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BIENNIAL REPORT OF THE Attorney General of Arizona

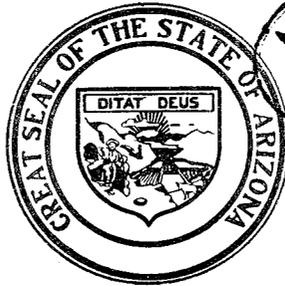
WILEY E. JONES, Attorney General

R. Wm. KRAMER
GEO. W. HARBEN

Assistants

KATHERINE MCGINNIS, Stenographer

DUPLICATE
RELEASED



1915-1916

AUTHORITY OF THE ACT OF MAY 20, 1912
(Chapter 1, Title 43, Revised Statutes 1913)

DEPARTMENT OF
LIBRARY AND ARCHIVES
ARIZONA



Attorneys-General of Arizona

TERRITORIAL

Coles Bashford	1866
Office abolished	1867-1870
James E. McCaffrey	1871-1874
Office abolished	1875-1882
Clark Curchill	1883-1886
Briggs Goodrich	1887-1888
John A. Rush	1889
Clark Curchill	1889-1890
Wm. Herring	1891-1892
F. S. Heney	1893-1894
T. D. Satterwhite	1895-1896
J. F. Wilson	1897
Cassius M. Frazier	1897-1898
C. F. Ainsworth	1899-1902
Edmund W. Wells	1903
Joseph H. Kibbey	1903-1904
E. S. Clark	1905-1908
John B. Wright	1909-1911

STATE

George Purdy Bullard	1912-1915
Wiley E. Jones	Incumbent

Note—It is an interesting fact that in the year 1861 the Confederacy had made Arizona a Confederate Territory, and appointed M. H. McWille as the Attorney General for the Confederate Territory of Arizona.

STATE OF ARIZONA

Office of the Attorney General

Phoenix, Arizona, December, 1916.

Hon. George W. P. Hunt,
Governor of the State of Arizona,
Phoenix, Arizona.

Sir:

In accordance with the provisions of law relating thereto, I have the honor to submit to you herewith the biennial report of the department of the Attorney General up to December 31st, 1916. Owing to the very close and pleasant relations existing between your office and mine, it would seem to be almost needless to make an extensive, detailed report, as you are conversant with the work which has been carried on in this department for the past two years. In this connection I may say that the relations existing between this department and the other departments in the State Capitol have been most pleasant and all departments have cooperated harmoniously with the department of the Attorney General in the administration of the affairs of the State. However, it is a requirement of the law that a report be made and it is therefore complied with.

OFFICIAL CORRESPONDENCE

During the period covered by this report many official, written opinions have been given in response to requests from the Governor, the various state officials, the various state commissions, the various state boards, the various boards of trustees of state institutions and the county attorneys of the various counties of the state. These written opinions represent but a small portion of the correspondence of this department. Several thousand letters have been received, covering a variety of subjects, from persons in and out of the State which might have been considered non-official, but dealing with legal questions, and it has been the policy of this department to make some answer to every letter received, out of courtesy due to the writer.

REPORT OF THE ATTORNEY GENERAL OF ARIZONA

I have the honor, also, to state that a great deal of the time of the office is necessarily devoted to conference and consultation with various officials and others as to official and public matters which may not be the subject of correspondence. It is difficult to estimate how much time is thus necessarily employed, but it is of sufficient magnitude to very seriously interfere with the prompt and satisfactory performance of other duties. The volume of business devolving upon this department has wonderfully increased since my tenure of office began and I feel safe in stating that it has quadrupled up to this time as compared with the work of the office when territorial days ended and statehood began.

OFFICIAL OPINIONS

There is now in the hands of the printer for publication, a manuscript of the opinions rendered by this department, but those being public and which will be embodied in this report, form but a fraction of all legal opinions that have been rendered by this department. But in order that the report may not be too voluminous, I have deemed it essential that the great number of opinions dealing with individual cases and not of decided importance be not included in this publication; hence I have placed as manuscript in the printer's hands only those opinions which are of some public importance, to be incorporated in the published report of this department.

PROHIBITION

On account of the adoption of the prohibition amendment of 1914, in accordance with the experience of each of the other states of the Union which have adopted measures along similar lines, the work of this department and of the courts of the state has been greatly increased thereby. It has also added greatly to the work devolving upon the sheriffs and the county attorneys of the state.

CORPORATION COMMISSION

The vast and important work of the Corporation Commission requires the almost constant attention of one of the working force of the department. The many intricate legal problems constantly arising, and the important interests involved therein impose upon

REPORT OF THE ATTORNEY GENERAL OF ARIZONA

this department the imperative necessity of continual caution and alertness; and, it is plainly evident that the exacting labors thereby demanded will be increased rather than lessened in the future.

I have requested the county attorneys of all counties of the state to begin January 1st next and keep a systematic report of the business of their offices so that in future time when called upon by this department, each county attorney can furnish a brief showing, in detail, of the business done in his office.

I here insert a synopsis of the business transacted in the Supreme Court of Arizona during the two years from January 1st, 1915, to January 1st, 1917, as shown by the records of the clerk of the Supreme Court:

Cases pending January 1, 1915.....	16
Cases filed Jan. 1, 1915 to Jan 1, 1917.....	55
	—
Total	71
Cases affirmed	32
Cases reversed	11
Cases dismissed	7
Original writs	2
	—
Total cases decided.....	52
Cases pending Jan. 1, 1917.....	19
	—
Total	71

STATE BOARD DUTIES

The Attorney General is, by law, made a member of the Board of Pardons and Paroles, a member of the State Land Department, a member of the Selecting Board for the selection of public lands donated to the State by the Federal government, and is also a member of the State Board of Health. His time is necessarily, to a considerable extent, occupied in his attendance upon these boards and in the performance of his duty as legal advisor of such boards.

LOANS OF STATE FUNDS

The public land law, authorizing the loan of state funds upon cultivated lands within the state, has made it necessary that legal

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attention should be given to the applications made by persons desiring such loans, as well as a close inspection of the abstract of title to the lands offered as security for such loans; therefore, the necessity for safe-guarding the interests of the state, as above mentioned, in making said loans, has largely increased the legal work of this department. But it is gratifying to realize that the state is much benefited by making such loans of its public moneys at the interest fixed by law, and that it likewise results in a corresponding benefit to the land owner, in obtaining moneys at a low rate of interest and for a long period of years for the development of the land of the settler.

In conclusion I desire to acknowledge the very efficient services rendered to me by my assistants, Mr. Leslie C. Hardy, now resigned, Mr. R. Wm. Kramer, his successor, and Mr. Geo. W. Harben; also by my stenographers, Miss Willie Lovitt, now resigned, Miss Helen H. Boyle, now resigned, and Miss Katherine McGinnis. I desire, also, to acknowledge my appreciation of the uniform courtesy that I, at all times, have received at the hands of your Excellency and all other officials of the state, and of counties of the state, with whom it has been my pleasure to be officially associated.

Respectfully submitted,
WILEY E. JONES,
Attorney General.

Vacancy in Office. Power of Governor to Fill by Appointment.

Phoenix, Arizona,
October 22, 1915.

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

Your letter of October 20th, addressed to this department, has been received, enclosing a petition from the mayor of the town of Tempe, Arizona, stating that " * * * there is not now and has not for some time past been a quorum of the common council of Tempe to transact the business of the town, and there is no method by law provided for the filling of any one or more of said vacancies," and by said petition they ask you to fill said vacancies by appointment, pursuant to the provisions of Section 8 of Article 5, of the Constitution of the State of Arizona.

You request a legal opinion from this department on the proposed action. In reply will say that without going behind the allegations contained in said petition, we would therefore have to assume that there is no quorum of a city council in existence in the town of Tempe, and that there is no method provided by law for the filling of such vacancies. The question would then resolve itself into the fact of whether or not the Governor, under our Constitution and laws, would have the right to fill a vacancy in a city government, by appointment.

Article 5, Section 8, of the State Constitution provides:

"When any office which from any cause becomes vacant, and no mode shall be provided by the constitution or law for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment."

The Constitution of California contains a provision in substance the same as the provision of our Constitution above referred to. The Supreme Court of California, in the case of Quigg vs. Evans, 53 Pac. 1093, construed the California Constitution to mean that the Governor had the power to fill a vacancy in a city government when no method was provided by law for the filling of such vacancy. In this case the plaintiff was appointed harbor master for the city of Eureka, and the Supreme Court of California, construing the case, used the following language:

"There being no mode specially provided by law or by the Constitution for filling such vacancy, the Governor was authorized to do so under the provision of the Constitution already quoted."

It would therefore seem that if said vacancies exist and there is no manner prescribed by law by which they can be filled, that the Governor

would have a right to fill such vacancies by appointment, under the provisions of our State Constitution above referred to, which no doubt were intended for such cases as are presented by this petition, so that no department of our state, county or any municipal government should fail to exist for the want of proper officials.

I am, therefore, of the opinion that under this state of facts you would have the power to appoint to fill a vacancy, but I do not believe that you would have power to appoint more than one member of said council, for the reason that said petition states that there are two members of said council who are duly elected, qualified and acting, and by the appointment of one other member they would then have a quorum to transact all business, and in that event, under our law, the city council would be empowered to fill the vacancies.

Respectfully yours,

GEORGE W. HARBEN,

Asst. Attorney General.

Member of Legislature. Can only Hold One Office.

Phoenix, Arizona,

July 14, 1915.

