidate for a party’s nomination in a primary election when he has changed his party registration since September 1 prior to the closing filing date for such election. But [NRS 293.176](#) does not apply to a new resident who delays changing party registration beyond the permissible date by reason of the 6-month residency requirement of [NRS 293.485](#).

CARSON CITY, July 10, 1972

THE HONORABLE DARREL H. DREYER, 5309 Masters Avenue, Las Vegas, Nevada 89109

DEAR MR. DREYER:

You have requested this office for a clarification of [NRS 293.176](#) as it may apply to the following facts which have come to your attention:

FACTS

In June 1971, a California resident, a registered Republican in that state, moved to Nevada. He waited the 6 months required by Article 2, Section 1 of the Nevada Constitution and by [NRS 293.485](#) for residency before registering as a voter in Nevada. In December 1971, after the 6-month period ended, he registered in Nevada as a Democrat. He now wishes to contend for the Democratic Party nomination for an elective state office in the September 5, 1972 primary election.

[NRS 293.176](#) provides, however, that:

No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation on an official affidavit of registration in the State of Nevada or in any other state since September 1 prior to the closing filing date for such election.

The person involved here obviously changed his party registration after the effective September 1 date, but was compelled by [NRS 293.485](#) to wait until after September 1 to do so.

QUESTION

Does [NRS 293.176](#) prohibit this person from filing for the Democratic Party nomination for an elective office in the September 5, 1972 primary election?

ANALYSIS

By reason of the right to vote, guaranteed by the State Constitution, every qualified person has the right to be a candidate for public office. *Preisler v. St. Louis*, 322 S.W.2d 748 (Mo. 1959); *Roberts v. Cleveland*, 48 N.M. 226, 149 P.2d 120 (1944). But one does not necessarily have the right to be a candidate of a particular political party. *Francis v. Sturgill*, 163 Ky. 650, 174 S.W. 753 (1915); 25 Am.Jur.2d Elections § 174.

A general election encompasses the basic rights of suffrage and participation in the political process. A citizen has a constitutionally protected right to participate equally with other citizens in such elections. *Dunn v. Blumstein*, No. 70-13 (U.S. Supreme Court, March 21, 1972). A primary election is in a different category. A primary election deals with the efforts of particular political parties or groupings to select and nominate candidates to represent them in the general election. At one time such nominations were subject simply to the whim and vagaries of each party or group. In order to prevent abuses, to insure that a fair choice was being offered voters, and to bring order and regularity to the nominating process, many states, including Nevada, enacted legislation to regulate the nominating process by creating the primary election. *Riter v. Duglass*, [32 Nev. 400](#), 109 P. 444 (1910).

Despite the imposition of the State in this matter, primary elections are designed solely to help particular political parties or groupings select their candidates. It is, therefore, the general view that the legislature of a state may, without violating state or federal constitutional prohibitions, impose reasonable requirements designed to insure that the person listed as a party. *Ray v. Blair*, 343 U.S. 214 (1952); *Riter v. Douglass*, supra; *Roberts v. Cleveland*, supra; 25 Am.Jur.2d Elections § 178.

Among these requirements, there may be imposed a test of the sincerity and substantiality of declared party affiliations. To determine the substantiality of party affiliation, to foster the legitimate interest of party loyalty, and to prevent opportunists from party-jumping at will, the Legislature may require not only that a party nominee be a member of that party at the time of the primary (to be evidenced by voter registration) but also that he has been a party member for a certain period of time. Thus, in *Roberts v. Cleveland*, supra, a New Mexico statute requiring a party nominee to be a member of that party for a year prior to the call for the primary election was upheld on this basis. A 2-year registration requirement of party affiliation was upheld in *Crowells v. Petersen*, 118 So.2d 539 (Fla. 1960). And a 3-month registration requirement of party affiliation was upheld in *Foote v. Hite*, 179 Cal.App.2d 762, 4 Cal.Rptr. 101 (1960).

The Nevada Legislature, therefore, had a legitimate and proper interest in enacting [NRS 293.176](#), namely, to insure the sincerity and substantiality of declared party affiliation. A person, desiring to be his declared party's nominee, must comply with this statute. The right to be a candidate in a primary for the nomination by a party is created by statute and can be exercised only upon the conditions prescribed. 25 Am.Jur.2d Elections § 174.

But what effect does the operation of Nevada's 6-month residency requirement prior to registering as a voter have on this statute? Assuming that this new resident wished to change his party affiliation by voter registration upon moving to Nevada, he was prevented from doing so in time for the September 1 deadline required by [NRS 293.176](#) by operation of [NRS 293.485](#).

This office is aware of the United States Supreme Court's decision in *Dunn v. Blumstein*, supra, declaring a state's durational residency requirement of 1 year and a county's durational residency requirement of 3 months unconstitutional as a denial of equal protection of the laws. This office believes, however, that for the purposes of this particular opinion it is not necessary to consider the effect of the U.S. Supreme Court's decision on [NRS 293.485](#). The new resident in the instant matter did not contest the

validity of [NRS 293.485](#). He treated it as valid and acted accordingly, waiting 6 months to establish residency before registering to vote. Therefore, laying aside consideration of Blumstein, supra, and this office's recent opinion on the unconstitutionality of Nevada's voter residency law, both this office and the new resident involved treat this statute as being valid for the particular purposes of this opinion.

Thus, there exist two statutes, both valid, which conflict with each other. By reason of [NRS 293.176](#) the new resident had to change his party registration prior to September 1, 1971, to run in the primary election but, by reason of [NRS 293.485](#), he could not register to vote in Nevada prior to December 1971. Because of the peculiar time circumstances involved when this person transferred residence from California to Nevada, [NRS 293.176](#) is unenforceable with regard to the new resident. An election law may be incapable of enforcement because of the inconsistency of its provisions. People ex rel. Hoyne v. Sweitzer, 266 Ill. 459, 107 N.E. 902 (1915). In this matter, since one of two inconsistent election laws has been observed faithfully, i.e. [NRS 293.485](#), the other, [NRS 293.176](#), cannot be enforced.

In this respect [NRS 293.485](#) is the most important of the two. No one can contend for a party's nomination in the primary unless he is registered as a member of that party. [NRS 293.177](#). One registers as a member of a party by registering to vote. One registers to vote by means of the criteria named in [NRS 293.485](#). In order to be a candidate at all, the new resident had to follow the procedures of [NRS 293.485](#) permitting him to register to vote. Having followed those procedures, he cannot be denied participation in the primary election by reason of a factual situation which makes another election law inconsistent, and therefore unenforceable, with a prior, heretofore valid, election law.

Therefore, it is the opinion of this office that the new resident in this matter cannot be denied the right to participate in the Democratic primary election on September 5, 1972. This result would appear to be further urged by consideration of [NRS 293.127](#):

This Title shall be liberally construed to the end that all electors shall have an opportunity to participate in elections and that the real will of the electors may not be defeated by an informality or by failure substantially to comply with the provision of this Title with respect to the giving of any notice or the conducting of an election or certifying the results thereof.

CONCLUSION

The Legislature has a legitimate interest in proving the sincerity and substantiality of party affiliation by requiring prospective party nominees in primary elections to be registered members of their parties for a particular length of time. Failure to comply with the time limit for change of party registration required in [NRS 293.176](#) will result in prohibiting a person from contending for his declared party's nomination in the primary.

However, where, because of a peculiar factual situation, a person is compelled to delay his change of party affiliation beyond the permissible date due to the registration requirements of [NRS 293.485](#), [NRS 293.176](#) is unenforceable as being inconsistent with a prior, valid and indispensable election statute.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES H. THOMPSON, *Chief Deputy Attorney General*

87 Lease-Purchase Agreements—Lease-purchase agreements permitted by [NRS 612.227](#) are included in the debt limitation provision of the State

Constitution, if financed by state funds. If financed by nonstate funds, then a lease-purchase agreement is not subject to the debt limitation provision. But should nonstate financing be terminated, the State is obligated to use state funds and the agreement would be subject to debt limitation.

CARSON CITY, July 11, 1972

ROBERT ARCHIE, *Executive Director, Employment Security Department, 500 East Third Street, Carson City, Nevada 89701*

DEAR MR. ARCHIE:

You have informed this office that your department intends to construct an annex to its building in Carson City and to pay for that building under the authority of Chapter 612 of the Nevada Revised Statutes, particularly [NRS 612.227](#).

You request an opinion of the following question:

QUESTION

If the Employment Security Department constructs a building, are the financing costs of that building, as permitted by Chapter 612 of Nevada Revised Statutes, includable within the construction limitation for the State of Nevada for bonded indebtedness?

ANALYSIS

The pertinent parts of Section 3, Article 9 of the Nevada State Constitution read:

The state may contract public debts, but such sum shall never, in the aggregate, exclusive of interest, exceed the sum of one per cent of the assessed valuation of the state. * * * Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect. * * *

As can be seen, this provision is applicable against every contract of indebtedness, not merely for bonded indebtedness.

[NRS 612.227](#) states:

The executive director [of the Nevada Employment Security Department], subject to the provisions of this section, may enter into lease-purchase agreements with any individuals, corporations, associations or partnerships for the purchase of office buildings and the land upon which such buildings are located. Rentals to the lessor shall be paid by the employment security department, or any agency which may hereafter absorb the employment security program.

The purpose of lease-purchase plans is to avoid state constitutional debt limitations. Most states have such provisions in their constitutions, and most states, as the cost of government increases, have sought methods to avoid these provisions. The theory of the lease-purchase plan takes advantage of the common law rule that rent which falls due beyond the current rent period is not a present debt. The tenant owes only for the amount due for the current rent period. Therefore, if a state agency had someone build a facility and rent it to the state agency, the indebtedness of the State would be increased only by the annual rent, which was paid off each year, and not by the full cost of the building. The theory maintains that this would be so even though the state agency takes title when the cumulative rents equal the full costs of the facility. 25 Geo. Wash. L.Rev. 377 (1955-1956).

This theory was considered by the Supreme Court of Nevada in *State ex rel. Nevada Building Authority v. Hancock*, [86 Nev. 310](#) (1970). This case involved Chapter 448 of the 1969 Statutes of Nevada, which created the Nevada Building Authority. The authority was empowered to have facilities constructed for the State. Buildings were to be financed through the sale of bonds, which, according to the statute, were not to be a debt of the State, but of the authority. They were payable solely from the authority's income. The authority's income was derived from the rents paid by the state agencies to whom the buildings were rented. The statute provided that the agencies' rents could be appropriated each year or pledged *in futuro* by the Legislature. Once the cumulative total of rents equaled the cost of the building and land, title was turned over to the state agencies involved. Although differing from [NRS 612.227](#) in that the authority and a bond finance plan was interposed between the state agency and the builder, the statute was nothing less than a lease-purchase plan. In fact, it was an example of the classic form of lease-purchase plans. 25 Geo. Wash. L.Rev. 377 (1955-1956).

The statute was declared unconstitutional as a violation of Section 3, Article 9 of the State Constitution. The disabling factor was that the entire program was founded on state financing; on moneys being paid from the State's General Fund. Furthermore, the basic prop of lease-purchase, that the "rents" were annual in nature and paid off each year, and that the total cost of the facility thus did not constitute a present debt, was disallowed. The view of the court was that the Legislature was bound by the good faith of Nevada to continue successive biennial appropriations for the entire period of the lease-purchase plan. It was "inconceivable" that it would default on the contract for construction. Therefore, in actual fact, the total cost of the facility was a present long-term debt, existing for the life of the contract and payable from state tax revenues. Such a debt came within the provisions of Article 9, Section 3 of the State Constitution.

Two other exceptions to the applicable provisions of the state debt limitation were discussed, e.g. the "special fund" doctrine and the "executory contract" doctrine. Both were rejected. Despite the alleged validity of these doctrines in other circumstances, in the context of Chapter 448 they were invalid, for the basic underpinning of the statute was that financing would be accomplished through the State's General Fund.

This, then, is the main thrust of the Building Authority case as applied to a consideration of [NRS 612.227](#). First, that the theory of lease-purchase not being a present debt is a fiction. A lease-purchase contract is a pledge for the payment of a long-term debt for the total cost of the contract. Second, if the financing for lease-purchase is to be accomplished through state funds, lease-purchase falls under the provisions of Article 9, Section 3 of the Nevada Constitution.

Conversely, if lease-purchasing financing is through nonstate funds, then the debt limitation provisions of the Constitution do not apply. But what happens if nonstate financing is withdrawn? What is the obligation of the State?

The Employment Security Department, though a state agency, is almost 100 percent federally financed. The last building constructed for ESD under lease-purchase was done so with federal grants. It may be anticipated that the next building will be similarly financed. But it is not inconceivable that federal grants may be withdrawn. For example, if ESD does not comply with the conditions of the grant, or if ESD is unable to comply with the federal Relocation Act pertaining to state assistance to persons displaced by building programs. What, then, would be the obligation of the State with regard to a lease-purchase contract made by the department's director under [NRS 612.227](#)?

As [NRS 612.227](#) was originally written, ESD could enter lease-purchase contracts only to the extent that federal funds were provided. The statute stated that rents were to be paid by ESD

* * * from grants received by the employment security department or state agency for such purpose, to the extent that funds are made available by the Congress of the United States.

In 1961, however, the Legislature amended the statute by eliminating this language from the law. As it is now written, ESD may bind the State to a lease-purchase contract under all circumstances. Should a federal grant for such a purpose be terminated, the State would be obligated to use its funds to complete the project. In the words of the Building Authority case, it is “inconceivable” that the State would default as the good faith of Nevada would not allow it. Building Authority, *supra*, at 316-317. In such circumstances the lease-purchase contract would be subject to Article 9, Section 3.

CONCLUSION

Therefore, it is the conclusion of this office that a lease-purchase agreement made by authority of [NRS 612.227](#) and financed by state funds is within the debt limitation provision of Article 9, Section 3 of the Nevada Constitution. A lease-purchase contract, in such circumstances, which pushes the State’s allowable debt beyond the constitutional limitation is void and of no effect.

A lease-purchase agreement made by authority of [NRS 612.227](#) and financed by nonstate funds is not within the debt limitation provision of the Constitution. But should nonstate financing be withdrawn or terminated, the State would be obligated to finance the project and the agreement would then be subject to the Constitution’s debt limitation provision. In that case, should the permissible debt limitation be exceeded, such a lease-purchase agreement would be void and of no effect.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES H. THOMPSON, *Chief Deputy Attorney General*

88 Forced Payroll Deduction for Debt Owed by State Employee to the State—A state agency may not administratively deduct a debt owed by a state employee to the State from the employee’s paycheck without his consent. Payment of the debt must be obtained by civil process and garnishment and execution are permitted in this process.

CARSON CITY, July 20, 1972

HONORABLE WILSON MCGOWAN, *State Controller*, Carson City, Nevada 89701

Attention: LARRY R. WORCESTER

DEAR MR. MCGOWAN:

You have asked for an opinion on the following question:

QUESTION

Can a state agency, appointing authority, or board or commission, through an administrative process, withhold an employee’s paycheck or have a payroll deduction made without the employee’s consent when moneys are due the State under some program, other than normal payroll adjustments? Are these deductions subject to garnishment and execution proceedings under Nevada Revised Statutes?

This is a general question you have asked, which arises from a specific situation. The situation, as related by you to this office, involves an employee of the Employment Security Department who was discharged, and subsequently appealed the discharge to the

State Personnel Division. Pending appeal, the employee applied for, and received, unemployment benefits. The appeal was upheld and the employee was ordered reinstated with all back pay. The ESD wishes to deduct the unemployment benefits from the employee's paycheck.

ANALYSIS

With regard to the specific fact situation involved, ESD may proceed only according to the provisions of [NRS 612.365](#). This provides that a person receiving unemployment benefits is liable for the recovery of overpayments of such benefits only if the overpayment was due to fraud, misrepresentation or willful nondisclosure on the part of the recipient. In cases of liability, [NRS 612.365](#) states that recovery may be made only by the methods provided in [NRS 612.625](#) to [612.645](#), inclusive.

These provisions allow two methods of recovery. [NRS 612.625](#) permits recovery by civil suit with right of attachment as provided by [NRS 31.010](#). [NRS 612.630](#) permits recovery by filing for summary judgment, with a right by the debtor for a hearing for refund of money paid. These are the methods of recovery prescribed by statute.

Therefore, ESD may not simply deduct the payments from the employee's paycheck but, provided the employee is liable for recovery in the first place, may proceed only by the methods prescribed in [NRS 612.625](#) and [612.630](#).

Furthermore, to answer your general question, this would also be the result in a situation where a state employee allegedly owes the State a debt and the State seeks to deduct the amount of the debt from the employee's paycheck without his consent. Article 1, Section 8 of the Nevada Constitution states, in part, “* * * No person shall * * * be deprived of life, liberty or property without due process of law. * * *” No state agency, therefore, may take it upon itself to administratively adjudicate the existence of a debt and the liability of an employee, then seek execution of its judgment by deducting the amount it has determined is owed from the employee's paycheck. This would be depriving the employee of his property without due process of law. Payroll deductions, of course, may be made by the employee's consent or even without his consent if a statute specifically provides for such deduction. [NRS 608.110](#), subsection 1; Attorney General's Opinion No. 455, dated November 2, 1967.

The proper means of collecting the alleged debt, absent consent by the employee for deductions, is by the recognized procedures of civil process. In this regard, and to answer your second question regarding availability of garnishment and execution, [NRS 281.130](#) permits the salaries and fees of state employees to be subject to garnishment and execution.

CONCLUSION

A state agency may not administratively deduct a debt owed by a state employee to the State from the employee's paycheck without his consent. Payment of the debt must be obtained by civil process and garnishment and execution are permitted in this process.

Respectfully submitted,

ROBERT LIST, *Attorney General*

89 Gaming, Punchboards—Punchboards are not lotteries but are gaming devices subject to the Gaming Control Act.

CARSON CITY, July 20, 1972

PHILIP P. HANNIFIN, *Chairman, State Gaming Control Board*, 515 East Musser Street,
Carson City, Nevada 89701

DEAR MR. HANNIFIN:

The State Gaming Control Board has requested a reevaluation of prior Attorney General opinions holding that a punchboard constitutes a lottery which is barred by constitutional and statutory prohibitions. The board has also requested an opinion, on the assumption that punchboards may not be lotteries, as to the manner by which punchboards should be treated under the Nevada Gaming Control Act.

QUESTION

Is a punchboard a lottery within the prohibition of our State Constitution, and if not, how would punchboards be regulated under the Nevada Gaming Control Act?

ANALYSIS

In 1919, this office advised the Sheriff of Washoe County on October 29, that punchboards were lotteries and consequently subject to the constitutional prohibition against lotteries. The District Attorney in Lyon County was similarly advised earlier that year as were other public officials during the years 1919 and 1922. Attorney General's Opinion No. 97, dated October 29, 1919; Attorney General's Opinion No. 8, dated January 29, 1919; Attorney General's Opinion No. 90, dated August 23, 1919; and Attorney General's Opinion No. 94, dated January 28, 1922. This office at that time based its determination upon decisions arising out of the jurisdictions of Alabama and Louisiana and was undoubtedly influenced by the existing antigambling legislation then in force in Nevada. *Brewer v. Woodham*, 74 So. 35 (La. 1914). We believe our prior opinions must be reexamined particularly in light of Nevada's attitude toward legalized gaming and subsequent decisions of our sister states. A reevaluation forces us to a conclusion opposite that reached some 50 years ago particularly when the nature and operation of a punchboard is closely examined and measured against the general concepts of a lottery.

Lotteries generally have no specific or technical meaning nor are they capable of being precisely defined with any great amount of exactitude. Nonetheless, a distinction is generally recognized to exist between lotteries and other forms of gambling and that lotteries are a subspecies of gambling. *City of Shreveport, supra*; *Commonwealth v. Kentucky Jockey Club*, 38 S.W.2d 987 (Ky. 1931); *State v. Hudson*, 37 S.E.2d (W.Va. 1946). Conceptually, a lottery contemplates a pool comprised of money wagered by a great number of people who have purchased an opportunity to receive all, or a portion of, the pool while at the same time being exposed to the risk of gaining nothing from the pool. The determination as to whether or not a person is to receive any portion of the pool is determined by lot, through a drawing or a similar exercise, at the preestablished date. See *People v. Trace*, 109 N.Y.S.2d 893 (Court of Special Sessions 1951).

The foregoing concept has been generally recognized by our Legislature and is reflected in our antilottery statutes. [NRS 462.010](#) et seq. Sections 461.020, 461.404, and 461.050 of the Nevada Revised Statutes particularly indicate a lottery to be a scheme whereby tickets are sold for the disposition of property, and such disposition is determined by lot. The pool nature of the lottery although not specifically mentioned within any of the foregoing sections, is in essence reflected within the definition of [NRS 462.010](#) wherein the section speaks of "the distribution of property * * * among persons who have paid * * * consideration for the chance of obtaining such property, or a portion of it, or for any share or interest in such property * * * to be distributed by lot or chance. * * *"

On the other hand, a punchboard is generally understood to be a device consisting of a board having numerous holes containing unexposed slips of paper bearing numbers of symbols some of which represent a prize. A customer upon paying a specified consideration is entitled to remove from the board a number of slips of paper chosen at

random; depending upon the number or symbols on the slips removed, the player may receive a prize or cash, or in the alternative, may receive nothing. The winning combination of numbers or symbols and the respective payoff is predetermined and generally indicated in some manner upon the face of the board. *The game is played individually by the player and the amount he may win is not in any manner determined by the amount which had previously been played nor are the wagers pooled.* In essence, the owner of the board is required to bank the game since the amount which may be won by a player is not in any manner determined by prior wagers made upon the board. For statutory definition of a banking game as a gambling game see [NRS 463.0110](#); for judicial descriptions of punchboards see *Brewer v. Woodham*, supra; *Parker-Gordon Importing Co. v. Benakis*, 238 N.W. 611 (Iowa 1931).

Although some jurisdictions have held punchboards to be lotteries, these decisions generally arise out of jurisdictions which lump all gaming activities under the heading of lotteries for purposes of constitutional and statutory prohibitions against gambling and no effort is made to make a distinction between the various types of forms of gambling since their prohibitions, either constitutional or statutory, are all inclusive as to gambling. *Commonwealth v. Kentucky Jockey Club*, supra, at 992. Nevada, however, at least on one occasion has made the distinction between lotteries and other forms of gambling. Ex parte Pierotti, [43 Nev. 243](#) (1919). Here, the court noted that lotteries and other forms of gaming partake of the same mischief and that chance is a material element in both. However, the court observed a “wide distinction or contrast between the vice of lotteries which infests the whole community and the mischief or nuisance of gambling which is generally confined to a few persons and premises.” The court additionally observed that “experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple.” See also *Douglas v. Kentucky*, 168 U.S. 496 (1897).

Notwithstanding those jurisdictions which hold punchboards to be lotteries, there are nonetheless other jurisdictions which deem punchboards to be gambling devices but not necessarily lotteries, and New York has specifically held that a punchboard does not constitute a lottery and would not come within New York’s antilottery statute. *People v. Trace*, supra. New Hampshire has likened the operation of a punchboard to that of a slot machine. *State v. Leblanc*, 191 A.2d 537 (N.H. 1963). Kentucky and Iowa have also done so. *Commonwealth v. Griffin*, 202 S.W. 884 (Ky. 1918); *Parker-Gordon Importing Co. v. Benakis*, supra.

Accordingly, we hold a punchboard as generally described herein to be a gaming device or a gambling game and not a lottery and, as such, is subject to the Gaming Control Act.

As to the second part of your question, it is our opinion that a punchboard for all intents and purposes would have to be treated as a slot machine under the Gaming Control Act if the Nevada Gaming Commission first approves this form of a gaming device.

Pursuant to the above description, a punchboard appears to fall within the statutory definition of a slot machine which is defined in [NRS 463.0127](#) as follows:

“Slot machine” means any * * * device, contrivance * * * which upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may * * * entitle the person playing * * * to receive cash, premiums, merchandise, tokens or anything of value whatsoever, whether the payoff is made automatically from the machine or in any other manner whatsoever.

The punchboard does not compare easily to any other form of gambling device presently in existence in the State of Nevada other than a slot machine. The distinguishing factor between a slot machine and/or a punchboard with other gaming devices is that the slot machine or punchboard produce something of value upon winning wherein the cash or a token representing cash comes from within the machine itself. It is unlike a "21" game, roulette, craps, and various other gambling games wherein payment, or the entitlement thereto, is made by a dealer and is not made by the device itself. This general distinction has been recognized by at least one court in the case of *State v. Leblanc*, supra.

CONCLUSION

On the basis of the foregoing the manufacture, sale, distribution, possession, operation, taxation, and holding out for public play of a punchboard should be treated in the same manner under the Gaming Control Act as the foregoing applies to slot machines.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By DAVID C. POLLEY, *Deputy Attorney General*

90 Wild Horses—Authorized destruction of unbranded, free-roaming horses and burros in accordance with [NRS 569.360](#) to [569.430](#), inclusive, is preempted by Public Law 92-195, enacted December 15, 1971.

CARSON CITY, July 20, 1972

MR. THOMAS W. BALLOW, *Executive Director, Nevada Department of Agriculture*, Box 1209, Reno, Nevada 89504

DEAR MR. BALLOW:

This is in reply to your letter asking the effect of the passage of Public Law 92-195 on [NRS 569.360](#) to [569.430](#), inclusive, which presently allows the destruction and capture of wild unbranded horses or burros running at large on public lands.

There are basically two questions to be answered.

FIRST QUESTION

Does the passage of Public Law 92-195 (U.S.C.A. 16, §§ 1331-1340) affect part or all of [NRS 569.360](#) to [569.430](#), inclusive?

ANALYSIS

Presently, [NRS 569.360](#) states:

Subject to the provisions of [NRS 569.370](#) to [569.390](#), inclusive, any resident of the State of Nevada is authorized and it is lawful for such resident to kill, capture, remove, sell, or otherwise dispose of any wild unbranded horse, mare, colt or burro found running at large on any of the public lands or ranges within the State of Nevada.

[NRS 569.370](#) to [569.430](#), inclusive, set forth the procedures for licensing, bonding, etc., required to conform to the law.

Public Law 92-195, passed by the Congress and signed by the President of the United States on December 15, 1971, states in part:

Section 8. Any person who * * *

* * * * *

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands without authority of the Secretary [of the Interior or the Secretary of Agriculture] or * * *

* * * * *

(6) willfully violates a regulation issued pursuant to his act shall be subject to a fine of not more than \$2,000 or imprisonment for not more than one year or both. * * *

The federal statute defines “public lands” as any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service. This definition is inclusive of the “public lands or ranges” referred to in the Nevada Statutes.

The federal statute also defines “wild free-roaming horses and burros” as all unbranded and unclaimed horses and burros on the public lands of the United States. This definition is inclusive of “any wild unbranded horses, mare, colt or burro found running on any of the public lands. * * *” as stated in the Nevada Statutes.

The intent of Congress to make this bill superseding is readily apparent. Section 3(a) of the law states:

All wild and free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with this Act. (Italics added.)

Further indications of intent can be found in the Congressional Record—House, October 4, 1971, where Representative Conte stated in part (after citing the enormous depletion of the mustangs) “the measures we are now considering would halt the extermination of these animals by making them part of the National Heritage * * * *Only trained government agents would be allowed to kill these horses and then only when their number becomes excessive.*” (Italics added.)

CONCLUSION

It is the opinion of this office that the legal killing or capturing of wild free-roaming horses or burros allowed in [NRS 569.360](#) is in direct conflict with the new federal law.

SECOND QUESTION

Does the federal law supersede existing state law?

ANALYSIS

Article 6, Clause 2 of the United States Constitution states:

This Constitution and the Laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land and Judges in every State bound thereby. * * *

Chief Justice Marshall stated in *Gibbons v. Ogdon*, 9 Wheat 1 (1824) that the contention by the state that its laws were equal was found to be invalid. He noted “the framers of our Constitution foresaw this state of things and provided for it by declaring the supremacy not only of itself but also of the laws made in pursuance of it.”

In *Sperry v. Florida*, 371 U.S. 875 (1963) the court held “the law of the state though enacted in exercise of powers not contravened must yield when incompatible with federal legislation.” Further in *Chicago, Rock Island and Pacific Railroad Co. v. Hardin*,

239 F.Supp. 1 (1965) the Federal District Court held “congress normally intends that federal law shall operate uniformly throughout the nation in order that the federal program will remain unimpaired.”

CONCLUSION

The passage of Public Law 92-195 by the Congress of the United States is applicable to the State of Nevada and binding on it.

It is the opinion of this office that [NRS 569.360](#) to [569.430](#), inclusive, would be unenforceable in view of the direct conflict with Public Law 92-195.

Respectfully submitted,

ROBERT LIST, *Attorney General*

91 University Tuition—The attached regulations for classifying students as in-state or out-of-state students for tuition purposes, enacted by the Board of Regents at its meeting on May 12-13, 1972, are legally valid.

RENO, July 29, 1972

MR. NEIL D. HUMPHREY, *Chancellor, University of Nevada System*, 100 North Arlington, Reno, Nevada 89501

DEAR CHANCELLOR HUMPHREY:

The administration of the University of Nevada, working with its counsel, has formulated regulations to provide uniform rules throughout the University of Nevada System for classifying students as in-state or out-of-state students for purposes of tuition. The Board of Regents of the University of Nevada has requested a written opinion concerning the legality of the regulations, which are attached hereto.

ANALYSIS

1. *Application of the Nevada Statute.* The Nevada State Legislature has enacted a statute concerning the charging of tuition by the University of Nevada. The regulations are consistent with the statute, recognizing those categories of students which the Legislature intended should pay out-of-state tuition and those who should not. The statutes in point are the following:

396.540 Tuition charges; registration; other fees.

1. For the purposes of this section:

(a) “Bona fide resident” shall be construed in accordance with the provisions of [NRS 10.020](#). The qualification “bona fide” is intended to assure that the residence is genuine and established for purposes other than the avoidance of tuition.

(b) “Tuition charge” means a charge assessed against students who are to residents of Nevada and which is in addition to registration fees or other fees assessed against students who are residents of Nevada.

2. The board of regents may fix a tuition charge for students at all campuses of the University of Nevada System, but tuition shall be free to:

(a) All students whose families are bona fide residents of the State of Nevada; and

(b) All students whose families reside outside of the State of Nevada, providing such students have themselves been bona fide residents of the State of Nevada for at least 6 months prior to their matriculation at the University; and

(c) All public school teachers who are employed full time by school districts in the State of Nevada; and

(d) All full-time teachers in private schools in the State of Nevada whose curricula meet the requirements of [NRS 394.130](#).

3. In its discretion, the board of regents may grant tuitions free each university semester to worthwhile and deserving students from other states and foreign countries, in number not to exceed a number equal to 3 percent of the total matriculated enrollment of students for the last preceding fall semester.

10.020 Legal residence. The legal residence of a person with reference to his right to naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent upon residence, is that place where he shall have been actually, physically and corporeally present within the state of county, as the case may be, during all of the period for which residence is claimed by him. 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 in determining the fact of such residence.

The regulations elaborate upon the criteria of the statute specifying their application to some of the more frequent questions arising concerning tuition requirements. The regulations are consistent with the statutory provisions and therefore this opinion need not deal with the question of whether the Board of Regents would have the power to enact tuition regulations inconsistent with those prescribed by the Legislature.

2. *The Distinction Between Residents and Nonresidents for Tuition Purposes is Permissible Under the State and Federal Constitutions.* The courts have consistently held that such a distinction and classification is permissible and constitutional. *Landwehr v. Regents of Colorado*, 156 Colo. 1, 396 P.2d 451 (1964); *Bryan v. Regents of the University of California*, 188 Cal. 559, 205 P. 1071 (1922); *Johns v. Redeker*, 406 F.2d 878 (8th Cir. 1969); *Clarke v. Redeker*, 259 F.Supp. 117 (S.D. Iowa 1966); *Kirk v. Board of Regents of University of California*, 78 Cal.Rptr. 260 (1969). The proposition was recently upheld by a 3-judge federal court in Minnesota in a case which was appealed directly to the United States Supreme Court and was there affirmed. *Starns v. Malkerson*, 326 F.Supp. 234 (1970), 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed. 527 (1971) (affirmed without opinion). Subsequently, the Supreme Court of the State of Nebraska has upheld such a distinction. *Thompson v. Board of Regents of University of Nebraska*, 188 N.W.2d 840 (1971).

3. *An Original Durational Residence Requirement to Qualify as a Resident for Tuition Purposes is Constitutional.* Federal and state courts have sustained full 1-year residency requirements for tuition purposes in Colorado, California, Iowa, New York, and Minnesota. *Thompson v. Board of Regents of the University of Nebraska*, supra. It was thought that the recent United States Supreme Court case of *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), which struck down the 1-year residency requirement for welfare recipients might well foretell a similar result for out-of-state tuition. The Shapiro case established the test that where a *fundamental interest* of a person was involved, infringement by the state could only be justified by a *compelling state interest*. Merely showing a *reasonable or rational basis* for the requirement, such as budgetary planning or an objective test of residency was insufficient. However, the recent Starns decision, which was affirmed by the United States Supreme Court, upheld Minnesota's tuition statute, which required 1 year's residency before qualifying as a resident for tuition purposes. The court stated:

For the reasons, we conclude that this is not a case of an infringement of a fundamental right and thus the exacting standards of the compelling state interest test have not application. Unlike Shapiro, we find the one-year durational residence requirement challenged here does not constitute a penalty upon the exercise of the constitutional right of interstate travel and thus the regulation's constitutionality should be tested under the traditional equal protection standards. *Starns v. Malkerson*, supra.

The traditional standards require only a showing that a *reasonable basis* for the classification exists and that it is related to a legitimate objective of the state. In classifying students for purposes of charging tuition, many cases have held under the *traditional standards* that the state has a legitimate objective in attempting to achieve a partial cost equalization between those persons who have and those persons who have not recently contributed to the state's economy through employment, tax payments and expenditures within the state. This justification for the difference in tuition was recognized before and after Shapiro. (*Clark v. Redeker*, supra; *Kirk v. Board of Regents of University of California*, supra; *Starns v. Malkerson*, supra; and *Thompson v. Board of Regents of University of Nebraska*, supra.) The court in the *Starns* case discussed the justification for the difference in tuition. The opinion is particularly important because the decision was affirmed by the U.S. Supreme Court without opinion. The court stated:

Although there is no way for this Court to determine the degree to which the higher tuition charge equalizes the educational costs of residents and nonresidents, it appears to be a reasonable attempt to achieve a partial cost equalization. The regulation classifying students as residents or nonresidents for tuition purposes is not arbitrary or unreasonable and bears a rational relation to Iowa's object and purpose of financing, operating and maintaining its educational institutions. *Starns v. Malkerson*, supra.

4. *It is Constitutional to Provide That an Out-of-State Student Shall Not Qualify for a Change in Status Unless He Shall Have Completed Twelve Continuous Months of Residence While Not Attending the University.* Section 4(10) of the regulations is the regulation which sets forth the criteria for an out-of-state student in qualifying for in-state status on the basis of his own residence. The operative portion of this regulation is very similar to that of the University of Colorado which was upheld by the Colorado Supreme Court in *Landwehr v. Regents of University of Colorado*, supra. The Colorado statute also had a 1-year requirement worded in much the same language. Although an earlier Idaho case* had held a regulation invalid which provided that a non-resident student retains his status throughout his college enrollment, the Colorado court did not follow this decision nor did the Nebraska Supreme Court.

A similar statute for a shorter period was upheld by the Nebraska Supreme Court in 1971. *Thompson v. Board of Regents of University of Nebraska*, supra. The Nebraska court stated its reasoning, as follows:

* * * [T]he Legislature may reasonably require that the bona fides of residence be demonstrated independent of the equivocal nature of mere physical attendance by a nonresident at a school in

*Newman v. Graham, 82 Ida. 90, 349 P.2d 716 (1960).

the state. * * * [I]f a state may adopt such a standard or classification it may also adopt and require reasonable standards to ascertain and enforce the basic, legitimate state purpose.

* * * Voting, physical presence, acquisition of housing or payment of taxes may or may not be indicative of establishment of a legal residence, which is primarily a question of intent. The acquisition of these various indicia coupled with an actual residence requirement * * * in the state while not attending school obviously comes much closer to proving the bona fides of intent.