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

I write in answer to your recent letter inquiring about the eligibility of Senator D. H. Claridge to hold the office, by your appointment, of State Fair Commissioner.

Paragraph 4536 of the Revised Statutes, Civil Code, declared that there shall be a Commission to consist of three members, to be known as the Arizona State Fair Commission, and who shall hold office for terms of two, three and four years.

Paragraph 4540 fixes the compensation of each member at \$5.00 per day, and limits the per diem of each to \$250.00 per year and provides that "such compensation shall be paid on vouchers as hereinbefore provided."

The law thus speaks of this appointment as an office, and designates the terms of each of the three members of the Commission, and also designates the \$5.00 per day paid to each as a "compensation."

Paragraph 45 of the Civil Code reads as follows:

"From and after January 1, 1915, it shall be unlawful for any member of either house of the Legislature to hold, by virtue of an appointment thereto any elective or appointive office, state or county, or to be employed by this state or by any state officer,

state department or state institution or any county during the term for which he was elected as a member of the Legislature.”

Paragraph 47 of the Civil Code reads as follows:

“By the word term for which he was elected’ is meant the period of two years from and after the first day of January following his election and no resignation or attempted resignation during such period shall in any manner confer any right to hold, by appointment thereto, any elective or appointive office or any employment during said period.”

I regard the appointment of Senator Claridge as a very suitable one, were he eligible to such appointment, but under the law as quoted above it seems quite plain and definite that he is not eligible to this appointment until January 1, 1917. Even his resignation or attempted resignation will not render him eligible under the Statute, and though he should resign, he is still rendered ineligible by the Statute

I am unable to come to any other conclusion.

Very respectfully,

WILEY E. JONES,
Attorney General

Legislative Bills. Time of Transmission to Governor.

Phoenix Arizona,
March 22, 1915.

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

In answer to your inquiry of the 16th inst., relative to the status of certain alleged legislative bills that were delivered to you four or five days after the conclusion of the recent legislative session, I have the honor to respond as follows:

Section 7 of Article V of the State Constitution provides:

“Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor.”

It also further reads:

“If any bill be not returned within five days after it shall have been presented to the Governor (Sundays excepted) such bill shall become a law in like manner as if he had signed it, unless the Legislature by its final adjournment prevents its return, in which case it shall be filed with his objections in the office of the Secre-

tary of State within ten days after such adjournment (Sundays excepted) or become a law as provided in this Constitution.”

From the foregoing constitutional requirement, it will be seen that the presentation of a bill passed by the Legislature is a legislative function, and that the bill after passage shall reach the Governor before the adjournment of the Legislature. As said Section contemplates that a final adjournment may prevent its return, that is,—the return from the possession or custody of the Governor, it is plain that the bill after its passage must reach the Governor before adjournment, and the time within which it may remain in the possession of the Governor after such adjournment, is limited to ten days (Sundays excepted), or it will become a law without his formal approval.

Unless the Governor assumes that the bills were in his possession during the four or five days mentioned, and that said time was included within the ten days' limit, the bills must fail upon the ground that the Legislature has not performed the legislative function by delivery of the bills to the Governor before adjournment, for the limit of return by the Governor is fixed by the Constitution to ten days after adjournment.

Very shortly before adjournment on the night of the 11th inst., a committee from each house called upon your Excellency to inquire if the Governor had any further communications to make to the Legislature. This was in accordance with an old-time custom prevailing in congressional matters and in legislative matters throughout the various states of the Union, that the executive may return to the legislative body any bills in his possession with due notification of his action of approval or disapproval thereon.

The provisions of our State Constitution seem plain, and require no further comment in the premises.

I have the honor to be,

Very respectfully,

WILEY E. JONES,
Attorney General.

Legislative Bill. Amendment.

Phoenix, Arizona,
March 22, 1915

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

In answer to your inquiry about the legality of the passage of House Bill No 81, now before you for your consideration, I have the honor to reply as follows:

I understand that after the passage of the bill by the House of Representatives, that the Senate record shows an amendment to the bill was adopted by the Senate, in Committee of the Whole, but that said amendment was never embodied in the enrolled bill, and the Senate Journal shows the passage of the bill by a constitutional majority. Also that the bill itself bears the certificate of the presiding officer of each House that it received a constitutional majority in each House as enrolled and now before you.

So far as the record shows, the bill has been legally and constitutionally passed, and if signed by you, all legal steps to make it a valid act will have been taken, as the courts will not consider "extrinsic evidence"—that is, evidence outside the record kept in accordance with the provisions of the State Constitution. The Constitution of Arizona does not require the "Ayes" and "Nays" to be entered upon the Journal, although the journals, in this case, show the passage of the bill by a constitutional majority of each House; that fact is entered in each Journal.

The actual FACT of the adoption of the amendment may have come to your knowledge outside of the record, and of course, as your action of approval or disapproval is a legislative act, it is for you to consider whether or not the amendment is essential to the full operation of the bill, or whether it is of sufficient importance to justify you in withholding your approval of the bill. However, if it is approved by you officially, the passage and approval will have been constitutionally performed and it cannot be successfully attacked as having been unconstitutionally passed, or as not being the bill that was actually passed. Even an inspection of the Journals of each House will show that it was passed after enrollment, regularly by both Houses of the Legislature.

I have fully examined the court decisions in just such cases as the one now before you for your consideration, but I do not deem it necessary to cite a long list of authorities, so I simply give you the result of my research.

Very respectfully,

WILEY E. JINES,
Attorney General

Legislative Bill. Emergency Clause.

Phoenix, Arizona,
January 28, 1915

Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

Your letter of today, accompanying Senate Bill No. 1, and asking my opinion thereon, was handed me by your messenger this forenoon and, in

my hasty examination of the matters called to my attention, I have the honor to report thereon as follows:

The bill submitted to you is wanting in the signature of the Speaker of the House, certifying that it passed said body by a two-thirds vote thereof, as required by the Constitution. This fact should be made to appear officially to you, and can be supplied by the Speaker by attaching his signature, through your permission.

You ask my "opinion concerning whether this bill is so directly vital to the public health, peace and safety as to justify its adoption under the emergency clause." I must reply, that this is a matter which appears by decisions to be directed solely to the discretion and judgment of the law making power. The Legislature having made the declaration, in a separate section, that the Act in question is to "preserve the public peace, health and safety," they have pronounced their judgment thereon.

As the proposed Act is now before you, your powers and responsibilities in the premises are as full and complete as any member of either House of the Legislature. The courts have repeatedly held, by a long line of decisions, and it is no longer a question, that while engaged in considering bills which have passed the Legislature and which are presented to the Governor for approval or disapproval, in acting thereon, he acts in a legislative capacity and not as an executive and he is, for that purpose, a part of the legislative department of the State. *Lukens v. Nye*, 105 Pac. 593; *Fowler v. Pierce*, 2 Cal. 172; *People v. Bowen*, 21 N. Y. 521; Cent. Dig. Chap. on Statutes, Sec. 28; Dec. Dig. Stat., Sec. 26.

Therefore, it is within the province of the Governor to pass upon every section and provision of the bill, the whole of the Act, and determine the wisdom of its provisions, including the necessity for its passage as an emergency measure, and whether it is, in fact, a measure to preserve the public peace, health and safety, as expressed in the emergency provision of the bill.

The courts of states which have constitutional provisions in reference to emergency measures very similar in purport to the Arizona Constitution, with considerable uniformity, have held that laws passed thereunder with the recital that an emergency exists and it is necessary to preserve the public health, peace and safety, are conclusive upon the court.

The Oklahoma Constitution permits such legislation, "in case of emergency to be expressed in the Act." The Arizona Constitution, permitting such legislation, says: "It shall state in a separate section why it is necessary," so the purport of the two Constitutions is very similar.

The Oklahoma Court, in the case of *Oklahoma City v. Shields*, 100 Pac. 599, said: "We conclude that the judgment of the Legislature in determining whether or not an emergency existed—that is, whether or not an emergency is immediately necessary for the preservation of the public peace, health or safety—rests solely with the Legislature. It is not subject to

review by the courts or any other authority except the people." The Oklahoma Court, in the foregoing decision, quoting from the South Dakota Court, in the case of *State v. Bacon*, 85 N. W. 605—a similar case—cites the following language: "But it is argued, what remedy will the people have if the Legislature either intentionally or through mistake declare falsely or erroneously that a given law is necessary for the purposes stated? That obvious answer is that the power has been vested in that body, and its decision can no more be questioned or reviewed than the decision of the highest court in a case over which it has jurisdiction."

The foregoing decisions, referring to the legislative act, include the action of the legislative bodies in passing the measure through both Houses, and also the action of the Governor thereon, performing a duty in a legislative capacity.

In the limited time of about an hour and a half research today, this is all that I have to offer you at this hour.

Respectfully yours,

WILEY E. JONES,
Attorney General

Teachers. Must be Citizen of United States.

Phoenix, Arizona,
April 29, 1915

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

Your letter of April 28th, addressed to this department, has been received, in which you ask whether or not a person of foreign birth, who has declared his intention of becoming an American citizen, is qualified to serve as a teacher in the schools and colleges of Arizona.

In reply thereto will say that the framers of our Constitution embodied in it a section as follows:

Section 10. Article XVIII.

"No person not a citizen or ward of the United States, or who has not declared his intention to become a citizen, shall be employed upon or in connection with any state, county or municipal works or employment, provided: That nothing herein shall be construed to prevent the working of prisoners by the State, or by any municipality thereof on street or road work or other public work. The Legislature shall enact laws for the enforcement and shall provide for the punishment of any violation of this section."

The Legislature, in obedience to the mandate contained in this section

of our Constitution, has in its wisdom enacted a law for its enforcement, and has even gone further than the provisions of the constitutional mandate, which they had a right to do (provided they did not take from the provisions of said section). Section 155 of the Revised Statutes, 1913, provides:

"No person shall be eligible to any office, employment or service in any public institution in the State of Arizona, or in any of the several counties thereof, of any kind or character, whether by election, appointment or contract, unless before said election, appointment or contract, he shall be or have become a citizen of the United States."

Paragraph 156 of the Revised Statutes of Arizona, 1913, provides: "by the word office and public institutions as used herein is meant any office or institution the salary or compensation of which to the person filling it, is paid out of a fund raised by taxation"

These provisions certainly apply to teachers, and no reason can be offered or was offered in the Constitutional Convention or in the Legislature, when said laws were enacted, why teachers should not be included under the provisions of said laws.

Our state school system wherein the minors of the coming generation are being trained for American citizens, is the most important public institution of the State of Arizona. I am therefore of the opinion that a person, before he can be employed under any contract in one of our public schools or colleges, supported by the public, the salary or compensation of which employment is to be paid out of a fund raised by taxation, must be a citizen of the United States.

Hoping this will give you the information you desire, I am,

Very respectfully,

GEORGE W. HARBEN,

Asst. Attorney General

Surety Bond Form.

Phoenix, Arizona,

March 20, 1915.

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

Your letter of March 17th, with bond of the Commercial Trust & Savings Bank of Prescott as Principal, and the National Surety Company as surety in the sum of Twenty-five Thousand Dollars (\$25,000.00) has been received, in which you ask for my opinion regarding the form of said bond.

In reply will say that after a careful examination of the form of this bond, I find the condition of the said bond to be that "the above named principal has been duly designated to be a depository of public moneys for the said State of Arizona," and it does not state whether or not it has been designated as an active or inactive depository in accordance with Paragraph 4649 of the Revised Statutes of Arizona, 1913; nor does it state whether or not it has been designated as both active and inactive depository in accordance with Paragraph 4652 of the Revised Statutes of Arizona, 1913, and as different rates of interest are prescribed for the different kinds of depositories, my opinion is that the bond should state under which one the bank is designated or whether or not it is designated as both.

Another thing I desire to call your attention to is that Paragraph 4643 of the Revised Statutes of Arizona, 1913, provides that the bond shall be "conditioned that such bank will promptly pay out to the parties entitled thereto all public moneys in its hands, upon lawful demand therefor, and will whenever thereunto required by law, pay over to the State Treasurer such moneys with interest thereon as hereinafter provided"

I do not find any provision in said bond for the payment of such moneys to the "State Treasurer," but only for the payment to the "State of Arizona."

These things may seem unimportant and technical in their nature, but as the handling of the public funds is a matter upon which great caution should be exercised, I would advise that this bond be made to follow the language of the Statutes more specifically, and thus obviate any question of doubt that might arise in the future as to the validity of this bond.

I therefore return the said bond to you without my approval of its form.

Respectfully yours,

WILEY E. JONES,
Attorney General

Prisoners. Discharge. Clothing.

Phoenix, Arizona,
Sept 30, 1915.

Hon. Charles R. Osburn,
Secretary Board of Control,
Phoenix, Arizona.

Dear Sir:

In response to your communication of yesterday, I desire to inform you that it is my opinion that Section 1 of Chapter 35, Laws of the Regular Session of the Second State Legislature, did not so amend Paragraph 5147 of the Civil Code, Revised Statutes 1913, so as to provide that prisoners employed in road camps shall be furnished discharge clothing, to be paid out of the funds appropriated for working prisoners on the roads, nor shall

the money which is required to be paid to the prisoners at the time of their discharge be paid out of such funds, but on the other hand, both of these expenses should be paid as provided in Paragraph 4159 of the Penal Code of Arizona, 1913.

Very truly yours,

LESLIE C. HARDY,
Asst. Attorney General.

Vacation. None For State Employees.

Phoenix, Arizona,
August 16, 1915.

Hon. Charles S. Osburn,
Secretary Board of Control,
Phoenix, Arizona.

Dear Sir:

For this department I desire to acknowledge receipt of your communication of the 14th inst., inquiring if an employee in one of the State institutions may be paid a double salary for a period of fourteen days, in lieu of a vacation.

There is no provision of law extending the privilege of a vacation to employees of the State, and it of course follows that there is no provision whereby an employee may have double salary for a period in lieu of a vacation.

Very truly yours,

LESLIE C. HARDY,
Asst. Attorney General.

Newspaper. Definition.

Phoenix, Arizona,
May 17, 1915.

Hon. Charles R. Osburn,
Secretary Board of Control,
Phoenix, Arizona.

Dear Sir:

Your letter of the 15th inst., received, in which you ask this department for an interpretation of the word "newspaper" as used in Paragraph 4662, Revised Statutes of Arizona, 1913.

In reply thereto, I will say that I presume you desire an interpretation relating to the publication of notices for bids on contracts for furnishing supplies to the Board of Control. I will call your attention to Paragraph 4659, which provides that when notice is provided by law to be given for a specified number of days or weeks, such notice shall be published in either a daily or weekly paper of general circulation in the county where the notice is to be given. A newspaper of general circulation is defined

by the best authorities to be a paper of general circulation among the people, without regard to class, vocation or calling, devoted to the gathering and dissemination of news of current events of interest.

I am therefore of the opinion that any paper published either daily or weekly, devoted to current news events, for the general public and not for any special class, would be a newspaper within the spirit and meaning of Paragraph 4662 of the Revised Statutes, 1913, and any advertisement made in pursuance of said law in any paper of general circulation, without regard to the number of subscribers, would be a legal publication of notice.

Hoping this will give you the desired information, I am,

Very respectfully,

GEORGE W. HARBEN,

Asst. Attorney General

Contracts. Abolishment of System Not to Apply to Contracts for Supplies.

Phoenix, Arizona,
January 14, 1915

Mr. Charles R. Osburn,
Secretary Board of Control,
Phoenix, Arizona

Dear Sir:

In response to your communication of the 13th inst., I desire to inform you that the abolition of the contract system by Section 4 of An Act to Promote the Welfare of the People, etc., initiated at the last general election by the people of the State, is not applicable to contracts for supplies, but only contracts of construction.

Very truly yours,

LESLIE C. HARDY,

Asst. Attorney General

Furniture. Rent by Board of Control.

Phoenix, Arizona,
February 13, 1915

Hon Charles R. Osborn,
Secretary Board of Control,
Phoenix, Arizona.

Dear Sir:

In answer to your inquiry of the 11th inst., as to your authority to pay rental for temporary use of furniture and typewriters out of the Capitol Building Fund, I call your attention to Paragraph 4453 and other succeeding paragraphs touching such matters dealt with under the head of "Board of Control" Said Paragraph 4453 provides that in cases of emergency,

private purchases may be had, not exceeding the amount of \$100.00 for any one institution. The purchase of a typewriter at a price less than \$100.00, in case of emergency, is therein authorized, the same as a piece of furniture.

Therefore, if economy suggests that you rent a piece of furniture or a typewriter for temporary use for one to three months, or possibly more, instead of an outright purchase of the same, you would be authorized to do so under the provision governing the Board of Control, and if the same is to be used in the Capitol Building, you can pay for same out of the Capitol Building Fund. Such would be a purchase of the use of the article

Yours very respectfully,

WILEY E. JONES,

Attorney General

Mines. Taxation. Appeal from Assessment.

Phoenix, Arizona,
November 17, 1915.

Arizona Tax Commission,
Phoenix, Arizona.

Gentlemen:

For this department I desire to acknowledge receipt of your communications of the 3d and 10th inst., relating to an appeal from the assessment of the productive mines of the Shannon Copper Company for the year 1915. In view of the fact that the appeal was taken under Section 4993, Civil Code, Revised Statutes of Arizona, 1913, you desire to be informed whether the Shannon Copper Company has pursued the correct method of appeal, and if not, whether you should transmit the proceedings of your Commission to the Clerk of the Superior Court of Greenlee County, as provided by law.

After an examination of this matter, it is the opinion of this department that the appeal has been correctly taken. By Sub-division 13 of Section 4829, Civil Code, Revised Statutes of Arizona, 1913, patented and unpatented producing mines are assessable by the State Tax Commission, but no method of appeal from this assessment has been provided, as in the case of railroad, telegraph and telephone companies, and such other utilities as are enumerated in Sub-division 13 of said Section 4829. The appeal could not be taken from the assessment of the Board of Supervisors, for the reason that the assessment is not made by that Board, but on the other hand it is made by the State Tax Commission, and thereafter transmitted to the Board of Supervisors. However, Chapter 12 of Title 49, Civil Code, in toto, after mines and mining claims had been assessed for the fiscal years ending June 30, 1914, and June 30, 1915, but only expired by limitation insofar as the method therein provided was used for the basis of reckoning the valuations for assessable purposes,—that is to say,—the method of

adding together an amount equal to four times the value of the net proceeds and an amount equal to twelve and one-half per cent of the total value of the gross proceeds of such mining claims or group of such.

The procedure provided by Chapter 12 of Title 49, supra, still prevails insofar as the facilities therein provided for making assessments are usable. To this extent the method of an appeal from an assessment made by the State Tax Commission upon patented or unpatented producing mines is still available, and accordingly the Shannon Copper Company has perfected its appeal thereunder, and it is accordingly the opinion of this department that the correct procedure has been pursued.