The Nebraska statute is reasonably designed to protect a legitimate state interest and to secure the bona fides of the claimed intent regarding the residence of a person coming from another state for the avowed and immediate purpose of securing the educational facilities of this state and eschewing the facilities of the state of his prior residence. *Thompson v. Board of Regents of University of Nebraska*, supra.

In addition to the similar statutes construed in the Colorado and Nebraska cases above cited, a recent study by the Education Commission of the States notes several other states which have similar statutes or regulations, mentioning Arkansas, Oklahoma, Oregon, Rhode Island, Tennessee, West Virginia, and Wyoming. *Resident or Non-Resident*, Report No. 18, Education Commission of the States, March 1970, Denver, Colorado. The weight of authority and most recent opinions uphold such statutes or regulations.

A question has been raised as to whether this 1-year regulation for attaining in-state status after initial enrollment is consistent with the Nevada Statute. The Nevada Statute requires for in-state status a 6 months' residence prior to initial matriculation. It is silent on the question of acquiring in-state status thereafter. A literal interpretation of the statute could lead one to conclude that a student, once enrolled as an out-of-state student, could never achieve in-state status. This interpretation would, in all probability, be unconstitutional. A more reasonable interpretation is that the statute precludes the out-of-state student from acquiring in-state status on the basis of his own residence, while enrolled at the University. The determination of the status of a person who has interrupted his education is thus left to the University. The regulations follow the Colorado rule and establish a 1-year period of residence while not attending the University as being a reasonable objective indication of his intent to remain a permanent resident.

Since a 1-year residence requirement has been upheld in numerous cases as a reasonable time standard to justify a change in tuition status, the fact that it is not identical to the statutory 6-month period required prior to initial matriculation is not disabling. The regulation provides a reasonable interpretation of the statute to permit its administration, free of a possible constitutional infirmity which would exist if a person once enrolled as an out-of-state student could never achieve in-state status for tuition purposes. It creates a reasonable classification requiring a person who has come from out-of-state for educational purposes to provide more objective evidence of his intent to remain than a person who established himself as a bona fide resident and then enrolled in the University. There would be a substantial temptation for an out-of-state student, once enrolled, to drop out of school for a semester, solely for the purpose of avoiding tuition. A longer period decreases that likelihood.

5. The following are general comments which may provide some perspective in the understanding and the administration of the regulations:

(a) The regulations, as well as the Nevada Statutes, define residence in terms similar to that of domicile. However, they do not use the word "domicile" as the test, which avoids the peculiarities of the law concerning domicile based on constructive residence, such as the rule that the domicile of an unemancipated minor is that of the parents or that the domicile of the wife is that of the husband. This application frequently results in determinations which are not sensible, in light of the policy of the tuition

statute. Under these regulations, it is thus unnecessary to make determinations as to whether a minor is emancipated or which parent has custody of the child. It avoids applying the strange rule that a girl is an adult at 18 and thus able to establish her own domicile, whereas a boy is a minor until 21 and thus takes the domicile of his parents. These considerations really have no relevance to purposes of the tuition policy. The problems presented in some jurisdictions because of the 18-year-old voting law are likewise avoided because the statute and regulations permit the student himself to establish his own residence for tuition purposes irrespective of his age or the technical rules of constructive domicile.

These regulations also meet an objection raised in the Iowa case of *Clarke v. Redeker, supra*. The student there objected to the rule of domicile where the female student could achieve in-state status by marrying a resident male, but the reverse was not true. He argued that this was an unlawful discrimination based on sex. The regulations provide the same rule for both male and female students. If the spouse is a bona fide resident, the student, whether male or female, can qualify for in-state status.

The regulations provide for an appellate procedure which avoids the due process objections presented in some of the cases. A procedure is also established to avoid arbitrary or unjust results in the exceptional case where an application of the rules and presumptions works an obvious injustice not intended in the enactment of the statute or regulations.

CONCLUSION

The attached regulations for classifying students as in-state or out-of-state students for tuition purposes, enacted by the Board of Regents at its meeting on May 12-13, 1972, are legally valid.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By PROCTER HUG, JR., *Special Deputy for the
University of Nevada System*

92 Payment of Taxes from the State Insurance Fund—Chapter 588 of the 1971 Statutes of Nevada, which provides for payment of taxes under [NRS 361.055](#), subsection 4 from the State Insurance Fund by the Board of Examiners, is constitutional. The Nevada Constitution does not prevent the Legislature from detraining what state agency may make payments from the Insurance Fund.

CARSON CITY, August 3, 1972

MR. JOHN R. REISER, *Nevada Industrial Commission*, 515 East Musser Street, Carson City, Nevada 89701

DEAR MR. REISER:

The Legislature on April 27, 1971 enacted Chapter 588 of the 1971 Statutes of Nevada, Section 51 of which reads:

The following sums are hereby appropriated from the state insurance fund in the state treasury for the purposes hereinafter expressed for the fiscal years

beginning July 1, 1971, and ending June 30, 1972, and beginning July 1, 1972, and ending June 30, 1973.

| | 1971-72 | 1972-73 |
|--|---------|---------|
| State Board of Examiners | | |
| For the payment of taxes by the state board of examiners pursuant to subsection 4 of NRS 361.055 | \$8,092 | \$7,469 |

[NRS 361.055](#), subsection 4 provides that all real estate owned by the State of Nevada in each county which exceeds 17 percent of the total value of all other real estate listed in the county's tax list shall be liable for taxes.

Since Article 9, Section 2 of the Nevada Constitution places the State Insurance Fund into a trust fund for specified purposes, you requested you legal counsel for an opinion of the constitutionality of Chapter 588. After a consideration of Article 9, Section 2 of the Constitution and of State v. McMillan, [36 Nev. 383](#), 136 P. 609 (1913), he concluded the statute was unconstitutional.

You, therefore, have requested this office for an opinion on the constitutionality of Chapter 588, 1971 Statutes of Nevada.

ANALYSIS

Article 9, Section 2 of the Nevada Constitution reads:

* * * Any moneys paid for the purpose of providing compensation for industrial accidents and occupational diseases, *and for administrative expenses incidental thereto*, shall be segregated in proper accounts in the state treasury, and such moneys shall never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified. (Italics added.)

Under [NRS 616.180](#) the Nevada Industrial Commission is authorized to acquire whatever real property is necessary for the performance of its duties. The cost of maintaining this property, including the payment of applicable taxes, can only be regarded as an administrative expense incidental to the performance of its duty to provide compensation for industrial accidents and occupational diseases. The Nevada Constitution specifically provides that the State Insurance Fund, though a trust fund, is to be used not only for the purposes of compensating industrial accidents and occupational diseases, but also for the payment of the administrative expenses which accompany these duties. There is no constitutional bar, therefore, on applying the State Insurance Fund toward payment of a tax under [NRS 361.055](#), subsection 4. It must be emphasized that the State Insurance Fund, provided by [NRS 616.425](#), is distinguished from the Accident Benefit Fund, provided by [NRS 616.410](#). The funds from the Accident Benefit Fund are to be applied only for the payment of accident benefits.

The legal counsel for the commission, while admitting the liability of the commission for its proportional share of taxes, maintains that the right to make such payments lies entirely in the hands of the commission. The Nevada Constitution declares the fund to be a trust fund, and the Supreme Court in State v. McMillan, *supra*, declared the trust fund not subject to administration by the State Board of Examiners, as are funds of other state agencies which obtain their income from general revenues. Therefore he contends Chapter 588, which renders funds payable for taxes to the Board of Examiners, is unconstitutional.

State v. McMillan, *supra*, however, simply held that in paying compensation pursuant tot he Nevada Industrial Insurance Act, the commission did not just have to submit the claim to the Board of Examiners and seek issuance of a warrant from the controller. These accounting procedures had to be followed for funds expended from the

general revenues, but were not necessary for an expenditure from a trust fund. This was the extent of the ruling in *state v. McMillan*, supra; it did not place a constitutional bar on the Legislature from determining what agency may disburse state insurance funds.

Article 9, Section 2 of the Constitution simply puts a constitutional bar on the purposes for which the fund may be used, not who may disburse the funds. The commission and the State Insurance Fund, being, except for the purposes of Article 9, Section 2 of the Constitution, a creature of statute, the Legislature is free to determine what agency may disburse the funds. For the purposes of paying any proportional share of taxes due under [NRS 361.055](#), subsection 4, the Legislature has determined that payment should lie with the State Board of examiners. This legislative determination is not prevented by the Nevada Constitution.

CONCLUSION

Chapter 588 of the 1971 Statutes of Nevada is constitutional. The Legislature is free to determine what state agency may make payments from the State Insurance Fund, subject to constitutional provisions regarding the purposes of the fund.

Respectfully submitted,

ROBERT LIST, *Attorney General*

93 Aliens Prohibited from Public Employment—[NRS 281.060](#), prohibiting aliens from public employment, must be presumed constitutional in view of the lack of clear, convincing and overwhelming evidence to the contrary.

CARSON CITY, August 21, 1972

THE HONORABLE ROY A. WOOFER, *District Attorney*, Clark County Courthouse, 200 East Carson Street, Las Vegas, Nevada 89101

Attention: MR. F.C. CARTER, *Administrative Coordinator*

Dear MR. WOOFER:

You have requested an opinion from this office regarding the constitutionality of [NRS 281.060](#), Preferential Employment by State and Political Subdivisions. This statute reads:

Only citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States shall be employed by any officer of the state of Nevada, any political subdivision of the state, or by any person acting under or for such political subdivision of the state.

It is our belief, in light of recent United States Supreme Court decisions regarding rights of aliens, that [NRS 281.060](#) violates the equal protection clause of the Fourteenth Amendment of the United States Constitution.

DISCUSSION

This office is extremely reluctant to declare by administrative opinion that a legislative enactment is unconstitutional. This is ultimately the function of the courts. This does not mean, however, that in a special circumstances this office will not render such an opinion.

Thus, as in its recent Attorney General's Opinion No. 85, regarding the unconstitutionality of Nevada's voter residency requirement, where the evidence is clear, convincing and overwhelming that the United States Supreme Court regards a certain type of law unconstitutional, this office will issue an opinion regarding the unconstitutionality of a similar Nevada law.

Where such clear, convincing and overwhelming evidence is lacking, however, this office will adhere to the general principle of law that a statute is presumed constitutional and that any doubts on this point will be resolved in favor of constitutionality. The Nevada Supreme Court itself has adhered to this principle, holding that it will declare statutes unconstitutional only in clear cases of violation of the constitution. *State ex rel. Ash v. Parkinson*, [5 Nev. 15](#) (1869); *State ex rel. Clarke v. Irwin*, [5 Nev. 111](#) (1869); *Hess v. Pegg*, [7 Nev. 23](#) (1871); *State v. McClear*, [11 Nev. 39](#) (1876); *State ex rel. Mark v. Torreyson*, [21 Nev. 517](#), 34 P. 870 (1893); *Nash v. McNamara*, [30 Nev. 114](#), 93 P. 405 (1908); *Ex parte Iratacable*, [55 Nev. 263](#), 30 P.2d 284 (1934); *King v. Board of Regents*, [65 Nev. 533](#), 200 P.2d 221 (1948).

Regarding this question of state statutes prohibiting aliens from public employment, the United States Supreme Court in 1915 ruled that such statutes violated neither the Fourteenth Amendment due process clause nor the equal protection clause. It held that the states had a legitimate special public interest in enacting such legislation, namely, the protection and conservation of public resources for its own citizens. *Heim v. McCall*, 293 U.S. 175 (1915); *Crane v. New York*, 239 U.S. 195 (1915).

But since the turn of the century, the U.S. Supreme Court has enlarged the scope of aliens' rights. In particular, *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948); dealing with a state statute prohibiting aliens from obtaining fishing licenses, stated:

The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under non-discriminatory laws. 334 U.S., at 420

In *Graham v. Richardson*, 403 U.S. 365 (1971), the states sought to justify denial of welfare payments to aliens on the theory of special public interests. The court noted:

It is true that this Court on occasion has upheld state statutes that treat citizens and noncitizens differently, the ground for distinction having been that such laws were necessary to protect special interests on the State or its citizens.

In this context, the court specifically mentioned *Heim v. McCall*, *supra*, and *Crane v. New York*, *supra*. The court continued, however, by stating, "*Takahashi v. Fish and Game Commission*, however, cast doubt on the continuing validity of the special public-interest doctrine [doctrine] in all contexts."

This, however, is as far as the court went. While stating that the special public interest doctrine was not valid in every application, it did not strike down the principle. In particular, the *Heim* and *Crane* cases, dealing with the exact issue as that regulated by [NRS 281.060](#), were not specifically overruled. The court made no broad ruling on the special public-interest principle, other than to muse on its validity, and in view of this, *Takahashi* and *Graham* must be limited to their specific fact situations. The court had its opportunity to strike down the special public interest principle, the basis for *Heim* and *Crane*, but did not take it.

In short, while there is some doubt as to the validity of statutes such as [NRS 281.060](#), there is no specific ruling that they are unconstitutional. As state earlier, doubts as to the constitutionality of state statutes are resolved in favor of the presumption of constitutionality.

CONCLUSION

Therefore, in view of the lack of clear, convincing and overwhelming evidence that laws prohibiting aliens from public employment are unconstitutional and that the State does not have a legitimate special public interest in such an act, this office adheres to the presumption that [NRS 281.060](#) is constitutional.

Respectfully submitted,

ROBERT LIST, *Attorney General*

94 County Engineers—County engineers are forbidden to represent private clients before county planning commissions.

CARSON CITY, August 21, 1972

THE HONORABLE STANLEY A. SMART, *Lyon County District Attorney*, Lyon County Courthouse, Yerington, Nevada 89447

DEAR MR. SMART:

This is in reply to your letter of July 18, 1972, requesting an opinion as to any conflict of interest the county engineer might have in serving as a private engineer. The facts you relate to us indicate that the county engineer is appointed by the county Commissioners of Lyon County, and he is employed on a piece work basis, that he has subsequently appointed an assistant, who is a full-time employee of the county. The assistant county engineer, pursuant to county ordinance, has been made an ex officio member of the planning commission. The planning commission was created pursuant to [NRS 278.030](#), subsection 2. The county engineer, in the course of his private engineering practice, has occasion to submit subdivision plats for private subdividers to the county planning commission for approval.

QUESTION

Does the Lyon County Engineer have a conflict of interest when presenting subdivision plats to the county planning commission on behalf of private clients?

ANALYSIS

This opinion will not address itself to the ethical question involved herein. We would commend the county engineer to consult the State Board of Professional Engineers as well as the Nevada Society of Professional Engineers for an opinion as to the ethics of serving two employers who could potentially take diametrically opposed positions on a single project.

The assistant county engineer is subordinate to the county engineer, as evidenced by [NRS 254.050](#), as follows:

1. The county engineer may, with the approval of the board of county commissioners, appoint such assistants and other employees as are necessary to the proper functioning of his office.
2. The salaries of such assistants and employees and the other expenses of conducting the office of the county engineer shall be fixed and determined by the county engineer with the consent and approval of the board of county commissioners.

The assistant county engineer is appointed by the county engineer and his salary is fixed by the county engineer. It is clear that the assistant county engineer would, when acting on his superior's private proposals, be in a position of subservience to, and responsible to, the county engineer. The assistant county engineer is the alter ego of the county engineer when sitting with the county planning commission. [NRS 278.040](#), subsection 2. Nevada's statute addressed to conflicts of interest in public employment at the county level is [NRS 281.230](#), subsection 1, as follows:

1. The following persons shall not, in any manner, directly or indirectly, receive and commission, personal profit or compensation of any kind or nature inconsistent with loyal service to the people resulting from any contract or other transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way interested or affected:

(a) State, county, municipal, district and township officers of the state of Nevada;

(b) Deputies and employees of state, county, municipal, district and township officers; and

(c) Officers and employees of quasi-municipal corporations.

A county engineer is clearly a county officer, as used in Chapter 254 of Nevada Revised Statutes (see [NRS 254.030](#)). The assistant county engineer would be covered by [NRS 281.230](#), subsection 1(b). Therefore, both the county engineer and the assistant county engineer are forbidden by [NRS 281.230](#) from receiving any compensation inconsistent with loyal service to the people resulting from any contract in which the employing county is in any way interested or affected.

The Lyon County Engineer would not be in violation of [NRS 281.230](#) if he were performing work for private persons outside of Lyon County.

CONCLUSION

It is a violation of [NRS 281.230](#) for a county engineer to present subdivision plat maps commissioned by private clients to his county employer's planning commission for approval.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

95 Fish and Game—It is unlawful to carry a loaded firearm in any vehicle on land open to the public.

CARSON CITY, September 26, 1972

THE HONORABLE DELWIN C. POTTER, *Justice of the Peace, Henderson Township*, 155 Basic Road, Henderson, Nevada 89015

DEAR JUDGE POTTER:

This is in reply to your letter requesting an interpretation of [NRS 503.165](#), subsection 1, which reads as follows:

It is unlawful to carry a loaded rifle or loaded shotgun in or on any vehicle which is standing on or along, or is being driven on or along, any public highway or any other way open to the public.

QUESTION

What is the definition of “any other way open to the public,” as used in [NRS 503.165](#)?

ANALYSIS

The term “way open to the public” appears to be unique to [NRS 603.165](#). Definitions of highway, right-of-way, roadway, public highway, etc., found in other chapters of Nevada Revised Statutes are not persuasive at arriving at a definition of “way open to the public.” The uniqueness of the term “way open to the public” compels a specific definition that is appropriate for this usage.

The obvious purpose for enactment of [NRS 503.165](#) is three-fold. First, as evidenced by the fact that it is found in the chapter of Nevada Revised Statutes pertaining to hunting, fishing and trapping, it must be observed that one of the purposes is for the protection and propagation of wildlife in Nevada. The second purpose is for safety of persons riding in or on motor vehicles wherein firearms are carried. The third purpose is for protection of persons and property in the vicinity of ways open to the public. In view of these purposes, it is self-evident that when it selected the words “any other way open to the public,” the Legislature was focusing on a much broader concept than a public highway or road.

In the case of Chollar-Potosi M. Company v. Kennedy, [3 Nev. 361](#), 93 Am.Dec. 409 [Reprinted at [3 Nev. 328](#) (1867)], the Nevada Supreme Court recognized that “road” and “way” were not synonymous. The court also recognized that “way” is not the same as “right-of-way,” but nearly the same. “Way” is defined at page 373 (338), as follows:

“Way,” in its legal, technical sense, means nearly the same thing as “right-of-way.” Or, in other words, the right of one person, of several persons, or of the community at large, to pass over the land of another.