Very truly yours,

LESLIE C. HARDY,
Asst. Attorney General.

Bonds, Fees for. To be Charged by Corporation Commission.

Phoenix, Arizona,
March 23, 1915

Hon. P. W. Geary,
Corporation Commissioner,
Phoenix, Arizona.

Dear Sir:

Your letter of March 20 has been received, in which you state that the Arizona Corporation Commission has authorized the Arizona Power Company to issue Two Hundred Fifty Thousand Dollars (\$250,000.00) worth of three and one-half year negotiable notes for the purpose of improvement, etc.; you also state that the company contemplates the issuance of Four Hundred Thousand Dollars (\$400,000.00) worth of bonds of the company to be placed in the hands of the company and held as collateral security insuring the payment of the above referred to notes and interest thereon when due.

You ask if the Corporation Commission should charge this company fees as provided under Section 2333 of the Revised Statutes, 1913, for the amount of notes alone, or should you charge fees for the aggregate amount of both notes and bonds.

You are advised that it is the opinion of this department that you should at this time charge fees for the Two Hundred Fifty Thousand Dollars (\$250,000.00) worth of notes alone, provided the bonds under your order are to be held in the hands of the trustee for the purpose of securing this debt alone, and to be used for no other purpose; but in the event that you should at any time in the future modify this order and allow the company to take the said bonds out of the hands of the trustee and sell or otherwise dispose of them for any other purpose other than the security of this debt, then you would have the power, and it would be your duty to require the fees paid for them in accordance with law

Further, I would add that if said notes should be redeemed and cancelled in the future by the release and actual issuance of the bonds in excess of said Two Hundred Fifty Thousand Dollars (\$250,000.00) represented by the said notes, then the charge should be made upon every thousand dollars' worth of bonds so released and actually issued in excess of the amount of said notes, and your order should so provide.

I think I have made our position clear to you.

Very respectfully,

GEORGE W. HARBEN,

Asst. Attorney General.

Corporations. Capital Stock. Par Value. Should be Stated.

Phoenix, Arizona,

November 4, 1915.

Miss E. P. Wise,

Incorporating Department,

Corporation Commission, Phoenix.

Dear Miss Wise:

Answering your letter of yesterday, will say that I would suggest that you instruct all incorporators that it is best that they state in their Articles of Incorporation the number of shares or the par value of each share of stock, as the law requires the amount of capital stock to be stated in the Articles of Incorporation; so that if the number of shares is given, then the par value of each share is at once shown

While I do not state that the law absolutely requires it, yet, to remove all doubt, I would suggest that the incorporators show either the par value of the shares of stock, or the total number of shares, along with the aggregate amount of the capital stock of the corporation.

Very truly yours,

WILEY E. JONES,

Attorney General.

Insurance Agents. Issuance of License Ministerial Duty.

Phoenix, Arizona,

June 16, 1915.

Hon. F. A. Jones,

Chairman Arizona Corporation Commission,

Phoenix, Arizona.

Dear Sir:

In response to your telephonic communication of the 12th inst., I desire to inform you that it is the opinion of this department that the issuance of an agent's license to insurance agents desiring to transact business within

the State of Arizona is a ministerial and not a discretionary duty imposed upon the Corporation Commission. This seems to plainly answer for Sections 31 and 34 of the Insurance Code. There is, however, a discretionary duty, in my opinion, imposed upon the Corporation Commission in respect to the revocation of such licenses.

Very truly yours,

LESLIE C. HARDY,
Asst. Attorney General.

Corporations, Certificate Annual Report.

Phoenix, Arizona,
July 12, 1915.

Miss E. P. Wise,
Chief Clerk Incorporating Dept.
Arizona Corporation Commission,
Phoenix, Arizona

Dear Miss Wise:

For this department I desire to acknowledge receipt of your communication of the 8th inst., inquiring whether or not it is necessary for corporations to file their annual report and pay their annual registration fee if such corporation has not obtained a certificate of incorporation prior to the month of June of each year.

It is the opinion of this department that unless incorporations have obtained their certificate prior to the month of June, that it is unnecessary for such corporations to file their annual reports and pay their annual registration fees until the subsequent June

Very truly yours,

LESLIE C. HARDY,
Asst. Attorney General.

Public Land. Purchase and Lease. Maximum Amount to be Purchased or Leased. Appraisalment. Advertisement. Costs.

Phoenix, Arizona,
Sept. 14, 1915

Hon. W. A. Mouer,
State Land Commission,
Phoenix, Arizona.

I have before me your several letters calling for a construction of various sections of the Public Land Code, and I will answer briefly this afternoon, with the view of revising my answers after more extensive investigation, and answer all the questions at greater length, as I fully realize the serious importance of the work which the State Land Depart-

ment has before it, as well as the importance of a proper construction of the whole Public Land Code, which it is our duty to administer as members of the State Land Department.

I will answer the questions in the order in which they appear, and in accordance with the dates of the various letters

Referring to your letter of August 10th, containing two questions, will answer as follows:

1. The law authorizes purchase of state lands by one eighteen years of age and upwards, but nowhere does it authorize the lease of lands by such person, and I do not believe a lease to such person is authorized, unless I should come to a different conclusion after further investigation and reflection.

2. The Public Land Code seems to authorize both lease and purchase up to the maximum limit of agricultural and grazing land, but Section II, Article 10, of our State Constitution says:

"No individual, corporation, or association, shall ever be allowed to purchase or lease more than 160 acres of agricultural land or more than 640 acres of grazing land"

The words "purchase or lease" used in the Constitutions seems to be used as synonymous terms, that he can do one or the other up to the maximum of either grazing or agricultural lands, but not both up to the maximum.

As to your letter of August 20th, containing seven questions, will answer as follows:

1. Following the law and rules of the reclamation projects, the husband and wife cannot each purchase the maximum of 160 acres of agricultural land. As to such lands not under reclamation project, will consider that further for future answer. I am inclined to think that as to grazing lands, that matter is discretionary with the land department under such rules as it may establish.

2. Subject to the foregoing answer, will say Yes, but that husband and wife cannot lease and purchase both either agricultural or grazing lands.

3. I answer this question No, in line with the answers to the two foregoing questions.

4. Lessee is entitled to appraisalment of the improvements made upon state lands subsequent to June 26, 1915, but I feel like giving the question further consideration before you consider this question answered positively and absolute

5. Advertisement of improvements need not be made in case of lease of state lands, particularly if occupant's lease is extended

or lands re-let to such occupant. Will examine this question further as to the law upon it.

6. Public highways should not be included in the acreage of lands in case of sale. So much of the road as is taken from said land should be excluded or deducted in computing the acreage sold, although such road might properly increase the appraised value of the land computed and to be sold.

7. The law authorizes purchases by person of eighteen years of age, although it does not authorize him to lease. That is the declaration of the law, and I must so hold, unless further consideration and examination brings me to a different conclusion. As to your letter of August 27th, will answer as follows:

1. The cost of appraisement and sale includes all appraisement expenses, cost of appraisement and the physical costs of the sale itself.

2. The state pays all expenses of appraisement and sale, but the purchaser pays or advances as a payment, sufficient to meet the same under Section 59, at the time the bid is accepted, the purchaser being credited with such payment on the purchase price. As to your letters of the 11th inst., will answer as follows:

1. Lessees are entitled to appraisement of improvements placed upon lands leased subsequent to June 26, 1915.

2. Lessees are also entitled to appraisement with a view of reimbursement, for improvements placed upon leased lands subsequent to February 14, 1912, and prior to June 26, 1915.

3. State Land Department is authorized to collect all back rentals under leases issued by the various Boards of Supervisors, as those bodies acted merely as agents for and on behalf of the territory and state.

As to your second letter of September 11th, propounding six questions, would answer as follows:

1. Expenses of appraisement are permitted to be paid out of the State Land Administration Fund, under Sections 19 and 105; and also Section 107 permits such expenses to be paid out of the State Land Classification and Appraisement Fund. I think both funds are available for such purpose.

2. Sale expenses may be paid out of the State Land Administration Fund, if the amount bid and payment made under Section 59 is insufficient, as I think the Land Department may use the money collected under Section 59 from the successful bidder to cover the cost of appraisement and the sale without such money so collected actually reaching the State Land Administration Fund. Such money

OPINIONS OF THE ATTORNEY GENERAL

coming to the hands of the department from the successful bidder being used to pay the cost of appraisement and of sale, never becomes a part of the State Land Administration Fund, and its application to the payment of such expense relieves such fund of the burden of being drawn upon.

3. This is answered by my answer to question two above.
4. The state pays the sale expenses out of the payment made by the purchaser, the sum paid by the purchaser being credited upon the purchase price.
5. The Classification and Appraisement fee under Section 117, is additional to and separate from the full purchase price receivable for lands and improvements, and is for the sole use of the Classification and Appraisement Fund.
6. This question is answered by my answers to questions one and two above.
7. The current of authorities so far as my examination goes, shows that proceeds usually means net proceeds and not gross returns.

In reference to the items of sale expenses enumerated in your letter, would suggest that this expense should be pro-rated on the appraised values of the various lands the appraisement of which caused such expense.

I have answered all the questions propounded to me, though some of my answers are subject to revision and modification, if further investigation calls for it. I will examine the law thoroughly within a short time, and give a more extended answer to your questions.

Very truly yours,

WILEY E. JONES,
Attorney General.