This early Supreme Court decision makes it clear that a “way” can be a place where as few as one person has the right to pass over the land of another. The Legislature, however, in [NRS 503.165](#), limited subsection 1 to “ways open to the public.”

Lands “open to the public” would be areas that the public at large could travel upon without being in trespass. Lands posted as “No Trespassing,” “Keep Out,” “No Hunting” and similar terminology or lands behind locked gates are clearly not open to the public. However, lands posted “Permission to pass over revocable at any time” and similar postings granting permission to pass over are clearly open to the public until permission is revoked.

CONCLUSION

The term “way open to the public,” as used in [NRS 503.165](#), subsection 1, means all land over which the public has permission to pass or may do so without trespassing. The phrase has no reference to the legal ownership of such land.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

**96 Political Contributions by State Chartered Savings and Loan Associations—
While state chartered savings and loan associations may not contribute to
candidates and parties in federal elections, they may do so in state elections.**

CARSON CITY, October 19, 1972

MR. MICHAEL L. MELNER, *Director, Department of Commerce*, 201 South Fall Street,
Carson City, Nevada 89701

DEAR MR. MELNER:

You have requested an opinion as to the legality of political contributions by state chartered savings and loan associations which participate in the federal deposit insurance program.

ANALYSIS

The Federal Corrupt Practices Act, 18 U.S.C. § forbids national banks and federally chartered corporations from contributing to any political campaign. In addition, § 610 makes it unlawful:

* * * for any corporation whatever * * * to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates to any of the foregoing offices.* * *

Corporations which violate this law are to be fined not more than \$5,000 and officers or director who permit their corporations to violate this law may be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the violation was "wilful [willful]," may be fined not more than \$1,000, or imprisoned not more than two years, or both. However, except for national banks and federally chartered corporations, 18 U.S.C. § 610, by its terms, does not apply to state elections, but only to federal elections.

State elections being exempt under 18 U.S.C. § 610, the question is whether state chartered savings and loan associations participating in the federal deposit insurance program are permitted to contribute to political campaigns on a state level.

The fact that a state chartered association is connected with a federally regulated program does not affect its ability to contribute to state political campaigns. Federal law dealing with political contributions is limited to state or local officers or employees of state or local agencies. 5 U.S.C. § 1501 et seq. "State or local officer or employee" is defined by 5 U.S.C. § 1501 (4) as:

* * * an individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. * * *

"State or local agency" is defined by 5 U.S.C. § 1501(2) as:

* * * the executive branch of a State, municipality or other political subdivision of a State, or an agency or department thereof.

A privately organized corporate entity does not fall under either of these categories. But even if it did there is still the requirement of 5 U.S.C. § 1501(4) that it be

financed wholly or in part by the federal government. State chartered savings and loan associations which participate in the federal deposit insurance program are not financed, wholly or in part, by the federal government through that program. The associations pay an assessment to the federal government as payment for insurance coverage of money deposited with them. They receive no financing whatever from the federal government for this. 12 U.S.C. § 1725 et seq.

Even if they did receive such financing, the associations still would not be prohibited from contributing to state political campaigns by federal law. 5 U.S.C. § 1502 merely prohibits state or local officers or employees from active participation in political campaigns, using one's official position to interfere in, or promote, political campaigns or using one's official position to coerce or influence others to contribute to political campaigns. Voluntary contributions to political campaigns are not prohibited by federal law. Civil Service Commission Form 1982a, March 1962.

CONCLUSION

It is, therefore, concluded that:

1. Federal law prohibits all corporations from contributing funds to political candidates and parties in federal elections.
2. Federal law does not prohibit state chartered corporations from contributing to political candidates or parties in state elections.
3. State chartered savings and loan associations are not prevented, by virtue of their participation in the federal deposit insurance program, from making contributions to political candidates or parties in state elections.

Respectfully submitted,

ROBERT LIST, *Attorney General*

97 Subdivision—Chapter 639, Statutes of Nevada 1971, applies to platted lands under Chapter 116 of Nevada Revised Statutes, but does not apply to subdivided lands not included within the definition of “subdivision” in Chapter 278 of Nevada Revised Statutes.

CARSON CITY, October 20, 1972

THE HONORABLE ROLAND W. BELANGER, *District Attorney, Pershing County*, Lovelock, Nevada 89419

DEAR MR. BELANGER:

You have requested the opinion of this office on the following questions:

QUESTION ONE

Does Chapter 639, Statutes of Nevada 1971, amending Chapters 116, 117 and 278 of Nevada Revised Statutes, apply only to subdivisions as defined by Chapter 278 of Nevada Revised Statutes, or does it apply also to those lands platted under Chapter 116 of Nevada Revised Statutes?

ANALYSIS

Chapter 639, Statutes of Nevada 1971, amends Chapters 116 and 278 of Nevada Revised Statutes as follows:

116.040(2) The map or plat shall:

* * * * *

(d) Be approved by the health division of the department of health, welfare and rehabilitation concerning sewage disposal, water pollution, water quality and, subject to confirmation by the state engineer, water quantity.

278.420 The following certificates and acknowledgments shall appear on the final map and may be combined where appropriate:

* * * * *

6. A certificate by the health division of the department of health, welfare and rehabilitation showing that the health division approved the final map concerning sewage disposal, water pollution, water quality and, subject to confirmation by the state engineer, water quantity.

In response to a request as to whether the Maps and Plats Act of 1905, as amended, currently Chapter 116 of Nevada Revised Statutes, still applied in view of the Planning and Zoning Act of 1941, as amended, currently Chapter 278 of Nevada Revised Statutes, this office in Attorney General’s Opinion No. 289, dated August 5, 1953, stated:

* * * it is the considered opinion of this office that the said Acts of 1905 and 1941, while relating to the same subject matter, are independent Acts, neither being inconsistent with nor repugnant to the other, but as being designed to fit a particular situation and together to provide operable legislation throughout the State, regardless of local population.

In that opinion this office further stated:

We think that any city or county, qualified by population, electing to operate under the provisions of the 1941 Act, could do so, and that if any such city or county so elected, it would be governed solely by the provisions of the 1941 Act, and would no longer be required to comply with the provisions of the 1905 Act. * * *

We think the 1947 amendment, which includes the smaller cities and counties at their election, has not fundamentally changed the previous situation, except to permit the smaller cities and counties to operate under the 1941 Act, if they, or any of them, choose so to do. * * *

Although there have been several amendments to Chapters 116 and 278 of Nevada Revised Statutes subsequent to the aforementioned opinion, said amendments have not altered the applicability of Chapters 116 and 278 of Nevada Revised Statutes as they relate to cities and counties having a population greater or less than 15,000. Therefore, this office reaffirms the aforementioned opinion.

In view of the preceding discussion, it is the opinion of this office that the aforementioned amendments to Chapter 116 and 278 of Nevada Revised Statutes promulgated by Chapter 639, Statutes of Nevada 1971, apply to lands being mapped or platted under the provisions of Chapter 116 of Nevada Revised Statutes as well as to those subdivided lands within the definition of “subdivision” as set forth in Chapter 278 of Nevada Revised Statutes.

QUESTION TWO

Does Chapter 639, Statutes of Nevada 1971, amending Chapters 116, 117, and 278 of Nevada Revised Statutes, apply to those lands which are exceptions to the subdivision definition under [NRS 278.320](#), subsection 2?

ANALYSIS

[NRS 278.320](#) provides in pertinent part:

1. "Subdivision" refers to any land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units, which is divided for the purpose of sale or lease, whether immediate or future, by any subdivider into 5 or more parcels within any 1 calendar year.

2. "Subdivision" does not include either of the following:

(a) Any parcel or parcels of land in which all of the following conditions are present:

(1) Which contain less than 5 acres.

(2) Which abut upon dedicated streets or highways.

(3) In which street opening or widening is not required by the governing body in dividing the land into lots or parcels.

(4) The lot design meets the approval of the governing body.

(b) Any parcel or parcels of land divided into lots or parcels, each of a net area of 10 acres or more, a tentative map of which has been submitted to the governing body and has been approved by it as to street alignment and widths, drainage provisions and lot design.

3. *In either case provided in subsection 2, there shall be filed a record of survey map pursuant only to the provisions of [NRS 278.010](#) to [278.630](#), inclusive.* (Italics added.)

[NRS 278.500](#) provides in pertinent part:

1. If the subdivider is not required by the provisions of [NRS 278.010](#) to [278.630](#), inclusive, to prepare and record a final map, then before proceeding with the sale of any part of the subdivision, he shall file, in the office of the county recorder, a record of survey map conforming, in respect to design, to the approved tentative map or maps.

* * * * *

4. The following certificates shall appear on the record or survey map:

(a) A certificate for execution by the clerk of each approving governing body stating that the body approved the map for subdivision purposes in accordance with the conditional approval of the tentative map.

(b) A certificate by the engineer or surveyor responsible for the survey giving the date of the survey and stating that the survey was made by him or under his direction and setting forth the name of the owner who authorized him to make the survey, and that the survey is true and complete as shown. * * *

While Chapter 639, Statutes of Nevada 1971, required that a final map of a subdivision must, as a condition precedent to being filed, contain a certificate by the Health Division of the Department of Health, Welfare, and Rehabilitation showing that the Health Division approved said map concerning sewage disposal, water pollution, water quality and water quantity (see [NRS 278.420](#), supra), the 1971 Legislature did not promulgate a similar requirement as a condition precedent to filing a record of survey map under [NRS 278.500](#).

Reading [NRS 278.420](#) and [278.500](#) together then, it is clear that subdividers of subdivisions of land not included within the definition of subdivision as set forth in [NRS 278.320](#), supra, are not required to file a final map of subdivision nor are they required to obtain the aforementioned Health Division certificate as a condition precedent to filing a record of survey map on said subdivision of land.

As discussed previously, Chapters 116 and 278 of Nevada Revised Statutes are independent of each other even though they deal with the same subject matter. Therefore, the broad provisions of Chapter 116 of Nevada Revised Statutes concerning lands mapped and platted are not applicable to those lands not included within the definition of

subdivision as set forth in [NRS 278.320](#), supra, if the city or county either by population or election is governed by the provisions of Chapter 278 of Nevada Revised Statutes.

It is the opinion of this office then, that the provisions of Chapter 639, Statutes of Nevada 1971, as they relate to Chapter 278 of Nevada Revised Statutes, do not apply to those subdivisions of lands not included within the definition of subdivision as set forth in [NRS 278.320](#).

CONCLUSIONS

1. The amendments to Chapters 116 and 278 of Nevada Revised Statutes promulgated by Chapter 639, Statutes of Nevada 1971, apply to those lands platted and mapped pursuant to the provisions of Chapter 116 of Nevada Revised Statutes as well as to subdivisions of land within the purview of the definition of subdivision as set forth in Chapter 278 of Nevada Revised Statutes.

2. The amendments to Chapters 116 and 278 of Nevada Revised Statutes promulgated by Chapter 639, Statutes of Nevada 1971, do not apply to those subdivided lands not included within the definition of subdivision as set forth in [NRS 278.320](#), if the city or county concerned, either by population or election, is governed by the provisions of Chapter 278 of Nevada Revised Statutes.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By LARRY G. BETTIS, *Deputy Attorney General*

98 County Printing—[NRS 332.050](#) only requires informal requests for bids when the work desired is not a “sole source item;” [NRS 244.330](#) requires the printing to be done in the county by a printer who is “adequately equipped” so long as his prices are reasonable and the work is “satisfactory.”

CARSON CITY, October 24, 1972

THE HONORABLE MIKE FONDI, *District Attorney of Carson City*, Courthouse, Carson City, Nevada 89701

DEAR MR. FONDI:

QUESTION

You have requested an opinion from this office on whether or not the mandatory provisions of [NRS 244.330](#) concerning public printing are modified by the considerations of [NRS 332.080](#) concerning the award of a bid contract.

FACTS

According to your letter there is only one newspaper in Carson City that has the equipment in Carson City necessary to do all the work required in printing the annual tax list “newspaper style.” While there is another bona fide newspaper in Carson City, it does not own its own printing press.

The annual tax list, requested by the Carson City Board of Supervisors, will involve printing costs in excess of \$1,000 but under \$2,500. The supervisors, therefore, consider the provisions of [NRS 332.050](#) mandatory and consequently solicit bids from other commercial printing establishments in Carson City that do not own their own printing presses.

ANALYSIS

[NRS 244.330](#) (as amended by Chapter 577, 1971 Legislature) states:

1. All public printing required by the various counties shall be placed with some bona fide newspaper or bona fide commercial printing establishment within the county requiring the same; but if there is no bona fide newspaper or bona fide commercial printing establishment within the county *adequately equipped* to do such printing, then the printing so required shall be placed with some bona fide newspaper or bona fide commercial printing establishment elsewhere in the state *adequately equipped* to do such printing. If only one such newspaper or commercial printing establishment exists in the county and it fails, or has failed in the past, with regard to a specific piece of printing required by law to be printed, to perform its printing functions in accordance with the specification for the job as supplied by the governing body in any year, the specific piece of printing when required in any subsequent year may be placed with some bona fide newspaper or bona fide commercial printing establishment elsewhere in the state *adequately equipped* to do such printing.

2. Except as otherwise authorized in subsection 4, printing required by counties shall be done within the state.

3. The provisions of this section are contingent upon *satisfactory services* being rendered by all such printing establishments and *reasonable charges* therefor. Reasonable charges shall mean a charge not in excess of the amount necessary to be paid for similar work in other printing establishments.

4. Nothing in this section shall be construed as prohibiting the printing of county bonds and other evidences of indebtedness outside the state. (Italics added.)

The legislative purpose of [NRS 144.330](#) is to assure, whenever possible, local printers and their employees the economic benefits of performing county printing paid with local tax revenues, subject to reasonable prices being charged therefor. It therefore follows that “printing establishment within the county” has reference to the printing plant and equipment being physically present in the county.

The Local Government Purchasing Act (Chapter 332 of Nevada Revised Statutes) provides for the informal solicitation of bids. [NRS 332.050](#) states:

Except as otherwise provided by law, a governing body may let a contract of any nature without advertising if:

1. The estimated amount required to perform the contract is greater than \$1,000.00 but does not exceed \$2,500.00.

2. Informal requests for bids have been submitted to at least three persons who are capable of performing the contract, *unless the item required is a sole source item*. (Italics added.)

When bids are solicited in accordance with this law, then [NRS 332.080](#) which provides as follows, becomes relevant:

When a governing body or its authorized representative has advertised for or requested bids in letting a contract, the award shall be made to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder will be judged on the basis of price, performance to specifications, bidders’ qualifications, quality and utility of services, supplies, materials or equipment offered and their adaptability to the required purpose, and the best interest of the public, each of such factors being considered.

If there were more than one newspaper or commercial printing establishment in Carson City that was adequately equipped to do the work in question, then the informal requests for bids would have to be sent out and subsequently awarded in compliance with the requirements and considerations of [NRS 332.050](#) and [332.080](#).

It is relevant to note that other sections in Chapter 332 indicate that certain bids may be rejected if the “equipment,” etc., does not conform to requirements. [NRS 332.090](#), subsections 1, 2(b), 332.100. And [NRS 332.050](#) and [332.140](#) indicate that informal requests for bids are not necessary if the item required is a “sole source item.” The word “sole” connotes the singular. *Charvoz v. Bonneville Irr. Dist.*, 235 P.2d 780, 782 (Utah 1951).

Considering both [NRS 244.330](#) et seq., and Chapter 332 as a whole, it is apparent that the intent of the Legislature was to require county printing to be done by the bona fide newspaper or commercial printing establishment that was “adequately equipped,” “contingent upon satisfactory and reasonable charges” as well as satisfactory performance of its printing functions in accordance with the specifications supplied by the governing body. Furthermore, since the printing must be done within Carson City when possible, and Carson City has but one printer capable of performing the service, then informal requests for bids are not necessary, the printing work required being considered a “sole source item.” Of course, even if competitive bidding is not required, the printing contract can be awarded to another adequately equipped printing establishment in the State, though not fully equipped, when the prices of the fully equipped printer are unreasonable as determined by prices for similar work in other printing establishments.

In Attorney General’s Opinion No. 174, dated April 15, 1925, it was stated that the statute requiring public printing to be done in the county was “mandatory” and the counties must, therefore, handle their printing in the manner set forth in that section. The legislative intent, while sometimes unclear, is here quite explicit upon a close reading of the entire statute and chapter.

CONCLUSION

The provisions of [NRS 332.050](#) do not require informal requests for bids on printing the Carson City tax list when the work requires is a “sole source item.” The mandatory provisions of [NRS 244.330](#) require the printing to be done by a bona fide newspaper or commercial printing establishment in Carson City that is “adequately equipped to do such printing. If there is but one such newspaper or printing establishment that is so equipped, then the contract should be awarded, without informal bidding, to that entity, so long as the prices charged are *reasonable*, and *satisfactory* services are being rendered. If the charges are in excess of the prices charged for similar work in other printing establishments, local or otherwise, then the Carson City Board of supervisors may decline to accept the contract offer, and solicit the service elsewhere in the State.

Respectfully submitted,

Robert List, Attorney General

99 General Improvement Districts—A service charge or fee may only be collected on the tax roll if ad valorem taxes were previously levied. A district attorney is not under duty to act as counsel for a general improvement district.

Carson City, October 30, 1972

The Honorable Robert Manley, *District Attorney*, Elko County Court House, Elko,
Nevada 89801

Dear Mr. Manley:

You have requested an opinion from this office concerning the rendering of official services by county officers to the Elko Television District (hereinafter called District), a general improvement district organized under Chapter 318 of Nevada Revised Statutes.

FACTUAL SITUATION

The board of trustees of the Elko Television District has, by resolution determined that a one dollar (\$1) per month per television receiver service charge or fee is to be billed to all owners of television receivers within the District. Pursuant to [NRS 318.201](#), the Elko County Assessor has been asked to add this charge or fee, to be paid annually in advance, to the county's general tax roll.

In addition, your office has been requested to perform legal services for the District.

QUESTIONS

Your letter raised two questions:

1. Is the county assessor required to bill and collect the above-mentioned service fees or charges on the general tax roll, and if so, may he bill the District for such services?
2. Is the district attorney required to perform legal services for the District as part of his official duties, and if not, may he bill the District for any services rendered?

QUESTION NO. 1—ANALYSIS

A general improvement district, such as the Elko Television District, organized under [NRS Chapter 318](#), is empowered to:

(f)ix tolls, rates and other service or use charges for services by the district or facilities of the district, including * * * [among others] (c)harges classified by the number of receivers; * * * ([NRS 318.1192](#)(3), (3)(b).)

Clearly the District had the power to set a service charge by proper action of its board of trustees.

Chapter 318 districts have been granted the power to collect such fees or charges, [NRS 318.200](#), subsection 4, to provide penalties for nonpayment, [NRS 318.200](#), subsection 5, and in addition, to contract with “* * * any person, firm, or public or private corporation * * *” to perform such collection services. [NRS 318.200](#), subsection 7.

By a separate provision, an alternative procedure for collection of such fees is provided. [NRS 318.201](#), subsection 1, states:

Any board which has adopted *rates* pursuant to this chapter may, * * * elect to have such charges for the forthcoming fiscal year collected on the tax roll in the same manner, * * * and at the same time as, * * * *its general taxes*. * * * (Italics added.)

The language of [NRS 318.201](#), taken as a whole, clearly indicates that the Legislature sought to allow for the collection of service fees or charges on the tax roll only when the district in question has, at the time of such collection, levied an ad valorem property tax on the owners of real property within the district. For example, [NRS 318.201](#), subsection 6 requires a notice of the proposed collection of service charges or fees on the tax roll to be sent to “* * * each person to whom any parcel or parcels of real

property *** is assessed. ***” [NRS 318.201](#), subsection 9 requires the county treasurer to “*** enter the amounts of the charges against the respective lots or parcels of land as they appear on the current assessment roll.” Finally, [NRS 318.201](#), subsection 11 provides that the charges in question shall be billed on the tax bills levied against the respective parcels of land, and that “*** (t)hereafter the amount of the charges shall be collected at the same time and in the same manner and by the same persons as, *** *the general taxes for the district.* ***” (Italics added.) No mention is made in [NRS 318.201](#) of the personal (unsecured) tax roll which is administered by the county assessors. Therefore, service charges or fees established by a general improvement district organized under [NRS Chapter 318](#) may not be collected on the personal property (unsecured) tax roll. Such service charges or fees may only be collected on the tax roll along with existing general (ad valorem taxes of the district, or, pursuant to the general collection provisions found in [NRS 318.200](#).

We are informed that the Elko Television District presently has not levied an ad valorem tax, and therefore, its service charges or fees may not be collected on the tax roll.

You also asked whether the county assessor may bill the District for his services. In view of the above conclusion, the question of possible payment for services is not moot.

QUESTION NO. 2—ANALYSIS

The duties of a district attorney are governed primarily by two statutes, [NRS 252.110](#) and [252.160](#). The former lists the duties of the district attorney to act as attorney for his county (and the included school district), and also provides that he shall “*** (p)erform such other duties as may be required of him by law.” The latter section, [NRS 252.160](#), provides as follows:

The district attorney shall, without fees, give his *legal opinion* to any assessor, collector, auditor or county treasurer, and to all other county, township or district officers within his county, in *any matter relating tot he duties of their respective offices.* (Italics added.)

Therefore, a district attorney should, upon request, give his legal opinion in matters relating to the duties of the officers of Chapter 318 general improvement districts. However, he is not required to act as counsel for or to represent such districts as a part of his official duties.

In addition, [NRS Chapter 318](#) contains no provision requiring a district attorney to act as legal counsel for an improvement district organized pursuant to its terms. [NRS 318.180](#) provides:

The board shall have the power to hire and retain agents, employees, servants, engineers and *attorneys*, and any other persons necessary or desirable to effect the purposes of this chapter. (Italics added.)

This language contemplates the retaining of private counsel. In normal usage, an attorney is “retained” by payment of a partial fee in advance. Webster’s Third International Dictionary, (1967), p. 1938. Therefore, an attorney for a Chapter 318 district is entitled to a reasonable fee for his services, since a district with the power to retain an attorney, of necessity, must have the power to compensate him for his services. (See [NRS 318.185](#); compensation of agents, etc.)

CONCLUSIONS

1. A television improvement district organized under [NRS Chapter 318](#) which has an outstanding ad valorem tax levy may collect any service fees or charges which it

has imposed along with its general ad valorem taxes and county officials affected must cooperate in the billing and collection of such fees on the general tax roll of the district.

2. A district attorney is not obligated to act as counsel for the board of a general improvement district as a part of his official duties. A district attorney is obligated to give his legal opinion to the officers of such districts have the power to retain private legal counsel to represent their interests.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES D. SALO, *Deputy Attorney General*
Nevada Tax Commission

100 State Board of Education—The regulations for school desegregation purportedly adopted by the State Board of Education on October 5, 1972 are void and unenforceable because they were adopted without due process of law and they govern a subject matter over which the state Board of Education has no jurisdiction.

CARSON CITY, November 14, 1972

THE HONORABLE JACK SCHOFIELD, *Assemblyman*, 2000 Stockton Street, Las Vegas,
Nevada 89105

DEAR ASSEMBLYMAN SCHOFIELD:

This is in reply to your request for a formal opinion concerning the validity of regulations adopted October 5, 1972 by the Nevada State Board of Education pertaining to desegregation of schools.

QUESTION

Does the State Board of Education have legal authority to adopt regulations for the desegregation of public schools in Nevada?

ANALYSIS

The Nevada State Board of Education was created by the Nevada Legislature. Chapter 385, Nevada Revised Statutes. Thus, it is necessary to look to the statutory powers and authority granted in order to determine the boundaries and limits of its jurisdiction. [NRS 385.080](#), as it here pertains, reads as follows:

The board shall have power to adopt rules and regulations not inconsistent with the constitution and laws of the State of Nevada for its own government and which are proper or necessary for the execution of the powers and duties *conferred upon it by law*; * * * (Italics added.)

It is therefore clear that while the board has the power to promulgate rules and regulations, it is limited in its power to do so to those instances where such rules and regulations are proper or necessary for the execution of those responsibilities conferred by law.

Our task then becomes one of determining whether the power or duty to effect school desegregation has been conferred on the State Board of Education by law. In other words, the board's authority to adopt any regulations on any subject matter must be

bottomed upon a statutory provision granting the board jurisdictional ingress. Without such a threshold, the board is powerless.

This principle has long been recognized by our nation's highest court, and was articulately stated in *Miller v. United States*, 294 U.S. 435 (1935), at page 440, where, in holding a regulation to be void and unenforceable, the court stated:

The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act—not to amend it. [Citing authorities.]

A state agency created by statute has only such powers as are conferred upon it by statute. *Board of Higher Education of City of New York v. Carter*, 228 N.Y.S.2d 704 (1962).

A review of Title 34 of Nevada Revised Statutes, which contains our school code, reflects that many varied powers have been expressly delegated to the board by the Legislature. Examples include the power to prescribe rules and regulations or the power to govern in the following instances:

The issuance and renewal of certificates and diplomas ([NRS 385.090](#));

The conditions under which contracts, agreements or arrangements may be made with the federal government for funds, services, commodities or equipment to be made available to the public schools ([NRS 385.100](#));

The administration of the higher education student loan program ([NRS 385.106](#));

The courses of study for the public schools of the State ([NRS 385.110](#));

The approval or disapproval of the list of books for use in school libraries ([NRS 385.120](#));

The exercise of substantial powers concerning the payment of public school moneys ([NRS 387.040](#)); and

The making of the final selection of all textbooks to be used in the public schools ([NRS 390.140](#)).

These are but a few of the many responsibilities imposed upon the State Board of Education, as contained in the 15 chapters and more than 500 pages which make up our school code.

By contrast, the Legislature has delegated distinct and different responsibilities to the local school districts. They too are creatures of the Legislature.

It has been held that there is no occasion to give one statutory creature jurisdiction over the activities of another statutory creature unless the law unmistakably so provides. *St. Petersburg v. Carter*, 39 So.2d 804 (Fla. 1949); *Peoples Gas System, Inc. v. City Gas Company*, 167 So.2d 577 (Fla. 1964).

It is abundantly clear that the legislative intent was to divide the powers and prerogatives between state and local officials. Perhaps the most conspicuous indication of the fact that local school districts have far greater powers than does the State Board of Education comes with an inspection of [NRS 386.350](#), which provides as follows:

Each board of trustees is hereby given such reasonable and necessary powers, not conflicting with the constitution and the laws of the State of Nevada, as may be requisite to attain the ends for which the public schools are established and to promote the welfare of school children.

By contrast, neither the State Board of Education nor the State Department of Education has such sweeping authority for the regulation of our public schools. Further, the boards of trustees of each school district have the power to prescribe and enforce rules, so long as they are not inconsistent with the law or with valid rules prescribed by the State Board of Education, for the government of public schools under their charge. [NRS 386.360](#).

An overall review of the school code leads to the compelling conclusion that the Nevada Legislature has consciously reserved broad powers within the local school districts, while consciously limiting the role of the State Board of Education and the State Department of Education to specified fields. There is no statutory provision authorizing the State Board of Education to adopt regulations for school desegregation, and absent such authorization, the regulations must be deemed invalid.

It should also be noted that prior to the purported adoption of the regulations here in questions, there was no notice to local school districts, interested persons, or even the members of the State Board of Education themselves, that the regulations were to be acted upon at the board meeting of October 5, 1972. Neither the circulated agenda nor any other advance notice of the meeting indicated that a hearing would be held or that interested persons should appear. The proposed regulations included a 1-page policy statement and 5 pages of complex and comprehensive regulations which, had they been valid, would have had a massive impact upon children, families, school personnel and school districts throughout the State. The regulations reach beyond any requirement of the equal protection clause of the United States Constitution in that they purport to apply to school districts even without a finding of state-imposed segregation. The United States Supreme Court itself, in *Swann v. Board of Education*, 402 U.S. 1 (1971), clearly recognizes that in order for segregation to be constitutionally infirm, it must be state-imposed. In fact, the court in that case stated, at page 26:

[I]t should be clear that the existence of some small number of one-race or virtually one-race schools within a district is not in and of itself the mark of a system that still practices segregation by law.

At page 28, the court further added:

Absent a constitutional violation, there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes.

It is apparent, therefore, that the regulations themselves might have placed unconstitutional burdens on school districts. This fact points up the necessity for compliance with procedural due process in the adoption of any administrative regulation by the State Board of Education. While the State Board of Education is exempt from the Administrative Procedure Act, there is no agency in Nevada that is exempt from procedural due process consistent with the Fourteenth Amendment of the United States Constitution in the adoption of its administrative regulations. The Nevada Supreme Court, in the recent case of *Checker, Inc. v. Public Service Commission*, [84 Nev. 623](#), 446 P.2d 981 (1968), affirmed that a state agency must provide procedural due process in promulgating regulations. The court said, at page 631:

It is a well recognized principle of administrative law that *notice and an opportunity to be heard* must be given before such an order may be entered. (Italics added.)

The court went on to say, at page 634:

The Commission cannot act without notice and a reasonable opportunity to be heard and must act within constitutional limits. *Carroll v. Public Util. Comm'n*, 207 A.2d 278 (Conn. 1964).

CONCLUSION

The regulations for school desegregation purportedly adopted by the State Board of Education on October 5, 1972, are void and unenforceable for two reasons: (1) They were acted upon without procedural due process, and (2) they govern a subject matter which is outside the statutory powers conferred on the State Board of Education.

Respectfully submitted,

ROBERT LIST, *Attorney General*

101—Federal Lands—[NRS Chapter 328](#)—An application by the United States to acquire concurrent jurisdiction with the State of Nevada over Hoover Dam is properly filed with the Nevada Tax Commission. The Nevada Tax Commission should be guided by [NRS 328.206](#) to [328.209](#), inclusive, and in addition, should seek the countersignature of the Governor to any consent which may be granted.

Carson City, November 16, 1972

Mr. John J. Sheehan, *Secretary, Nevada Tax Commission*, 300 Blasdel Building, Carson City, Nevada 89701

Dear Mr. Sheehan:

You have received inquires from representatives of the U.S. Department of Interior, Bureau of Reclamation relative to their need to secure the consent of the State of Nevada to extend police authority to guard personnel on the Hoover Dam located on the Nevada-Arizona border. In addition, Mr. E. A. Lundberg, Regional Director of that agency for lower Colorado area, has filed, pursuant to [NRS 328.206](#), a notice of intention to obtain concurrent legislative jurisdiction over certain federal lands in order to properly police the Hoover Dam facility, and, in addition, to authorize federal employees in proper circumstances to carry firearms.

You have requested the guidance of this office.

FACTUAL BACKGROUND

At the present time, the federal government does not have legislative jurisdiction over Hoover Dam and its related facilities since such jurisdiction has never been effectively transferred by the State of Nevada to the United States pursuant to Article I, Section 8, Clause 17 of the U.S. Constitution. *Six Companies, Inc. v. De Vinney*, 2 Fed.Supp. 693 (Nev. 1933). Jurisdiction not transferred by the State of Nevada is retained by it. *Paul v. U.S.*, 371 U.S. 245 (1963).

Unlike similar statutes, the Reclamation Act of 1902, 32 Stat. 388, does not grant regulatory or police power to the subject agency. The Bureau of Reclamation, we are informed, will seek the appointment of security personnel under the auspices of the General Services Administration (G.S.A.) once the question of legislative jurisdiction is solved pursuant to their request.

The proper federal officials have sought the deputization of the necessary security personnel by the Clark County (Nevada) Sheriff, Ralph Lamb, who refused to so deputize federal personnel since he, as sheriff, could not maintain supervision and control over such personnel yet he would be responsible for their acts. (See Letter of March 6, 1972 from Clark County Sheriff Chief Deputy Barton Jacka.)

After exhausting the apparent avenues of action open to it as outlined above, the United States filed a notice of intention to acquire legislative jurisdiction.

QUESTIONS PRESENTED

1. Is the request for legislative jurisdiction by the United States to allow for increased police services on Hoover Dam a proper matter for the consideration of the Nevada Tax Commission?
2. If the answer to Question No. 1 is affirmative, what are the duties of and/or courses of action available to the Nevada Tax Commission with reference to the notice filed by Mr. E. A. Lundberg, representing the Bureau of Reclamation?

DISCUSSION OF QUESTION NO. 1

The United States Constitution is the primary source of all powers for the federal government. Powers not granted to the federal government are specifically reserved to the states. Therefore, we must first look to the Constitution to determine the extent of powers over land in the various states granted to the federal government.

Under Article I, Section 8, Clause 17 of the Constitution, Congress is granted the power

To exercise exclusive Legislation in all cases whatsoever * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *

The United States Supreme Court has interpreted the above-quoted language numerous times holding that the key factor in determining the extent of jurisdiction acquired by the federal government over any particular parcel of federally owned land is the presence or absence, and the nature of any consent given by the local state legislature. *Paul v. U.S.*, supra; *Silas Mason Co. v. Tax commission*, 302 U.S. 186, 58 S.Ct. 233 (1937); *Fort Leavenworth R. Co. v. U.S.*, 114 U.S. 525, 5 S.Ct. 995 (1885). Without such consent by the local State Legislature granting exclusive jurisdiction, the federal government is an ordinary proprietor as to any lands purchased by it. *Paul v. U.S.*, supra, at 268; *James Stewart Co. v. Sandrakula*, 309 U.S. 94 (1940).

Congress has enacted a statutory provision concerning, in part, acquisition of jurisdiction over lands by the United States. 40 U.S.C. § 255. The head or other authorized agent of a land controlling agency is given the authority to accept or secure *exclusive* or *partial* jurisdiction over lands under his control, and absent acceptance of any such jurisdiction by the United States, it is conclusively presumed no such jurisdiction has been accepted. The latter presumption applies only to land acquired after a 1940 amendment to that statute, and thus does not arise in the situation now before us. *U.S. v. Johnson*, 426 F.2d 1112 (7th Cir. 1970), cert. den. 400 U.S. 842 (1970). The authority is clear, however, for a federal agency to accept either exclusive or partial jurisdiction with the necessary consent of the state legislature, both under the Constitution and by statute.

We conclude, therefore, that the Bureau of Reclamation may seek concurrent (i.e., partial) legislative jurisdiction, over Hoover Dam pursuant to 40 U.S.C. § 225.

In the situation before us, the requisite consent of the State of Nevada has been sought by application to the Nevada Tax commission, rather than to the Nevada Legislature. The representatives of the United States rely, in making such application, on [NRS 328.206](#), which reads in part as follows:

1. On and after July 1, 1960, *in order to acquire all or any measure of legislative jurisdiction of the kind involved in clause 17 of section 8 of article I of the Constitution of the United States over any land or other area, or in order to relinquish such legislative jurisdiction, or any measure thereof, which may be vested in the United States, the United States, acting through a duly authorized*

department, agency or officer, shall file with the Nevada tax commission a notice of intention to acquire or relinquish such legislative jurisdiction. * * *

2. Upon a finding by a majority of the members of the Nevada tax commission, which majority shall include the governor, that a proposed acquisition or relinquishment of legislative jurisdiction and the method thereof and all matters pertaining thereto are consistent with the best interests of the state and conform to the provisions of [NRS 328.206](#) to [328.209](#), inclusive, *the Nevada tax commission may give the consent of the State of Nevada to the acquisition or relinquishment of such legislative jurisdiction by the United States.* (Italics added.)

It is clear by reading the above-quoted portion of [NRS 328.206](#), as well as the remainder of [NRS Chapter 328](#), that the Nevada Legislature has delegated to the Nevada Tax commission its power to consider applications of the United States to acquire lands or jurisdiction over lands.

A State Legislature may delegate legislative functions if sufficient guidelines or standards are set out to limit the exercise of discretion by the delegatee of such legislative authority. *Ex rel. Ginocchio v. Shaughnessy*, [47 Nev. 129](#), 136, 217 P. 581, 583 (1923). It remains to be determined if this delegation of legislative authority is constitutionally valid under the above-stated test.