Indians. Employment of Boys and Girls of School Age.

Phoenix, Arizona,
May 7, 1915.

Loson L. Odle,
Supt. Fort Yuma Indian School,
Yuma, Arizona.

Dear Sir:

Your letter of April 26th has been received in which you ask for an opinion from this department, as to whether or not our law prohibiting the employment of boys and girls of school age applies to Indians who are being employed as a part of their industrial training.

You are advised that it is the opinion of this department that our

state law regulating the employment of boys and girls of school age, does not apply and was never intended to apply to Indian children, wards of the United States Government, who are employed as a part of their industrial training.

Hoping that this will give you the desired information, I am,

Very truly yours,

GEORGE W. HARBEN,

Asst. Attorney General.

Public Land. Can Lease Unsurveyed.

Phoenix, Arizona,

Sept 9, 1915.

Hon. E. J. Trippel,

Deputy State Land Commissioner,

Phoenix, Arizona.

Dear Sir:

Answering your letter of the 17th inst., inquiring whether or not the State Land Department has the right to lease unsurveyed school sections that will ultimately revert to the State of Arizona, I beg leave to state that in my opinion the Department can lease the same, and should do so when the same can be done to advantage for the State. It may be necessary however, to mention in the instrument at least that the land is unsurveyed and is leased subject to any prior rights which may exist, etc., so that the State may be properly protected; but I think we should encourage the leasing of such lands in order that the occupant may recognize the State as a lessor and therefore would be unable to dispute the title of the State as a landlord or leasor. I can suggest hereafter the provisions to be inserted in the lease, as herein suggested by me

Very truly yours,

WILEY E. JONES,

Attorney General

Public Land, Stockholder of Corporation Can Lease or Purchase.

Phoenix, Arizona,

July 23, 1915.

E. J. Trippel, Esq.,

State Land Commission,

Phoenix, Arizona.

Dear Sir:

In response to your letter of yesterday, inquiring if a stockholder of a corporation could lease or purchase state lands in his own name, in a case where the corporation in which he is a stockholder, has leased or purchased state lands, I would state that I am of the opinion that the

individual share-holder can lease or purchase in his own name up to the limit prescribed, regardless of any holding by lease or purchase on the part of the corporation in which he may hold stock.

Very truly yours,

WILEY E. JONES,
Attorney General

Public Land. Section May Be Less or Greater Than 640 Acres.

Phoenix, Arizona,
Sept. 9, 1915.

Hon. E. J. Trippel,
Deputy State Land Commissioner,
Phoenix, Arizona.

Dear Sir:

Answering your inquiry contained in your letter of August 30th, relative to the disproportionate size of certain sections of land and subdivisions thereof, and calling my attention to the fact that some sections may exceed 640 acres, while some may be less such acreage,—I would state that the Legislature doubtless had in view the fact that 640 acres constitutes a section of land according to the usual survey, as mentioned in the State Public Land Code, they used that term as synonymous with "section of land." And as the United States Government, in issuing its patent, issues it for the amount of land embraced in the section or subdivision, whether it be less or greater than 640 acres or 160 acres, I think such policy is wise enough to be followed by the State Land Department.

Very truly yours,

WILEY E. JONES,
Attorney General

Superintendent of Public Instruction. Duty to Furnish Certified Copies of Records in Office.

November 22, 1915.

Hon. C. O. Case,
Supt. of Public Instruction,
Phoenix, Arizona.

Dear Sir:

Miss Alice M. Birdsall, an attorney at law of this city, has informed this department that she desires the certified copy of a certain contract executed between the State of Arizona and School Book Publishers for the purchase of school books under the commonly designated "Free Text Book Law."

This department has been further informed by Miss Birdsall that you

are in doubt whether it would be your duty to comply with her request and deliver to her a certified copy of said contract.

I desire to inform you that it is your duty, upon proper request, to certify to public documents, such as this is, within your custody, and accordingly you should deliver to Miss Birdsall upon her request a certified copy of the contract which she desires.

Very truly yours,

LESLIE C. HARDY,
Asst. Attorney General.

School Elections. Voter Must Reside in State One Year Previous to Voting at Election.

Phoenix, Arizona,
June 21, 1915.

Hon. C. O. Case,
State Supt. of Public Instruction,
Phoenix, Arizona

Dear Sir:

Your letter of June 21st received.

In reply thereto will say that I am of the opinion that a person, before he is entitled to vote at school election, in this state, must, among other things, have been a resident of the State of Arizona for one year preceding the date of election.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General

Public Schools. Employment of Principal. Beginning of Term.

Hon. C. O. Case,
Supt. of Public Instruction,
Phoenix, Arizona.

Dear Mr. Case:

In compliance with your verbal request for an opinion on some questions submitted to you by Mrs. Minnie Lintz, County Supt. of Schools of Cochise County, as follows:

“Will you please give me an opinion on the employment of a principal for twelve months? For instance, I desire to employ a principal for next year, and pay him for twelve months? When can I legally have his term begin? Is it legal to have his salary begin June first?”

I desire to state that by Paragraph 2733, Section VIII, of the Revised

Statutes of Arizona, it is provided that Boards of Trustees may, whenever they deem it advisable, employ City Superintendents of Schools and principals, for any term not exceeding two years.

Paragraph 2766 of the Revised Statutes of Arizona provides that the school year shall begin on the first day of July and end on the last day of June.

The County School Superintendent says that she desires to employ a principal for next year, and pay him for twelve months. It seems to be clearly the intent of the law that such principal should be employed for the school year unless it should be necessary to employ one to fill an unexpired term. As it seems clearly the intent of the County Superintendent to employ a principal for next year, I cannot see how his salary could begin June 1, when the month of June would be no part of the next school year.

I am therefore of the opinion that if the principal is to be employed for the next school year, his salary could not legally begin until July 1. Hoping this will give you the desired information, I am,

Respectfully yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Text Books. Publisher Defined.

Phoenix, Arizona,
May 20, 1915.

Hon. C. O. Case,
State Supt. of Public Instruction,
Phoenix, Arizona

Dear Sir:

Your letter of May 20th received, in which you ask this department whether or not book companies, as the McNeil Company of Phoenix, Jacobs & Sons of Tucson, and such other companies, can bid on text books. You state that the Board of Education meets May 21st, to consider bids for text book adoptions.

You are advised that it is the duty of the Superintendent of Public Instruction to advertise for bids for furnishing text books for the common schools. After this provision of the law has been complied with, it is the duty of the members of the State Board of Education to open said bids and award the contract to the lowest responsible bidder. Of course it seems that the law presumes that the bidder must be a publisher, but just what is a "publisher" under the meaning and intent of our law, is very difficult to define. Bouvier's Law Dictionary defines a publisher to be one who by himself or his agent makes a thing publicly known; or one engaged in the circulation of books, pamphlets and other papers.

You see from the foregoing definition of a publisher, by the best author-

ities, that it is difficult to define what a publisher is under our law, but it seems that the act of the Legislature in stating that the bid must be let to a publisher undoubtedly means the letting of bids to some one who is responsible and able to fulfil the contract. I know of no provision in the law that requires a publisher of each, every and all books that he contracts to furnish. If that should be the law, it would probably be very difficult to get a bidder to publish all books that the State of Arizona might desire to use in the public schools of the State.

The State Board of Education is required to let the contract to the lowest responsible bidder. As to who is the lowest responsible bidder, would be a matter wholly discretionary with the State Board of Education, a question which they and they alone are able to determine. This seems to be a duty placed by law upon said Board, and it seems that it is their duty to determine who is the lowest **responsible** bidder, and when they are satisfied with their decision, and the bidder makes bonds as required by law, and said bonds are approved as provided by law that they have complied with the law regardless of whether or not any publisher publishes all of the books selected by said Board.

I am therefore of the opinion that any publisher such as the two above named, whether or not they publish all of the books selected by said Board, would be eligible for consideration as bidders provided they are considered the lowest **responsible** bidders, and can give bond according to law.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Indians. Deficient Children to be Admitted to State Institutions.

Phoenix, Arizona,
March 29, 1915

Hon. C. O. Case,
Supt. of Public Instruction,
Phoenix, Arizona.

Dear Sir:

In answer to your inquiry of the 26th inst., asking my opinion upon the legality of the admission of Indian children into the Arizona School for the Deaf and Dumb, I would refer you to the opinion of my predecessor, Mr. Bullard, dated May 5, 1914, which was in response to a similar inquiry from the Governor of the State, in which he says:

"In view of the fact that there is no specific authorization of law, permitting the State to enter into the contract suggested by the Commissioner of Indian Affairs, and because of the fact that the United States Government is in duty bound to care for deficient

Indian children, we would suggest to you that we are of the opinion that the State is not authorized to enter into such contracts."

Very respectfully yours,

WILEY E. JONES,
Attorney General.

Public Land. Amount That Can be Leased or Purchased.

Phoenix, Arizona,
July 22, 1915.

Hon. W. A. Moeur,
State Land Commissioner,
Phoenix, Arizona

Dear Sir:

I have before me yours of the 21st inst., making inquiry about the limit in acreage that an applicant may buy or lease under the land law, and I am of the opinion that a person can buy or lease 160 acres of agricultural land and that the limit of 160 acres of agricultural land, susceptible of irrigation, and also buy or lease 640 acres of agricultural land and that the limit of 160 acres of agricultural land and 640 acres of grazing land, thus making 800 acres in all, is the proper construction to place upon the Statute, as the limit that one may acquire by lease or purchase.