The Legislature has specifically limited the discretion of the Nevada Tax Commission in considering applications for acquisition of legislative jurisdiction by requiring a finding of compliance with [NRS 328.206](#) to [328.209](#), inclusive, as well as requiring a finding that the proposed cession of legislative jurisdiction is in the best interests of the State. [NRS 382.206](#), subsection 2. One of the above-included statutes, [NRS 328.207](#), sets specific requirements which must be met before consent may be granted by the Nevada Tax Commission.

These requirements include: (1) The State of Nevada shall not be jeopardized in its efforts to tax private persons within the area affected, and, (2) the right of the State of Nevada to serve civil and criminal process within the affected area shall not be abrogated unreasonably.

When the above-stated minimum requirements are coupled with the requirement of a specific finding by the Nevada Tax Commission that the granting of consent in a particular case is in the best interests of the State, the delegation of authority to the Nevada Tax Commission is sufficiently limited to be valid under the *Ginocchio* test, *supra*. The Nevada Tax Commission should consider the application of the Bureau of Reclamation pursuant to [NRS Chapter 328](#).

DISCUSSION OF QUESTION NO. 2

The Nevada Tax Commission may only consent to the application before it if a majority of its members find that the relinquishment of legislative jurisdiction is consistent with the best interests of the State and [NRS 328.206](#) to [328.209](#), inclusive. [NRS 328.206](#), subsection 2. (A copy of [NRS 328.206](#) to [328.209](#), inclusive, has been attached for your convenience.)

You will note [NRS 328.206](#), subsection 2, states that the “* * * majority shall include the governor, * * *” It appears this provision is a holdover from the time when the Governor was the chairman of the Nevada Tax commission. Since 1969, the Governor has been only a nonvoting, *ex officio* member. [NRS 360.010](#). This direct conflict should ultimately be resolved by legislative action, yet in the meantime you undoubtedly want to know how to proceed.

It is clear the Governor is no longer a voting member of the Nevada Tax commission, his present status being that of *ex officio* member. [NRS 360.010](#). Such clear legislative intent should control to effectively omit any requirement that the Governor be part of the “majority” approving any relinquishment of jurisdiction. On the other hand, it

is doubtful that the Legislature intended to eliminate totally the participation of the Governor in the consideration of applications under [NRS 328.206](#). To do so would effectively undermine the Governor's role as the final reviewer of legislative action. Nevada Constitution, Art. 4, § 35. Therefore, until the Legislature sees fit to clarify [NRS Chapter 328](#) in this regard, we recommend that any consent given by the Nevada Tax Commission pursuant to its terms be submitted to the Governor for his countersignature. Such a procedure is similar to that required by [NRS 328.100](#) for a counter-signature by the Governor to a certificate of consent to the acquisition of land by the United States and would ensure that the Governor consider all such applications.

CONCLUSION

The application by the United States to acquire concurrent legislative jurisdiction has been properly filed with the Nevada Tax Commission pursuant to [NRS Chapter 328](#).

The Nevada Tax Commission should be guided by [NRS 328.206](#) to [328.209](#), inclusive, in considering the application before it. In particular, the minimum requirements of [NRS 328.207](#) must be considered and the commission should make a specific finding as to each such requirement, as well as a finding relative to the best interests of the State in this situation. Should consent be granted for the relinquishment of jurisdiction, the provisions of [NRS 328.206](#), subsection 3, must be strictly complied with to ensure an effective transfer and any consent should be submitted to the Governor for his countersignature.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES D. SALO, *Deputy Attorney General*

102 Apportionment of Moneys Received in Satisfaction of Judgment for Taxes—A county treasurer, in receipt of moneys in satisfaction of judgment for taxes, must apportion such moneys to various funds and bank accounts existent at the time of the levy of the tax.

Carson City, November 17, 1972

The Honorable William P. Beko, *Nye County District Attorney*, Courthouse, Tonopah, Nevada 89049

Dear Mr. Beko:

This is in response to your request for an opinion regarding the proper apportionment among the various state and county funds of amounts received in satisfaction of judgment for taxes due from government contractors for prior years.

QUESTION

Your question is: Are these taxes apportioned in accordance with the taxes effective at the time of the levy (Example: 1964-1965), or at the time of collection (1972-1973)?

ANALYSIS

A county treasurer in receipt of funds or moneys from taxes or other sources is required, among other things, to issue receipts and apportion such moneys among various funds. [NRS 354.270](#), [354.604](#), 361.755. The provisions requiring such apportionment are

worded in mandatory terms and therefore are statutory duties of the county treasurer. [NRS 354.310, 361.75](#).

We find no statute in Nevada specifically directing how to apportion moneys received in satisfaction of judgments for past due taxes. There are, however, two provisions relating generally to the apportionment of moneys received by county treasurers. These provisions, in pertinent part, provide as follows:

The county treasurer of each county shall issue a receipt in triplicate for all moneys received by him. * * * The duplicate and triplicate receipts shall, in addition to showing the amount and source of revenue, contain an apportionment to the proper funds as follows:

(a) All revenue collected for general, administrative, current expense, salary, indigent and contingent purposes shall be apportioned to the general fund.

(b) All revenue collected for special purposes shall be apportioned to special funds, or to separate bank accounts established under the provisions of [NRS 354.603](#), that have been or may be created, the purpose of which shall be indicated in the title of each special fund. [NRS 354.270](#), subsection 1.

At least once each quarter and at such intervals as may be required by the board of county commissioners, the county treasurer must apportion all the money that shall have come into his hands as ex officio tax receiver since the last apportionment into several funds, as provided by law, and he shall make out a statement of the same under oath and transmit the statement to the county auditor. The county auditor shall file the statement in his office. [NRS 361.755](#).

At this point, it should be noted that [NRS 354.270](#), subsection 1, requires apportionment of “* * * all moneys received by * * *” the county treasurer into general or special funds or bank accounts, whereas [NRS 361.755](#) requires apportionment of “* * * all money that shall have come into (the county treasurer’s) hands *as ex officio tax receiver* * * * *into several funds, as provided by law*, * * *” (Italics added.) It is clear from the above-quoted language that [NRS 361.755](#) requires apportionment of tax receipts “as provided by law.” [NRS 354.270](#), subsection 1, is the provision in Nevada law requiring the apportionment of moneys by county treasurers. Therefore, your question resolves itself to an interpretation of the language of [NRS 354.270](#), subsection 1.

The apportionment required by [NRS 354.270](#), subsection 1, supra, is to be made by determining the purpose(s) for which the moneys in question were collected and then apportioning such moneys to the proper funds or bank accounts accordingly.

The levy of property tax rates by counties is governed primarily by the final budgets of their various governmental entities. Subject to constitutional limitations, the rate for each year is set at a level sufficient to raise the revenue necessary for the various funds and bank accounts required by such budgets. [NRS 361.445 to 361.470](#), inclusive; 354.474. Therefore, we view the “purpose” for which any tax or portion of a tax is collected as being determined as of the date of the levy of the tax. In other words, any tax revenues received, absent contrary legislative authority, must be apportioned to those funds and bank accounts which were created to fund the budget(s) which formed the basis for the levy of the tax. Taxes must be distributed to the funds for which they were levied. (Cf. *People ex rel. Flack v. Washoe County*, [1 Nev. 460](#) (1865), legislative distribution between general and special funds not subject to alteration by counties.) The money in question was legally due to the county at the time the tax was levied in order to fund the various budgets upon which the levy was based, and the date of actual collection should not alter the apportionment of such funds. (Cf. *State ex rel. School District v. County Commissioners*, [17 Nev. 96](#), 28 P. 122 (1882), tax levied for special purpose governs the distribution of the proceeds.)

CONCLUSION

We therefore conclude that the moneys received in satisfaction of judgments for past due taxes must be allocated to the various funds or bank accounts created at the time of the levy of the tax rather than to funds or bank accounts existing at some later date on which such moneys were actually collected.

Respectfully submitted,

ROBERT LIST, *Attorney General*

103 Air Pollution Abatement Orders—Judicial Review—A de novo judicial review of an order issued pursuant to [NRS 445.571](#) will not automatically stay enforcement of the order. Staying of enforcement of the agency order is discretionary with either the agency or the court under [NRS 233B.140](#).

CARSON CITY, November 17, 1972

MS. CASSANDRA DUNN, *Regional Legal Counsel, Environmental Protection Agency*, 100 California Street, San Francisco, California 94111

DEAR MS. DUNN:

This is in reply to your recent inquiry in which you asked the following question:

QUESTION

Will [NRS 445.571](#), subsection 2, which subjects all abatement orders issued during air pollution emergency episodes to de novo judicial review, operate as a stay of enforcement of the orders pending judicial review?

ANALYSIS

The provisions of [NRS 445.571](#) contain the legal authority under which the control officer (defined as the Chief of the Bureau of Environmental Health under [NRS 445.426](#)) may cause by order the abatement of air contaminant emissions which reach emergency proportions. [NRS 445.571](#) states under subparagraph 1 that:

If the control officer finds that either a generalized condition of air pollution or the operation of one or more particular sources of air contaminant is causing imminent danger to human health or safety, he may order the person or persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants.

Subparagraph 2 of this section sets forth the time limitations within which a hearing must be held and a decision made affirming, modifying or setting aside the order of the control office. Such a hearing must be held before the State Environmental Protection Hearing Board within 24 hours after the time when the order becomes effective, and it must render its decision within 24 hours after completion of the hearing. The last sentence of subparagraph 2 provides that the “* * * decision of the hearing board shall be subject to appeal as provided in [NRS 445.591](#).”

[NRS 445.591](#) generally prescribes the types of judicial review available to an appellant. This depends upon the type of commission proceeding or ruling which he is petitioning the court to review. [NRS 445.591](#), subsection 3, prescribes the type of review available following a hearing board proceeding under the emergency episode provisions of [NRS 445.571](#). Subparagraph 3 states that:

Judicial review of all decisions of the hearing board under [NRS 445.571](#) shall involve a trial de novo.

The above provision could lend itself to an interpretation that trial de novo review would stay the enforcement of an emergency abatement order if it is read by itself without regard to other substantive and procedural provisions of Chapter 445 of Nevada Revised Statutes. However, [NRS 445.481](#), subsection 4, specifically provides that:

Hearing Board proceedings are governed by Chapter 233B of NRS as it relates to contested cases. * * *

The only other provision in Chapter 445 of Nevada Revised statutes relating to administrative procedure from agency decision to court review is that found in the aforementioned [NRS 445.591](#). Consequently, it must follow that the specific provisions contained in [NRS Chapter 233B](#) are intended to supply the procedures to be followed in taking an appeal to the courts from the hearing board's decision under [NRS 445.571](#). [NRS 223B.020](#) supports this position by providing under subparagraph 1 that:

* * * the legislature intends to establish minimum procedural requirements for the * * * adjudication procedure of all agencies * * * and for judicial review.
* * *

Further, [NRS 233B.140](#) contains a provision which pointedly resolves the question to be answered in this opinion. It provides under subparagraph 1 that:

The filing of the petition [for judicial review] does not itself stay enforcement of the agency decision. The agency *may* grant, or the reviewing court *may* order, a stay upon appropriate terms. (Italics added.)

Therefore, the granting of a stay of the control officer's emergency abatement orders is expressly made discretionary with the reviewing court or the hearing board under [NRS 233B.140](#), subsection 1. Furthermore, because a trial de novo under [NRS 445.591](#), subsection 3, requires plenary consideration by the reviewing court of the matter decided by the hearing board, it must be concluded that, in line with the above analysis, trial de novo review affects merely the scope of judicial review. It does not dilute the effectiveness of orders issued under [NRS 445.571](#) pending judicial review.

CONCLUSION

[NRS 445.571](#) authorizes the control officer to cause by order the abatement of air contaminant emissions reaching emergency proportions. Such an abatement order is reviewable by the hearing board within 24 hours of the time when the order becomes effective. If the hearing board affirms the order, the party against whom the order is issued is entitled to judicial review under [NRS 445.591](#), subsection 3, which provides that judicial review shall involve a trial de novo. At this point, however, and throughout the hearing board proceedings, the provisions of [NRS Chapter 233B](#) must be followed to satisfy the requirements of [NRS 445.481](#), subsection 4, and [NRS 233B.020](#).

[NRS 233B.140](#), subsection 1, provides that "Filing of the petition does not itself stay enforcement of the agency decision. * * *" Consequently, it follows that, whereas trial de novo judicial review does affect the scope of judicial review, trial de novo review does not automatically stay enforcement of the order which is the subject of the judicial review.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By D. MICHAEL CLASEN, *Deputy Attorney General*

104 County Commissioners—Board of county commissioners is empowered to assign county vehicle to commissioner for his use in transacting county business. Commissioner who resides outside county seat entitled to mileage allowance, or in the alternative, use of county vehicle, when traveling to official meeting of board.

CARSON CITY, November 21, 1972

THE HONORABLE ROBERT E. ROSE, *Washoe County District Attorney*, Washoe County Courthouse, Reno, Nevada 89505

DEAR MR. ROSE:

You have requested this office to render its opinion on a series of questions relating to the use of a county motor vehicle by a member of the board of county commissioners.

QUESTION ONE

Is the board of county commissioners empowered to assign a county vehicle to a county commissioner for his use in transacting county business?

ANALYSIS

[NRS 244.275](#) authorizes the board of county commissioners, within the confines of budgetary considerations, to purchase or lease any type of real or personal property necessary for the use of the county. The purchase or lease of motor vehicles for use by county officials or employees as a necessary aid to them in the performance of their official duties is sanctioned by this statute.

At the same time, [NRS 244.270](#) grants the commissioners complete power to manage and control all the property, both real and personal, belonging to the county. This office believes such discretionary management authority empowers the board of county commissioners, pursuant to a lawful vote, to assign a county vehicle to any of the members of the board for use in connection with the proper and efficient transaction of public business.

QUESTION TWO

In the context of using a county-owned vehicle, and also with regard to the statutorily sanctioned mileage allowance for public officials who must use their own private vehicle, what constitutes “transaction of county [public] business?”

ANALYSIS

In general, a public official is engaged in the transaction of public business whenever he is performing some act or duty imposed upon him by law or any other act reasonably necessary for the faithful execution of his public duties. *Libby v. Schmidt*, 298 P.2d 298 (Kan. 1956). Attendance at regular and special meetings of the board of county commissioners is an obvious example, since all the commissioners are jointly performing their public duties in such a situation. Usually, a commissioner will be transacting county business only when he is acting in concert with the other members of the board, but he may also be so engaged when he performs certain acts at the express direction of the

board or when, on his own initiative, he is investigating a citizen's inquiry in the count related to a matter present pending before the board.

A board of county commissioners is charged with a wide range of responsibilities including provision of county-wide fire and police protection, maintenance of county roads and approval of land use changes, to name but a few. In the opinion of this office, any reasonable inspection or factfinding trip by a commissioner to observe firsthand the conditions within the county respecting either public or private property over which the board of county commissioners has jurisdiction would certainly be an important aspect of "transacting county business," either when undertaken with the other members of the board, or at their direction, or individually and in response to a citizen's inquiry with regard to some matter presently pending before the board. Few would deny that the information gathered from such trips will often prove of great importance to the board member when he must subsequently vote on some related matter. A good example would be a trip by a commissioner to observe the area where a proposed zoning change is being considered by the board.

Commissioners are often members of other boards, groups or commissions in which their county has a legitimate interest, by statute or other organizations also qualifies as "transacting county business."

On the other hand, where a commissioner in the course of a social meeting with a constituent at that person's home or some other location hears complaints and grievances, he is not then engaging in the strict transaction of county business.

QUESTION THREE

Under what circumstances, if any, is a commissioner entitled to use of a county vehicle or mileage allowance in traveling from his home to county offices?

ANALYSIS

This office has previously rendered its opinion that a county commissioner is entitled to a mileage allowance whenever he travels from his home to the place where the commission intends to hold an official meeting whenever his home is outside the boundaries of the county seat, since the law does not require commissioners to reside only at the county seat. See Attorney General's Opinion No. 385, dated February 9, 1967.

Although in that instance the two commissioners involved lived more than 100 miles from the county seat at Tonopah, it was felt the actual mileage to be covered was irrelevant to the conclusion reached. Likewise, a mileage allowance or use of an authorized county vehicle would be appropriate where the commissioner was required to travel to county offices to meet with constituents or others to discuss matters within the purview of county jurisdiction. However, personal, discretionary visits to county offices from the commissioner's home, when not strictly related to the transaction of county business, are to covered under the law.

It should be kept in mind that use of a county vehicle or the granting of an allowance for mileage expenses is always subject to review by the board of county commissioners as a whole as a safeguard against any abuse of these privileges.

CONCLUSION

1. Authority exists for a board of county commissioners to assign a county vehicle to a commissioner for use in transacting county business, which is generally defined as the performance of any act or duty imposed upon a public official by law or any act reasonably necessary for the faithful execution of his public duties.
2. A commissioner who resides at some place other than the county seat is entitled to a mileage allowance (or use of an authorized county vehicle) when traveling to any official meeting of the board of county commissioners or when meeting constituents at county offices on matters of public business.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES H. THOMPSON, *Chief Deputy Attorney General*

105 Jurisdiction—Misdemeanor Traffic Offenses—Proper court jurisdiction for [NRS Chapter 484](#) traffic offenses is that of justice court unless municipal ordinance or city charter provision exists related to same type of offense which confers jurisdiction on municipal court as well, in which case the language of [NRS 484.803](#) governs as to selection of court for appearance.

CARSON CITY, November 20, 1972

MR. HOWARD HILL, *Director of Motor Vehicles*, 555 Wright Way, Carson City, Nevada 89701

DEAR MR. HILL:

You have requested the opinion of the Attorney General concerning the proper court jurisdiction for misdemeanor traffic violations under [NRS Chapter 484](#).

QUESTION

When Nevada Highway Patrolmen or Motor Carrier Field Agents issue written citations for traffic offenses constituting misdemeanor violations of state law pursuant to Chapter 484 of Nevada Revised statutes, should they direct the alleged violator to appear in justice court or municipal court when the offense is committed within an incorporated municipality?

ANALYSIS

Following a thorough review of [NRS Chapter 484](#), it is the opinion of this office that [NRS 484.803](#) provides a simple and clear guide in answering the question presented. It reads:

484.803 Appearance before magistrate having jurisdiction.

1. Whenever any person is taken before a magistrate or is given a written traffic citation containing a notice to appear before a magistrate as provided for in [NRS 484.799](#), the magistrate shall be a justice of the peace or police judge who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the alleged violation occurred, except that when the offense is alleged to have been committed within an incorporated municipality wherein there is an established court having jurisdiction of the offense, the person shall be taken without unnecessary delay before that court.