Very respectfully yours,

WILEY E. JONES,
Attorney General.

Land Department. Expenses of Appraisers and Assistants.

Phoenix, Arizona,
July 8, 1915.

Hon. W. A. Moeur,
State Land Commissioner,
Phoenix, Arizona,

Dear Sir:

I have before me your memorandum inquiry of yesterday as follows:

(1) "Does Section 17 of the Public Land Code provide for and cover salaries and traveling expenses of field assistants, when aiding and acting for the Selecting Board when selecting public lands? Also equipment such as automobile, automobile accessories, camp accessories, etc., if same is necessary?"

(2) "What fund must cover the office expenses, salaries, etc.?"

(3) "What fund must cover the expenses and salaries of appraisers?"

(4) "How are the expenses incurred under the provisions of the Carey Act to be met and paid, and out of what fund?"

As to the first inquiry, I answer Yes. This is upon the theory that an automobile equipment will be found more practicable than the payment of railroad fares and hiring of automobiles and chauffeurs.

Answering the second inquiry, I will say that such office expenses and salaries should be prorated, and that incurred by the Selecting Board to be paid out of the General Fund; and that incurred by the administration of the Public Lands, by the Department, should be paid out of the State Land Administration Fund.

Answering the third inquiry, the expenses and salaries of appraisers should be paid out of the State Land Administration Fund.

Answering the fourth inquiry, will say that provision for that expense has been dealt with by Par. 4622 of the Civil Code, 1913, and will advise you further under the Carey Act.

I have given my opinion after a somewhat hasty examination of the Public Land Code.

Very respectfully,

WILEY E. JONES,
Attorney General

Highways. Hours of Labor. Per Diem Wages. Must be Citizen Before Being Employed.

Phoenix, Arizona,
January 29, 1915

Hon. Lamar Cobb,
State Engineer,
Phoenix, Arizona.

Dear Sir:

Your letter of January 20th received, relative to the men employed and wages paid on work being done in Gila County at the direction of the State Engineer and the Board of Supervisors of Gila County, payable out of the seventy-five per cent fund. You state that the Globe Miners' Union has protested about persons employed and wages paid for said work, and have asked for advice relative to citizenship of employees engaged in such work, and the authority of your office in the premises and the wages prescribed by law.

In reply thereto, I will say that you are advised that eight hours, and no more, shall constitute a lawful day's work for all laborers, workmen, mechanics, or other persons doing manual or mechanical labor now employed, or who may hereafter be employed by or on behalf of the State of Arizona, or by and on behalf of any political subdivision of the State, except in cases of emergency.

You are further advised that the law provides that not less than the current rate of per diem wages in the locality where the work is performed

shall be paid to laborers, workmen, mechanics and other persons performing such labor on behalf of the State or any political subdivision of the State. Laborers, workmen, mechanics and other persons employed by contractors or sub-contractors in the execution of any contract or contracts with the State of Arizona or with any political subdivision thereof, are deemed to be employed by and on behalf of the State of Arizona

You are further advised that the law provides that no person not a citizen or ward of the United States, or who has not declared his intention to become a citizen, shall be employed upon or in connection with any State or municipal works. This does not apply, however, to the working of prisoners by the State or by any County or municipality thereof on street, road or other public works. This law, however, does not apply to contracts made prior to June 19th, 1912.

I will refer you to Paragraphs 3103, 3104 and 3105, Title 14, Chapter 1, of the Revised Statutes of Arizona, 1913, for more detailed information.

Hoping this will furnish you with the desired information, I am,
Very truly yours,

WILEY E. JONES,
Attorney General.

Lake Mary, Private Lake, Not Under Control of State.

August 18, 1915.

G. M. Willard, Esq.,
State Game Warden,
Phoenix, Arizona.

Dear Sir:

I enclose for your office a letter received in my absence, dated July 27th, from the Arizona Lumber & Timber Co., of Flagstaff, Arizona.

From this letter it certainly appears that Lake Mary, mentioned therein, is a lake privately owned by the Arizona Lumber & Timber Co., and constructed at large expense upon the part of the company. Under the facts as stated by their letter, it does not seem that the lake is under the control of the State of Arizona, neither the fish therein.

Very respectfully,

WILEY E. JONES,
Attorney General.

Contract. Can Be Made with Non-Resident.

June 16, 1915.

Hon. William Jennings Bryan, Jr.,
Tucson, Arizona

My Dear Friend:

In answer to your letter of the 14th inst., inquiring if there is any law

forbidding the acceptance of a bid on electrical equipment, submitted by a Los Angeles firm, I beg leave to state that I know of no such law in the State, and on conferring with Charles R. Osburn, Secretary of the Board of Control, who is familiar with such matters, he states that he has no knowledge of any law forbidding the entering into a contract on behalf of the State with a non-resident firm or corporation.

Very truly yours,

WILEY E. JONES,
Attorney General.

Doves and White Wings. Number That Can Be Killed in One Day.

August 25, 1915.

Hon. G. M. Willard,
State Game Warden,
Phoenix, Arizona

Dear Sir:

I have your letter of yesterday, inquiring about the construction to be placed upon the number of birds that may be killed under the following language quoted by you "Thirty-five doves or white wings in one day."

The language of the Statute appears to plainly lump or throw the white wings and doves together, so that even if they are a different species of birds, that thirty-five would be the limit applied to both species taken together.

However, I find that the Century Dictionary, Ten Volume Edition, in volume 8, page 6913, contains the following: White winged doves—a pigeon found in the southwestern parts of the United States, with a broad oblique wing-bar—so it seems that there is no doubt or perplexity whatever arising in the matter. Only thirty-five white wings or doves, as the Statute plainly says, can be killed by one huntsman in one day, and not seventy, as the sportsmen might seek to interpret it. The killing of above thirty-five "white wings or doves" is a violation of the Game Law of Arizona.

Very truly yours,

WILEY E. JONES,
Attorney General.

Mines. State Mine Inspector Has Right To Order Connection Between Contiguous Mines.

October 4, 1915.

Hon. G. H. Bolin,
State Mine Inspector,
Phoenix, Arizona.

Dear Sir:

Your letter of October 4th received, in which you ask if the Mining

Code gives you authority, as State Inspector of Mines, to order a connection between mines operated by different companies for the purpose of ingress and egress in case of accident, or making conditions better for the health and safety of employees.

You are advised that Paragraphs 4073 and 4075 provide that mines shall have means of egress and ingress in more than one place, and that these two Sections mention contiguous mines being connected for that purpose. It seems that the intent of the law is to provide for the health and safety of the employees of mines, and it is incumbent upon you as State Mine Inspector to make such orders as would be necessary in providing for the health and safety of men employed in the mines of Arizona.

It is, therefore, my opinion that you have power to order connections made between mines operated by different companies when necessary for the purposes above mentioned when this can be done without damage or inconvenience to the different mining companies.

Very truly yours,

GEORGE W. HARBEN,

Asst. Attorney General

State Fair Commission. Minutes of. May be Kept in Loose Leaf Form.

May 19, 1915.

Hon. T. D. Shaughnessey, Secretary
Arizona State Fair Commission,
Phoenix, Arizona

Dear Sir:

Your letter asking this department whether or not the minutes of the meetings of the State Fair Commission may be kept in loose leaf ledger form, has been received. In reply thereto will say that I know of no provision in the law against the keeping of your minutes in loose leaf ledger form, or any other form that you might deem convenient or desirable.

You also ask if the several pages of minutes of any session of the State Fair Commission, if riveted together with brass rivets or any similar device, and the signatures of the President and Secretary affixed, would be considered a legal record and admissible as evidence in a court of record. You are advised that I know of no provision of the law or rule of evidence whereby minutes kept bound together as you have suggested, would not be admissible as evidence in our Courts.

I am therefore of the opinion that this system of keeping your records

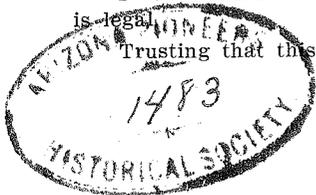
is legal. Trusting that this will give you the desired information, I am,

Respectfully yours,

GEORGE W. HARBEN,

Asst. Attorney General.

March 16, 1915.



State Fair Commissioner. Appointment of by Governor. Must File New Bond.

Hon. T. D. Shaughnessey,
Secretary State Fair Commission,
Phoenix, Arizona.

Dear Sir:

Your letter of March 15 has been received. You state that Hon. Homer R. Wood of Prescott, Arizona, was recently nominated by Governor George W. P. Hunt for the office of member of the State Fair Commission, and that he immediately gave bond and qualified according to law, and that the said nomination was then forwarded to the State Senate for confirmation and the Senate refused to confirm the same; whereupon the Governor immediately after the refusal of the Senate to confirm said nomination, appointed Mr. Wood a member of the State Fair Commission, and you now ask the opinion of this department as to whether or not it will be necessary for Mr. Wood to file new bond and qualify again.

In reply to your inquiry, I would state that it is the opinion of this department that since the Governor has made a new appointment, it will be necessary in order to obviate any doubt in the future as to the legality of his official acts, for him to file a new bond and oath of office to correspond with the beginning of his new term.

Very truly yours,
GEORGE W. HARBEN,
Asst Attorney General

Payment. Publication of Statutes for Various State Departments Is Not a Charge Against Department of State Librarian.

August 26, 1915.

Hon. Con P. Cronin,
State Librarian,
Phoenix, Arizona.