The obvious meaning of this statute is that whenever a Chapter 484 offense occurs and a written traffic citation is issued containing a notice to appear or an offender is to be actually taken before a magistrate, such person should be directed to appear or be taken before the nearest or most accessible justice of the peace or municipal police judge who has jurisdiction of the offense, except that where the offense is alleged to have occurred within the boundaries of an incorporated city or town, then the offender should always be taken before the municipal police judge if, and only if, he has jurisdiction over cases of this type.

One thing to keep in mind with respect to this statute is that although justices of the peace always have jurisdiction over state law misdemeanor violations, municipal police judges do not automatically have jurisdiction in cases like this. In the absence of proper city ordinances related to such offenses which make violations of Chapter 484 traffic laws a violation of city law as well, or a provision in the municipality's charter to the effect that all offenses against the criminal laws of the State shall constitute offenses against the municipality, a municipal court is without jurisdiction to hear and decide such cases, notwithstanding the language of [NRS 5.050](#) which purports to vest such jurisdiction in municipal courts.

Since 1959 it has been the opinion of the Nevada Attorney General that [NRS 5.050](#), which in substance says a municipal court has jurisdiction of all misdemeanor offenses, should be interpreted as merely permissive or enabling legislation which grants to municipal courts power and jurisdiction over these types of offenses when committed within municipal boundaries, if such municipality has previously seen fit to exercise the grant of authority and jurisdiction by adoption of appropriate ordinances. In the absence of such ordinances, violations of state statutes remain as matters of state concern only and are not within the purview of the constitutional requirement (Nevada [Const. Art. 6, § 1](#)) that jurisdiction of municipal courts shall be restricted to "municipal purposes only." For a more complete explanation of this position and interpretation, see Attorney General's Opinion No. 64, dated June 6, 1959, and the cases, texts and constitutional provisions cited therein.

Applying these principles to the question you have posed, it is the opinion of this office that the proper court to hear and decide a case involving an alleged violation under Chapter 484 would be the justice court unless the municipal court had acquired jurisdiction of similar offenses under a local ordinance, or a provision in the municipal charter, in which case the arresting officer should follow the directive of [NRS 484.803](#). However, where no local ordinance or charter provision exists covering the same type of offense, and the police judge therefore lacks jurisdiction, the officer must then cite the offender into justice court even though the alleged offense occurs within the limits of an incorporated municipality, since in such cases the justice court is the only established court in the area having jurisdiction of the offense.

CONCLUSION

The proper court jurisdiction for Chapter 484 traffic offenses is exclusively in the justice courts unless there exists a local municipal ordinance or city charter provision related to the same type of offense which confers jurisdiction on the local municipal court as well, in which case the language of [NRS 484.803](#) governs.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By WILLIAM E. ISAEFF, *Deputy Attorney General*

106 Schools, Textbooks—School districts may distribute obsolete textbooks without charge to pupils and nonprofit organizations within the district.

CARSON CITY, December 7, 1972

ROBERT L. PETRONI, *Legal Counsel, Clark County School District*, 2832 East Flamingo Road, Las Vegas, Nevada 89109

DEAR MR. PETRONI:

This is in reply to your inquiry concerning the disposal of obsolete and unserviceable textbooks that have no resale value by the Clark County School District.

QUESTION

May the Clark County School District distribute to students and non-profit organizations unserviceable and obsolete textbooks that have o sale value?

ANALYSIS

Textbooks become unserviceable by statute ([NRS 390.005](#), subsection 4) when 4 years have elapsed since their removal from the adopted list. The Nevada State Textbook Commission recommends textbooks to be adopted by the State Board of Education for use in the public schools of Nevada pursuant to [NRS 390.140](#). The boards of trustees of local school districts are required to insure that adopted textbooks are used in public schools pursuant to [NRS 390.220](#). Only the adopted textbooks may be used in the public schools as basic textbooks pursuant to [NRS 390.230](#).

The boards of trustees of local school districts are required to purchase textbooks approved by the State Textbook Commission pursuant to [NRS 393.170](#). The trustees are required to establish rules and regulations governing the care and custody of such approved textbooks and parents or guardians are held accountable for the loss or destruction of the approved textbooks. There is no provision in the statute for disposal of textbooks not approved by the Nevada State Textbook Commission.

School districts are authorized to sell personal property at public auction if it deems such a sale desirable and in the best interests of the school district. See [NRS 332.190](#), subsection 1. The textbooks involved in this inquiry are obsolete, unserviceable textbooks which have no marketable value. A local board of school trustees might very well find that it is not in the best interests of the school district to attempt to go through the public auction procedures to liquidate an item without marketable value. The lack of any contrary provision for disposal of textbooks without marketable value brings to focus the legislative intent that school districts are free to dispose of obsolete, unserviceable text books as they see fit.

CONCLUSION

A school district may dispose of unserviceable and obsolete textbooks by distributing them without charge to pupils and nonprofit organizations within the school district for use by pupils.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

107 State Water Laws and the Colorado River—The U.S. Supreme Court opinion and decree in *Arizona v. California*, 373 U.S. 546 (1963), interpreting the Boulder Canyon Project Act, have largely preempted state water laws governing appropriation of public waters as applied to the Colorado River. But state water permits are still required of parties contracting with the Secretary of Interior where purpose is to gather information for State Engineer’s records and to facilitate the administration of other water resources.

CARSON CITY, December 14, 1972

MR. ROLAND D. WESTERGARD, *State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, 201 South Fall Street, Carson City, Nevada 89701*

DEAR MR. WESTERGARD:

You have asked this office for an opinion on the following:

QUESTION

Does the U.S. Supreme Court opinion and decree in *Arizona V. California*, 373 U.S. 546 (1963) and 376 U.S. 340 (1964), eliminate the requirement that persons desiring to appropriate waters from the Colorado River comply with the provisions of our State Water Law, [NRS 533.325](#) to [533.435](#), inclusive?

ANALYSIS

The general water appropriation law of Nevada requires all water users to apply for a permit to appropriate public waters. With respect to water from the Colorado River, [NRS 533.370](#) requires approval by both the Colorado River Commission and the State Engineer before an appropriation permit may be issued.

In the opinion of this office, this broad, discretionary authority in these two state agencies to approve or disapprove water appropriation from the Colorado River is, if read literally, in direct conflict with the authority granted by the Congress of the United States to the Secretary of Interior under § 5 of the Boulder Canyon Project Act, 45 Stat. 1057 (1928), 43 U.S.C. §§ 617-617t, as interpreted by the U.S. Supreme Court in *Arizona v. California*, *supra*.

The congressional enactment was the end product of years of continuing controversy over the waters of the Colorado River, which the states through which the river flows, despite repeated efforts, had been unable to settle. Congress, acting in the national interest, settled the controversy itself with an act which controls all questions concerning initial use of waters from the Colorado River. As pointed out by the U.S. Supreme Court, 373 U.S., at 575, 579, Congress intended to and did, in fact, create its own comprehensive scheme for apportionment of waters from the Colorado River, by giving full and complete authority to the Secretary of Interior to effectuate the original division of waters approved in the Act through the making of contracts for its delivery and then prohibiting any one from acquiring water without first securing a contract from the secretary.

The authority in the Secretary of Interior under § 5 of the Project Act is all encompassing: Congress intended the secretary, through his § 5 contracts, both to carry out the original allocation of the waters of the mainstream of the Colorado River among the lower basin states and to initially decide which users within each state would get water. 373 U.S., at 580. In choosing between various water users within each state and in settling the terms of his contracts, is not bound by or required to follow state law:

But where the Secretary's contracts, as here, carry out a Congressional plan for the complete distribution of water to uses, *state law has no place*. 373 U.S., at 588. (Italics added.)

One of the main contentions of the State of Nevada in the case of *Arizona v. California* was that the general contract between the Colorado River Commission and the Secretary of Interior satisfied the terms of § 5 of the act and obviated the necessity of further contracts with actual users. It was no doubt the intention of the Colorado River Commission to then dispense this water as it thought best to Nevada users in accordance with Nevada law. The U.S. Supreme Court specifically rejected this contention, saying:

Acceptance of Nevada's contention here would not only undermine this plan congressional requirement that water users have contracts with the Secretary, but would likewise transfer from the Secretary to Nevada a large part, if not all, of the Secretary's power to determine with whom he will contract and upon what terms. We have already held the contractual power of the Secretary cannot be diluted in this manner. We therefore reject Nevada's contention. 373 U.S., at 592.

It is, therefore, the opinion of this office that any attempt by the State Engineer to interfere with the appropriation of water from the Colorado River by users who take their water directly from the river would be a violation of the U.S. Supreme Court decree which was subsequently issued in the case of *Arizona v. California*, 376 U.S. 340 (1964), whose Article III specifically enjoined the State of Nevada from in any way interfering with or purporting to authorize interference with the execution of the Secretary of Interior's duties under federal law.

However, this is not to say that the State Engineer could not legally require all water users who contract with the secretary to also apply for a state water permit after they have secured their federal contract, where the purpose of such an application is merely to insure the records of the State Engineer reflect all the necessary information related to water use from the Colorado River which he may need in order to make intelligent and informed decisions concerning any subsequent allocations of these waters after they come under state jurisdiction.

In view of the strong language in the opinion and decree in *Arizona v. California*, supra, it follows that, with regards to the question whether or not to issue the permit to an original appropriator of Colorado River water, the State Engineer would have no discretion. He would be required to issue the requested permit in every case, otherwise his actions could easily be viewed as inconsistent with the broad grant of authority in the Secretary of Interior under the Boulder Canyon Project Act and with the contract the secretary has already made with the applicant for a state permit.

While the necessity of obtaining a state water permit in addition to the secretary's contract may at first appear somewhat duplicitous, it must be borne in mind that the State Engineer is charged with substantial responsibilities (1) with respect to the uses of water now within the State, (2) with respect to subsequent uses of water originally taken from the Colorado River, and (3) with respect to the return flow of water to the river, especially should appropriations by Nevada users ever exceed the 300,000 annual acre-feet allowed the State of Nevada by the federal enactment. Without the information and records he would obtain through applications for state water permits, the State Engineer would be severely handicapped in carrying out these other important duties of his office.

Although it has been pointed out above that under the rulings of the United States Supreme Court in *Arizona v. California*, supra, the State Engineer lacks discretionary powers over water permits applied for by original Colorado River water users in that he may never refuse such a permit or attach conditions to it inconsistent with the terms of the secretary's contract, this is not to imply that he also lacks these discretionary powers with respect to permit applications from parties seeking to make further use of these same waters or their byproducts at some later time when the waters are clearly within the State's jurisdiction. In situations of this type, his authority under state law remains undiminished. This analysis is believed by this office to be in keeping with the spirit of § 18 of the Boulder Canyon Project Act, 43 U.S.C. § 617q, which provides that nothing in that act shall be construed as interfering with the rights of the states, as of December 21, 1928, "either to the waters within their borders or to adopt such policies and enact such laws as they deem necessary with respect to the appropriation, control or use of water within their borders, except as modified by the Colorado River Compact or other interstate agreement."

By way of example of the interpretation outlined above, if the Las Vegas Valley Water District were to contract with the Secretary of Interior for a direct appropriation of water from the Colorado River, then the district, after obtaining its contract, would also apply for a state water permit, which the State Engineer would be required to issue after he had received whatever information and data he believed necessary for his records. Subsequent persons or firms desiring to make further use of waters and the byproducts of waters, including effluent, originally appropriated to the district would also have to apply, under current state law, for a state water permit whose issuance, with or without conditions, would be solely within the discretion of the state Engineer, since such waters would now be entirely within the state of Nevada and subject only to state rather than federal law.

CONCLUSION

The U.S. Supreme Court opinion and decree in *Arizona v. California*, 373 U.S. 546 (1963) and 376 U.S. 340 (1964), interpreting the provisions of the Boulder Canyon Project Act, 45 Stat. 1057 (1928), 43 U.S.C. §§ 617-617t, have to a large extent preempted state water laws governing appropriation of public waters from the Colorado River. But state water permits are still required of those parties contracting with the Secretary of Interior where the purpose is to gather necessary information for the State Engineer's records and to facilitate the administration of other water resources.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By WILLIAM E. ISAEFF, *Deputy Attorney General*

108 Professional Practices Act provides the exclusive review procedure for dismissal of teachers unless dismissal procedures are detailed in the Collective Bargaining Agreement.

CARSON CITY, December 29, 1972

MR. FRED SCARPELLO, *Local Government Employee-Management Relations Board*, 215 E. Bonanza Road, Room 201, Las Vegas, Nevada 89101

DEAR MR. SCARPELLO:

This is in reply to your request for an Attorney General's Opinion to resolve an apparent conflict between the Professional Practices act and the Local Government Employee-Management Relations Act.

QUESTION

Does the Local Government Employee-Management Relations Board have jurisdiction to review dismissals by a local school board made pursuant to RN 391.3197 when the dismissed employee alleges his dismissal was in violation of [NRS 288.270](#), subsection 1(d)?

ANALYSIS

The fact situation presented to the Local Government Employee-Management Relations Board (EMRB) is that a certificated employee of a local school district actively participated in contract negotiations on behalf of the local teacher's association during her second year of teaching. The employee had not yet been employed by the local school

district the necessary 3 years to obtain the protection of the procedures of the Professional Practices Act found in [NRS 391.312](#) to [391.3196](#), inclusive. The employee was subsequently dismissed by the school board pursuant to procedures found in [NRS 391.3197](#), subsection 1. The reason given for the local school board's decision to not reemploy the employee was that the employee was inefficient, was inadequate in her performance and failed to show normal improvement. The employee in her complaint alleges that the real reason for her discharge was because of her activities as a member of the teacher's association negotiating committee, a violation of [NRS 288.270](#), subsection 1(d). There is no allegation by the employee that the procedures in [NRS 391.3197](#), subsection 1, have not been followed, which provides:

Teachers employed by a board of trustees shall be on probation annually for 3 years, provided their services are satisfactory, or they may be dismissed at any time at the discretion of the board of trustees. A teacher employed on a probationary contract for the first 3 years of his employment shall not be entitled to be under the provisions of [NRS 391.311](#) to [391.3196](#), inclusive.

However, prior to formal action by the board, the probationary teacher shall be given the reasons for the recommendation to dismiss or not to renew the contract and be given the opportunity to reply.

The employee was given the reason for the recommendation not to renew the contract and was given an opportunity to reply before the school board in advance of the school board's formal action to not reemploy her. This is not a case in which the employee had obtained a status pursuant to the Professional Practices act ([NRS 391.3192](#) to [391.3196](#), inclusive). In order for the school board to refuse to reemploy this employee it was not necessary that the school management establish one of the grounds for refusal to reemploy provided in [NRS 391.312](#) nor was the employee entitled to a review of the school management's allegations of cause by the Professional Review Panel as provided in [NRS 391.3192](#). This was a probationary certificated employee and, therefore, no "cause" need be established in order for the school district to refuse to reemploy the dismissed employee. The school district was merely obliged to notify the certificated employee. The school district was merely obliged to notify the certificated employee of their reasons for refusal to reemploy regardless of what those reasons may have been so long as they are constitutionally permissible reasons.

The EMRB Review Authority is found in [NRS 288.110](#), subsection 2, which reads as follows:

The board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions under, the provisions of this chapter by an local government employer or employee organization. The board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore tot he party aggrieved any benefit of which he has been deprived by such action.

This statute gives the EMRB adequate authority to hear and determine complaints arising under the Local Government Employee-Management Relations Act. Discharge or discrimination against an employee because he has chosen to be represented by an employee organization is clearly a prohibited practice by a local government employer pursuant to [NRS 288.270](#), subsection 1 (d), which reads as follows:

1. It is a prohibited practice for a local government employer or its designated representative willfully to:

* * * * *

(d) Discharge or otherwise discriminate against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because he has formed, joined or chosen to be represented by any employee organization.

The employee that the local school district refused to reemploy has alleged a violation of [NRS 288.270](#), subsection 1(d). There is, however, a conflict within the Local Government Employee-Management Relations Act in regard to discharge of employees. The local government employer still has the prerogative to discharge employees under the Local Government Employee-Management Relations Act. This provision is found in [NRS 288.150](#), subsection 2 (b), which reads as follows:

2. Each local government employer is entitled, without negotiation or reference to any agreement resulting from negotiation:

* * * * *

(b) To hire, promote, classify, transfer, assign, retain, suspend, demote, *discharge* or take disciplinary action against any employee;

* * * * *

Any action taken under the provisions of this subsection shall not be construed as a failure to negotiate in good faith. (*Italics added.*)

This office is not attempting to resolve any possible conflict between [NRS 288.150](#), subsection 2(b), and [NRS 288.270](#), subsection 1(d), by this opinion.

The Local Government Employee-Management Relations Act cannot be deemed to supersede the Professional Practices Act in regard to dismissal or refusal to reemploy teachers as defined in the Professional Practices Act even though [NRS 288.150](#), subsection 2(b), purports to give the local government employer the prerogative to discharge employees without negotiation or reference to any agreement. The Professional Practices Act only becomes subservient to the Local Government Employee-Management Relations Act when there is a negotiated contract between the employer and the employee's representatives pertaining to dismissals or refusals to reemploy teachers because [NRS 391.3197](#), subsection 2, provides:

2. The provisions of [NRS 391.311](#) to [391.3197](#), inclusive, are not applicable to a teacher who has entered into a contract with the board as a result of the Local Government Employee-Management Relations Act and such contract provides separate provisions relating to the board's right to dismiss or refuse to reemploy such teacher.

You will note that this provision applies to both classes of certificated employees as defined in the Professional Practices Act. The Legislature has provided that the Local Government Employee-Management Act takes precedence over the Professional Practices Act *when there is a negotiated contract providing separate provisions for dismissals or refusal to reemploy such teachers*. There was no such contract in effect in the local school district that refused to reemploy the complainant in this inquiry. The fact that the Legislature specifically provided for only one circumstance where the Local Government Employee-Management Relations Act takes precedence makes the intent clear that in all other circumstances the Professional Practices Act would be controlling.