Dear Sir:

I am just in receipt of your letter yesterday, asking an opinion with reference to subdivision D, Section 6, Chapter 62, Session Laws of the Regular Session 1915, and authority for the payment by your department for publication of the various Statutes that may be ordered by the head of any department of the State.

I beg leave to state in response thereto, that it most certainly seems that the subdivision does not contemplate that you or your department should pay for the same at all. That Act contemplates that a man of judgment and experience should hold the office of State Librarian, and that he merely supervises and attends to the preparation, printing and binding of such publications. That particular duty is one devolving upon the librarian, but

he is not to pay for the work out of any of his funds by any means. Furthermore, I know of no appropriation for the librarian to pay for the publication required by your department.

Very truly yours,

WILEY E. JONES,
Attorney General,

Sentence. Maximum and Minimum In Indeterminate Defined.

Phoenix, Arizona,
July 12, 1915.

Hon. R. B. Sims, Supt.,
Arizona State Prison,
Florence, Arizona.

Dear Sir:

Having before me yours of the 9th instant, referring again to the commitment under which you have in custody W. S. Hogge, I would say that I am sure the legal construction is that where a minimum is fixed in the sentence and order of commitment, without any mention of the maximum time in such case, the maximum would be automatically fixed by the law; and vice versa, if a maximum should be fixed within the statutory limitation, without any reference to the minimum time, the maximum so fixed and the statutory minimum would be the indeterminate sentence under the law, which would be your guide.

I concur with the opinion of my predecessor, Mr. Bullard, that in figuring "good time" it is figured upon the maximum, and deducted from the maximum and not from the minimum. In fact the indeterminate sentence law is a "good time" law in itself, and permits the prisoner to build his own good fortune or bad fortune, and largely is intended, in effect at least, to supercede the former "good time" law.

Very respectfully,

WILEY E. JONES,
Attorney General,

Poisons. Certain Labeled. Can Be Sold By Others Than Registered Pharmacists.

June 6, 1915.

Hon. A. G. Hulett,
Secretary Arizona State Board of Pharmacy,
Phoenix, Arizona.

Dear Sir:

Your letter of May 15th received, in which you ask this department whether or not sales of cyanide of potassium and London Purple (London Purple being an arsenic preparation) can be made by any other than regis-

tered pharmacists of this State, and in reply thereto will say that Paragraph 4811 of the Revised Statutes of Arizona, 1913, provides the manner in which the sale of all poisons is to be made, but the same Paragraph also contains a proviso that"

"***ant poisons, squirrel poisons, gopher poisons and arsenical poisons for orchard spraying when labeled with the official poison labels shall be exempt from the special provisions concerning the sale of those poisons listed in Schedule A of this Chapter"

Paragraph 4812 of the Revised Statutes of Arizona, 1913, provides how these poisons shall be labeled. I am therefore of the opinion that poisons sold only for the purposes above mentioned, if labeled in accordance with the law as provided in Paragraph 4812, can be sold by other than registered pharmacists.

Hoping this will give you the desired information, I am,

Very respectfully,

GEORGE W. HARBEN,

Asst. Attorney General

Expenses of Member of University in Attendance at Annual Conference on Taxation is not Legal Charge Against the State.

January 26, 1915.

Honorable Wm. J. Bryan, Jr.,
Secretary Board of Regents, State University,
Tucson, Arizona.

Dear Mr. Bryan:

Yours of the 19th instant received, and accumulated business has caused delay in answering it.

In reference to the expenses incurred by Dr. Chandler in attendance of the Eighth Annual Conference on Taxation, which was held at Denver from September 8th to 11th, 1914, as one of the representatives of this State, by appointment of the Governor, I am unable to find any provision of law authorizing payment by the State for such expenses. As it was not an expense incurred in University work, I do not see how it can be paid out of funds relating to the University, neither do I know of any provision on the matter of taxation or the State Tax Commission which authorizes payment therefor.

Not being able to find legal authority anywhere for such payment, I am compelled reluctantly to so state to you.

With personal regards, I remain,

Very truly yours,

WILEY E. JONES,

Attorney General,

Contracts. Industrial Act Declares Construction by the State Shall Be Done by Day's Pay.

January 23, 1915.

Hon. Frank H. Hereford, Chancellor,
Board of Regents, University of Arizona,
Tucson, Arizona.

Dear Sir:

IN RE, AGRICULTURAL BUILDING

Yours of the 19th instant, at hand calling attention to your former letter of the 9th inst., in which you enclosed a communication from Messrs. Britow & Lyman, making inquiry as to the method of carrying on public work under the initiated act to Promote the Public Welfare, usually mentioned as the "Industrial Act."

Section 4 of the Act in question recites "All work on all state buildings, dams, reservoirs, flumes, water plants, gas plants and all other State construction shall be done by day's pay by the State, and the system of letting contracts by the State is hereby abolished." The Act took effect on proclamation of the Governor, December 14, 1914.

The construction of this office upon said Act has been uniform, as there appears nothing in said Section to be doubtful or misleading and future contracts therein mentioned, of course, are prohibited. As to advising in regard to the method of placing future orders for work, I can, of course, express no opinion, as that question calls for no legal opinion but must be answered by the good business judgment of those carrying on public work.

Respectfully yours,

WILEY E. JONES,
Attorney General,

Dental Examinations. President of Board May Call Special Examinations by Direction of Majority of the Board.

February 6, 1915

Dr. John R. Lentz, President
Arizona Board of Dental Examiners,
Phoenix, Arizona.

Dear Sir:

For this department I desire to acknowledge receipt of your communication of the 22d ult., relating to the holding of a special examination for the purpose of examining applicants to practice the profession of dentistry within this state.

You state that, contrary to the usual rule of the Board of Dental Examiners, you desire to hold a special examination in view of the fact that two unsuccessful applicants have agreed to pay the expenses of such

examination. You submit six interrogatories, which I shall state and answer in the order named in your communication. They are as follows:

1. Have I, as President, authority to call such a meeting?

You have with the direction of a majority of the Board of Dental Examiners

2. Who must be notified of the meeting?

All persons who have their application on file with the Secretary of State fifteen days previous to the date of holding the examination, unless the Board feels disposed to extend the examination to applicants who have filed their application subsequent to a time of fifteen days before the date of holding the examination. The privilege of extending the examination to this latter class of candidates is optional with the Board in my opinion, for the reason that in conducting a dental examination it is necessary for the Board to know in advance the number of applicants who intend to take the examination, in order to provide facilities therefor.

3. Must candidates who have failed to pass one examination make a new application before they are entitled to the free examination?

In my opinion their former application would suffice

4. Must candidates who have failed and who have not had one free examination be notified of the meeting without first making a new application?

Yes.

5. If a meeting date is set, must applications be considered and candidates examined when the application is filed subsequent to fifteen days before the meeting?

This interrogatory is sufficiently answered by my answer to interrogatory No. 2.

6. In what way may we legally have the expenses of this meeting paid by the candidates offering to pay it?

I observe that your communication states that two unsuccessful candidates have offered to pay the costs of the contemplated examination. This can be done by requiring such applicants to pay to the Board of Dental Examiners the expense of conducting the special examination and the Board, in turn, paying the amount unto the State Treasurer, who can then honor the Auditor's warrants necessary for the expenses of the examination. I presume, however, that the two unsuccessful candidates who desire to pay the expenses of this examination would hesitate to pay it if other applicants are to also take the examination. This, however, is a matter to be decided by the applicants themselves, but should they desire not to pay the expenses of the examination, then the Board of Dental Examiners has the authority of law for conducting the examination, notwithstanding this fact and to have paid the expenses thereof out of the moneys in the Treasury of the State.

Yours very respectfully,

LESLIE C. HARDY

Asst. Attorney General.

Tax Commission. Being Created by Legislature, It May Be Abolished by Legislative Action.

Phoenix, Arizona,
February 18, 1915.

To the Honorable State Senate,
of the Second State Legislature of Arizona,
Phoenix, Arizona.

Gentlemen:

In responding to your request of the 15th inst., asking my opinion upon Senate Bill No. 48, and particularly that portion thereof relative to the abolishment of the Tax Commission; I have the honor to state:

The Tax Commission was created by legislative act and not by the State Constitution, and it has been a long established rule in America, sustained by a long line of decisions of State Courts and of the United States Courts, that an office created by an act of the Legislature may be abolished in like manner, and the term may be shortened by general legislation in the absence of any special provision of the Constitution forbidding it. There is nothing in our State Constitution forbidding the passage of an act abolishing such Commission.

Very respectfully

WILEY E. JONES,
Attorney General,

Appraisement of Improvements Belonging to Occupants of State Lands.

September 24, 1915.

Messrs. W. A. Moody,
S. Y. Barkley,
Charles Peterson,
Appraisers State Land Department, Phoenix

Gentlemen:

In answer to your letter of recent date, calling for my opinion upon the question of the appraisement of "improvements placed upon school lands by an occupant or his successor in interest, at a time when he was occupying the same as a squatter, and was paying no rental to the Territory of Arizona, or to be more explicit, prior to the Congressional Act of March 7, 1896, and the Act of the Arizona Legislature pursuant thereto, approved, March 18, 1897, and designated in the State Constitution as Title 65 (Civil Code of Arizona 1901," I beg leave to answer as follows:

Title 65 above referred to, Section 4 thereof (Paragraph 4035, Revised Statutes 1901) says:

"Actual and bona fide settlers or occupants who have placed improvements on school or university lands, shall have preferred right to lease the lands whereon such settlement has been made, etc."