The United States Supreme Court in the case of the board of Regents v. Roth, 40 L.W. 5079 (June 29, 1972), held that a nontenured teacher was not entitled to a hearing when his employer refused to reemploy him. The High Court held that unless a teacher can show he was deprived of liberty or property protected by the 14th Amendment, he is not entitled to due process protections in his dismissal. The teacher must show that his good name, reputation, honor, or integrity is at stake in order to be entitled to due process

protection for deprivation of liberty. In order to show deprivation of property, the teacher must show that he had a right to continued employment either pursuant to formal contract, statute, or implied promise. The court, citing *Connell v. Higgenbotham*, 403 U.S. 207 (1971).

The courts have recognized education to be a fundamental interest. See *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Serrano v. Priest*, 96 Cal.Rptr. 601, 5 Cal.3d 584, 487 P.2d 1241 (1971). The federal court in Montana said in a recent decision as follows:

* * * in the interests of creating a superior teaching staff a school board should be free during a testing period to let a teacher's contract expire without a hearing, without any cause personal to the teacher, and for no reason other than that the board rightly or wrongly believes that ultimately it may be able to hire a better teacher. Whatever the reason behind the Montana policy the 14th amendment does not yet deny Montana the right to exercise it. *Cookson v. Lewistown School District No. 1*, (No. 3062 D.C. Mont., dated July 19, 1972).

CONCLUSION

The Professional Practices Act, including [NRS 391.3197](#), subsection 1, is intended to provide the exclusive procedure for dismissal of certificated employees except when the dismissal or refusal to reemploy procedures are taken out of the Professional Practices Act pursuant to [NRS 391.3197](#). A teacher aggrieved by a decision rendered pursuant to the Professional Practices Act must look to the courts for further review.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JULIAN C. SMITH, JR., *Deputy Attorney General*

INDEX

(Figures at beginning of line denote number of opinion.)

| A | | Page |
|-----------------------|--|------|
| Agriculture— | | |
| 67 | Election of soil conservation district directors..... | 22 |
| 90 | Wild horses | 78 |
| Aliens— | | |
| 93 | Aliens prohibited from public employment | 87 |
| Appropriation— | | |
| 82 | Authority to negotiate bid—Planning Board | 57 |
| 107 | State water laws and the Colorado River | 119 |
| Assessors— | | |
| 65 | Veterans' property exemption— NRS 361.090 is not an unreasonable or arbitrary classification and is therefore constitutional | 16 |

| | | |
|---------------------------------|--|-----|
| 79 | Agricultural land—The Nevada Tax Commission has exclusive authority to classify and value agricultural land | 50 |
| 99 | General improvement districts | 99 |
| B | | |
| Banks and Banking— | | |
| 96 | Political contributions by state chartered savings and loan associations | 92 |
| Bids— | | |
| 70 | Highway departments—Bidding procedures set forth in NRS 408.880 are to be strictly followed..... | 26 |
| 82 | Authority to negotiate bid—Planning Board | 57 |
| 98 | County printing | 97 |
| Blood Alcohol Test— | | |
| 59 | Motor Vehicles—Implied Consent Law | 3 |
| C | | |
| Civil Rights— | | |
| 72 | Voting: Registration of persons dishonorably discharged | 33 |
| 77 | Assistance to disabled voters | 47 |
| Collective Bargaining— | | |
| 108 | Professional Practices Act provides the exclusive review procedure for dismissal of teachers unless dismissal procedures are detailed in the collective bargaining agreement | 122 |
| Commerce, Department of— | | |
| 96 | Political contributions by state chartered savings and loan associations | 92 |
| Conservation— | | |
| 67 | Election of soil conservation district directors..... | 22 |
| Controller— | | |
| 88 | Forced payroll deduction for debt owed by state employee to the State | 73 |
| Counties— | | |
| 65 | Veterans' property exemption— NRS 361.090 is not an unreasonable or arbitrary classification and is therefore constitutional | 16 |
| 75 | Mining claims | 41 |
| 76 | Searches of county hospital patients' possessions | 43 |
| 83 | Power of local governments to enact ordinances relating to mobile home standards | 60 |
| 94 | County engineers are forbidden to represent private clients before county planning commissions | 89 |
| 104 | County commissioners—Empowered to assign county vehicle to commissioner | 114 |

| | | |
|----------------|---|-----|
| Courts— | | |
| 68 | Inspection of juvenile records | 23 |
| 105 | Jurisdiction—Misdemeanor traffic offenses | 116 |

D

| | | |
|------------------|--|----|
| Dentists— | | |
| 84 | Health maintenance organizations—Regulation of | 61 |

| | | |
|----------------------------|--|-----|
| District Attorneys— | | |
| 58 | Property taxation—Charitable organizations | 1 |
| 59 | Motor vehicles—Implied Consent Law | 3 |
| 65 | Veterans’ property exemption— NRS 361.090 is not an unreasonable or arbitrary classification and is therefore constitutional | 16 |
| 68 | Inspection of juvenile records | 23 |
| 76 | Searches of county hospital patients’ possessions | 43 |
| 80 | Teachers—Benefits of the Professional Practices Act..... | 54 |
| 81 | Justice’s court—Small claims jurisdiction | 56 |
| 93 | Aliens prohibited from public employment | 87 |
| 94 | County engineers are forbidden to represent private clients before county planning commissions | 89 |
| 97 | Subdivisions—Application of Chapter 639, 1971 Statutes of Nevada | 93 |
| 98 | County printing | 97 |
| 99 | General improvement districts | 99 |
| 102 | Apportionment of moneys received in satisfaction of judgment of taxes | 110 |
| 104 | County commissioners—Empowered to assign county vehicle to commissioner | 114 |

| | | |
|--------------------------------|--|---|
| Drugs and Drug Addicts— | | |
| 59 | Motor vehicles—Implied Consent Law | 3 |

E

| | | |
|-------------------|---|-----|
| Education— | | |
| 66 | School districts are required to prescribe regulations for various types of leave | 19 |
| 80 | Teachers—Benefits of the Professional Practices Act..... | 54 |
| 100 | State Board of Education—Regulations for school desegregation | 102 |
| 106 | Schools, obsolete textbooks | 118 |

| | | |
|-------------------|--|----|
| Elections— | | |
| 62 | Elections—Political parties—Citizens, 17 years of age, who are registered voters may participate in political activities | 11 |
| 67 | Election of soil conservation district directors..... | 22 |
| 77 | Assistance to disabled voters | 47 |
| 78 | Election—Registration of military personnel | 48 |
| 85 | Elections; voter registration | 63 |
| 86 | Effect of a change of party registration on a candidacy in a primary election | 67 |

| | | |
|---|--|-----|
| Employees, Employers and Employment— | | |
| 60 | Discriminatory employment practices—State employee | 5 |
| 63 | Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave in addition to military pay | 12 |
| 66 | School districts are required to prescribe regulations for various types of leave | 19 |
| 69 | Tips—Unlawful to credit tips toward statutory minimum wage..... | 24 |
| 88 | Forced payroll deduction for debt owed by state employee to the State | 73 |
| 93 | Aliens prohibited from public employment | 87 |
| 108 | Professional Practices Act provides the exclusive review procedure for dismissal of teachers unless dismissal procedures are detailed in the collective bargaining agreement | 122 |
| Employment Security Department— | | |
| 87 | Lease—Purchase agreements | 70 |
| 88 | Forced payroll deduction for debt owed by state employee to the State | 73 |
| Engineers— | | |
| 94 | County engineers are forbidden to represent private clients before county planning commissions | 89 |
| 107 | State water laws and the Colorado River | 119 |
| Equal Rights Commission— | | |
| 60 | Discriminatory employment practices—State employee | 5 |
| 62 | Elections—Political parties—Citizens, 17 years of age, who are registered voters may participate in political activities | 11 |
| 71 | Nevada Fair Housing Law | 28 |
| 77 | Assistance to disabled voters | 47 |
| 93 | Aliens prohibited from public employment | 87 |
| Equalization— | | |
| 79 | Agricultural land—The Nevada Tax Commission has exclusive authority to classify and value agricultural land | 50 |
| Environmental Protection— | | |
| 103 | Air pollution abatement orders—Judicial review | 112 |
| Examiners, Board of— | | |
| 92 | Payment of Taxes from the State Insurance Fund..... | 85 |
| F | | |
| Fees— | | |
| 73 | Public Service Commission—Regulatory fee assessment..... | 35 |

| | | |
|--|---|-----|
| Firearms— | | |
| 95 | Fish and game—It is unlawful to carry a loaded firearm in any vehicle on land open to the public..... | 90 |
| Fish and Game— | | |
| 95 | Fish and game—It is unlawful to carry a loaded firearm in any vehicle on land open to the public..... | 90 |
| Funds— | | |
| 87 | Lease-purchase agreements..... | 70 |
| 102 | Apportionment of moneys received in satisfaction of judgment of taxes..... | 110 |
| G | | |
| Gaming— | | |
| 89 | Gaming, punchboards | 75 |
| General Improvement District— | | |
| 73 | Public Service Commission—Regulatory fee assessment..... | 35 |
| 99 | General improvement districts | 99 |
| H | | |
| Health, Welfare and Rehabilitation— | | |
| 61 | State Aid to the Medically Indigent Program must pay, subject to certain limitations, for the cost of diagnosis, treatment or care of “categorically” qualified mentally ill indigent persons at specified types of facilities..... | 7 |
| 84 | Health maintenance organizations—Regulation of | 61 |
| Highway Department— | | |
| 70 | Highway departments—Bidding procedures set forth in NRS 408.880 are to be strictly followed..... | 26 |
| Horses— | | |
| 90 | Wild horses | 78 |
| Hospitals— | | |
| 76 | Searches of county hospital patients’ possessions | 43 |
| Housing— | | |
| 71 | Nevada Fair Housing Law | 28 |
| I | | |
| Implied Consent Law— | | |
| 59 | Motor vehicles—Implied Consent Law | 3 |
| Indigents— | | |
| 61 | State Aid to the Medically Indigent Program must pay, subject to certain limitations, for the cost of diagnosis, treatment or care of “categorically” qualified mentally ill indigent persons at specified types of facilities..... | 7 |

| | | |
|-------------------------------|--|-----|
| 64 | The State Program for Aid to the Medically Indigent is not responsible for the costs of treatment of a medically indigent individual in the custody of a law enforcement official..... | 14 |
| Industrial Commission— | | |
| 92 | Payment of Taxes from the State Insurance Fund..... | 85 |
| Insurance— | | |
| 84 | Health maintenance organizations—Regulation of | 61 |
| 92 | Payment of Taxes from the State Insurance Fund..... | 85 |
| J | | |
| Justice Court— | | |
| 81 | Justice’s court—Small claims jurisdiction | 56 |
| 105 | Jurisdiction—Misdemeanor traffic offenses..... | 116 |
| Justice of the Peace— | | |
| 95 | Fish and game—It is unlawful to carry a loaded firearm in any vehicle on land open to the public..... | 90 |
| Juveniles— | | |
| 68 | Inspection of juvenile records | 23 |
| L | | |
| Labor— | | |
| 69 | Tips—Unlawful to credit tips toward statutory minimum wage..... | 24 |
| Lands— | | |
| 79 | Agricultural land—The Nevada Tax Commission has exclusive authority to classify and value agricultural land | 50 |
| 95 | Fish and game—It is unlawful to carry a loaded firearm in any vehicle on land open to the public..... | 90 |
| 97 | Subdivisions—Application of Chapter 639, 1971 Statutes of Nevada | 93 |
| 101 | Federal lands— NRS Chapter 328 —Jurisdiction over Hoover Dam..... | 106 |
| Lease— | | |
| 87 | Lease-purchase agreements..... | 70 |
| Leave— | | |
| 63 | Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave in addition to military pay | 12 |
| 66 | School districts are required to prescribe regulations for various types of leave | 19 |
| Legislature— | | |
| 62 | Elections—Political parties—Citizens, 17 years of age, who are registered voters may participate in political activities | 11 |

| | | |
|--------------------------|---|-----|
| 63 | Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave in addition to military pay | 12 |
| 64 | The State Program for Aid to the Medically Indigent is not responsible for the costs of treatment of a medically indigent individual in the custody of a law enforcement official | 14 |
| 79 | Agricultural land—The Nevada Tax Commission has exclusive authority to classify and value agricultural land | 50 |
| 84 | Health maintenance organizations—Regulation of | 61 |
| 100 | State Board of Education—Regulations for school desegregation | 102 |
| M | | |
| Medicine— | | |
| 84 | Health maintenance organizations—Regulation of | 61 |
| Military— | | |
| 63 | Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave in addition to military pay | 12 |
| 72 | Voting: Registration of persons dishonorably discharged | 33 |
| 78 | Election—Registration of military personnel | 48 |
| Mining— | | |
| 75 | Mining claims | 41 |
| Mobile Homes— | | |
| 74 | Issuance of compliance seals for mobile homes and travel trailers | 38 |
| 83 | Power of local governments to enact ordinances relating to mobile home standards | 60 |
| Motor Vehicles— | | |
| 59 | Motor Vehicles—Implied Consent Law | 3 |
| 74 | Issuance of compliance seals for mobile homes and travel trailers | 38 |
| 105 | Jurisdiction—Misdemeanor traffic offenses | 116 |
| Municipal Courts— | | |
| 105 | Jurisdiction—Misdemeanor traffic offenses | 116 |
| N | | |
| National Guard— | | |
| 63 | Local government employees who are members of the Nevada National Guard are entitled to 15 days military leave in addition to military pay | 12 |
| Newspapers— | | |
| 98 | County printing | 97 |

P

| | | |
|--|---|-----|
| Personnel— | | |
| 88 | Forced payroll deduction for debt owed by state employee to the State | 73 |
| Planning Board— | | |
| 82 | Authority to negotiate bid—Planning Board | 57 |
| 94 | County engineers are forbidden to represent private clients before county planning commissions | 89 |
| Pollution Control, Water and Air— | | |
| 103 | Air pollution abatement orders—Judicial review | 112 |
| Printing Office, State— | | |
| 98 | County printing | 97 |
| Property— | | |
| 58 | Property taxation—Charitable organizations | 1 |
| 79 | Agricultural land—The Nevada Tax Commission has exclusive authority to classify and value agricultural land | 50 |
| Public Schools— | | |
| 66 | School districts are required to prescribe regulations for various types of leave | 19 |
| 80 | Teachers—Benefits of the Professional Practices Act..... | 54 |
| Public Service Commission— | | |
| 73 | Public Service Commission—Regulatory fee assessment..... | 35 |
| Public Utilities— | | |
| 73 | Public Service Commission—Regulatory fee assessment..... | 35 |
| Purchasing— | | |
| 87 | Lease—Purchase agreements..... | 70 |
| R | | |
| Records, Public— | | |
| 75 | Mining claims | 41 |
| Residence— | | |
| 78 | Election—Registration of military personnel | 48 |
| 85 | Elections—Voter registration | 63 |
| S | | |
| Salaries— | | |
| 69 | Tips—Unlawful to credit tips toward statutory minimum wage..... | 24 |
| Savings and Loan— | | |
| 96 | Political contributions by state chartered savings and loan associations | 92 |

| | | |
|------------------------------|---|-----|
| School Districts— | | |
| 66 | School districts are required to prescribe regulations for various types of leave | 19 |
| 80 | Teachers—Benefits of the Professional Practices Act..... | 54 |
| 100 | State Board of Education—Regulations for school desegregation | 102 |
| 106 | Schools, obsolete textbooks | 118 |
| 108 | Professional Practices Act provides the exclusive review procedure for dismissal of teachers unless dismissal procedures are detailed in the collective bargaining agreement | 122 |
| Search and Seizure— | | |
| 76 | Searches of county hospital patients' possessions | 43 |
| Secretary of State— | | |
| 77 | Assistance to disabled voters | 47 |
| 78 | Election—Registration of military personnel | 48 |
| 85 | Elections—Voter registration | 63 |
| 86 | Effect of a change of party registration on a candidacy in a primary election | 67 |
| Sewage System— | | |
| 73 | Public Service Commission—Regulatory fee assessment..... | 35 |
| Social Security— | | |
| 64 | The State Program for Aid to the Medically Indigent is not responsible for the costs of treatment of a medically indigent individual in the custody of a law enforcement official | 14 |
| Soil Conservation— | | |
| 67 | Election of soil conservation district directors..... | 22 |
| T | | |
| Taxation— | | |
| 58 | Property taxation—Charitable organizations..... | 1 |
| 79 | Agricultural land—The Nevada Tax Commission has exclusive authority to classify and value agricultural land | 50 |
| 92 | Payment of Taxes from the State Insurance Fund..... | 85 |
| 99 | General improvement districts | 99 |
| 101 | Federal lands— NRS Chapter 328 —Jurisdiction over Hoover Dam..... | 106 |
| 102 | Apportionment of moneys received in satisfaction of judgment of taxes | 110 |
| U | | |
| University of Nevada— | | |
| 62 | Elections—Political parties—Citizens, 17 years of age, who are registered voters may participate in political activities | 11 |
| 78 | Election—Registration of military personnel | 48 |

| | | |
|--|---|-----|
| 91 | University tuition | 80 |
| V | | |
| Veterans— | | |
| 65 | Veterans' property exemption— NRS 361.090 is not an unreasonable or arbitrary classification and is therefore constitutional | 16 |
| Voting— | | |
| 62 | Elections—Political parties—Citizens, 17 years of age, who are registered voters may participate in political activities | 11 |
| 72 | Voting: Registration of persons dishonorably discharged | 33 |
| 78 | Election—Registration of military personnel | 48 |
| 85 | Elections—Voter registration | 63 |
| 86 | Effect of a change of party registration on a candidacy in a primary election | 67 |
| Wages— | | |
| 69 | Tips—Unlawful to credit tips toward statutory minimum wage..... | 24 |
| Water and Sanitation Districts or Water Conservancy Districts and Subdistricts— | | |
| 73 | Public Service Commission—Regulatory fee assessment..... | 35 |
| Water Law— | | |
| 107 | State water laws and the Colorado River | 119 |
| Welfare, Department of— | | |
| 61 | State Aid to the Medically Indigent Program must pay, subject to certain limitations, for the cost of diagnosis, treatment or care of “categorically” qualified mentally ill indigent persons at specified types of facilities..... | 7 |
| 64 | The State Program for Aid to the Medically Indigent is not responsible for the costs of treatment of a medically indigent individual in the custody of a law enforcement official | 14 |