The paragraph following, 4036, of said Act, reads:

"Improvements within the meaning of this Title (No. 65) shall be held to mean anything permanent in character, the result of labor or capital expended on such land in its reclamation or development, and the appropriation of water thereon which has enhanced the value of the same beyond what said land would be worth had it been permitted to remain in its original state."

The paragraph following, 4037, provides for the appraisalment of the improvements of the occupant of said lands "refusing or not wishing to lease said lands," by three disinterested persons, appointed by the Board of Supervisors of the County, in the manner as provided by said Paragraph. Thus it will be seen that the appraisalment referred to means the improvements of the "actual and bona fide settlers or occupants who have placed improvements on school or university lands" as expressed in Paragraph 4035 above mentioned, and unquestionably refers to those having improvements upon the school or university lands at the date of the passage of the Arizona Legislative Act, approved March 18, 1897, and known as Title 65 of the Civil Code of 1901.

That such is the proper interpretation of these Sections is borne out by Paragraph 4035 of said Title 65, being Section XXII of said Act March 18, 1897, which reads as follows:

"Anyone making permanent improvements on school or university lands after leasing the same, shall have them appraised, be allowed compensation therefor at the expiration of lease; or anyone having to surrender leased lands before expiration of lease, shall be entitled to all the benefits of this section."

Thus it appears plain that while the occupant of school lands prior to the passage of said Act of March 18, 1897, had no vested right whatever, the passage of said Act by the Arizona Legislature did give him a right at that time, which had become an actual vested right under the law.

Now, however, there is another matter which must be dealt with and kept steadily in mind by the appraisers in performing their duty. The Act of Congress, approved September 9, 1850, creating the territory of New Mexico (of which the present State of Arizona then formed a part), reads at Section 15 as follows:

"And be it further enacted that when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory, shall be and the same are hereby reserved for the purpose of being applied to schools in said territory and in the states and territories hereafter to be erected out of the same."

Thus it will be seen that these lands were reserved over sixty-five years ago, for future congressional donation to the State of Arizona, and anyone settling upon, occupying or possessing any of such lands, acquired

no rights thereto as against the future State of Arizona. As early as 1866, the right to the use of water upon mining and agricultural lands was recognized by Act of Congress, and has since been recognized by all of the western states, the use of water mentioned, to be applied to the lands in possession of the occupant, and a right to the use of water could only be created by its application to a beneficial use upon the lands to which it was to be applied. Without the existence of the lands, no right could be created for the beneficial use of water thereon. As the misletoe springs from the parent tree, so does the right to the use of water spring from the land to which such beneficial use should be applied by the occupant. Therefore the land owned by the State must be seriously considered as a prime factor in the creation of any right to the use of the water upon any such lands within the State. The very location of the lands of the State, if located advantageously for the use of water, near any of the streams of the State, from which the water could be diverted for practical and beneficial use upon such lands, is a valuable asset of the State.

Therefore, you should consider in justice to the State and to the occupant of the lands of the State, these matters to which I call your attention, for the rights of both the occupant and the State should be respected, and alike protected, and in appraising the improvements of the occupant of school land belonging to the State, you should also appraise the valuable asset of the State, which arises by such lands possessed by Arizona as may lie adjacent to the public streams and susceptible of irrigation.

I have carefully examined the condition of the public lands susceptible of irrigation and those now under irrigation belonging to the State of Arizona, and in my zeal as an official to protect the interests of the State, I do not for one moment desire to lose sight of the interests of those who are occupying these valuable lands of the State. I know that you have great difficulties ahead of you, and intricate problems to solve, and perplexing matters to adjust, but I hope that in adjusting all these matters that come before you in the performance of your duties as appraisers of the improvements of the occupant, and the lands of the State, and all the property that belongs thereto, as appurtenances to such land for appraisalment, that your action may result in justice and equity being done to all interests involved.

Also, the improvements made by the occupant of the land as mentioned in Paragraph 4036 of said Title 65, which have enhanced the value of the land beyond what it would be worth had it been permitted to remain in its original state, shall be appraised as the property of the occupant, but you must be careful to note that the Paragraph quoted does not say that the enhanced value of the land caused by such improvements, is the property of the occupant; the enhanced value of the land is the property of the State, and such enhanced value shall be appraised as the property of the State up to the actual value of the land at the present time. The paragraph quoted contemplates that such improvements might have enhanced in the past or may enhance in the future, the value of the land, but that enhance-

ment is the property of the State, not the property of the occupant. Section 21 of the Public Land Code, recently enacted, and under which you were appointed, provides for the appraisement of the improvements and the land along the lines which I have herein suggested.

There may be matters involved during the course of your labors and mine, wherein we may be compelled to attend before the courts, but I hope that your good judgment will dictate such action upon your part as will render it unnecessary for me as the legal officer of the State, to go into the courts in these matters for the protection of the interests of the State; and I also hope that it may be such as will satisfy the occupants of the state lands and render it unnecessary alike for them to resort to the courts.

We may encounter many things that will be unpleasant during our labors; we may be besieged by many persons who have no official responsibility to bear, holding views directly opposite to those which each of us may bear, and whose interests may seek to swerve us from the path of duty. We cannot please all; neither should we expect nor attempt to do so. Let us perform our duties under our oaths as our best judgment gives us to see it, and satisfy our own consciences with which each of us must abide and journey through life.

Very truly yours,

WILEY E. JONES,
Attorney General,

Legislative Power. Under Call for Special Session Legislative Action is Free Upon All Subjects Mentioned Therein.

Hon. O. S. Stapley, Chairman
Appropriation Committee, State Senate,
Phoenix, Arizona.

Phoenix, Arizona,
May 4, 1915.

Dear Sir:

I have before me your inquiry asking if the legislature has power under the Governor's call, to make an appropriation to bear the expense of extending an electric power line from Sacaton or Blackwater, Arizona, to the Arizona State Prison, for the use of said power at the State Prison.

The State Prison is a state institution, and the Governor's call is for the purpose "to enact a general appropriation bill providing appropriations of money for the different departments of the State, for state institutions," etc. Therefore, answering the question propounded to me by you, on behalf of the Senate Committee upon Appropriations, I will say that the legislature has such power under the Governor's call.

The matter is entirely within the discretion and judgment of the legislature.

Respectfully yours,

WILEY E. JONES,
Attorney General,

Prohibition. Enforcement.

GENERAL LETTER TO ALL COUNTY ATTORNEYS OF ARIZONA DIRECTING ENFORCEMENT OF THE PROHIBITION AMENDMENT ADOPTED IN 1914.

Phoenix, Arizona,

December 26, 1914.

To the County Attorney,
Hon. John F. Ross,
Tombstone, Arizona.

Dear Sir:

On the 24th inst., the Federal Court of three judges, in Los Angeles, California, denied the application for an injunction against the so-called "prohibition amendment" to our State Constitution in the several suits wherein, first, the Adams Hotel Company, second Melzer Brothers Company, third, Thomas W. Connolly, and fourth, Owl Drug & Candy Company were plaintiffs respectively against myself, as Attorney General, and the sheriffs and county attorneys of the State.

In denying each application for said injunction, the court, in all cases, refused to grant a stay and nothing remains but for you, officially, and myself, to treat the constitutional amendment as self-executing and to enforce it accordingly on and after January 1st, 1915.

This letter goes to all County Attorneys of the State. You can give such notice to those engaged in the liquor traffic in your county, and to all others interested, as your good judgment suggests. You and your successor in office will, no doubt, fulfill the official obligations imposed upon you by the law under your official oath until restrained, if at all, by some action of a competent court in the future. No such restraint is now imposed upon me or any other law officer of the State of Arizona.

Following the rule laid down in the case of Brookner vs. State, 14 Ariz. 546, you will observe that appropriate action for the violation of said amendment is in the Superior Court of your County by indictment through the grand jury, or by information filed by you after preliminary examination in the Justice' Court. Also, I would refer you to Ex Parte Cain, 93 Pac. 974, and State vs. Hooker, 98 Pac. 964, the two later being Oklahoma cases.

Respectfully yours,

WILEY E. JONES,

Attorney General.

Highways. County Engineers Have Charge of Location and Construction. Public Highways Must be Located and Recorded.

Phoenix, Arizona,
May 10, 1915.

Gilbert E. Greer,
County Attorney,
St. Johns, Arizona.

Dear Sir:

Your letter of May 7th received, containing a petition to the Board of Supervisors of Apache County, calling for the appointment of three men named therein as Road Commissioners, who are to handle all the road construction under your recent bond issue.

You state that one of these Commissioners named in said petition is now a member of the Board of Supervisors. You ask whether or not this Commission can act in the laying out, construction, building of roads and expending the county funds of your county.

You state that Paragraph 2418, Section 4 of the Revised Statutes of Arizona seems to be the only authority that you are able to find for the appointment of such Board. You also state that Paragraph 2418 seems to conflict with Paragraph 2622.

It is the opinion of this department that your holding is correct, for the reason that the Board of Supervisors, under Paragraph 2418, Section 4, are only empowered to lay out, maintain, control and manage public roads, turnpikes, ferries and bridges within the county, and levy such taxes therefor as authorized by law.

Paragraph 2622 seems to have placed a restriction upon the Board of Supervisors, and provides that the county engineer under the direction of the Board of Supervisors, shall have charge of the locating and construction of the road work for the county. Paragraph 2621 provides that the county engineer shall be the custodian of all the records and property heretofore pertaining to the offices of county surveyor and county road superintendent, and all equipment used in the prosecution of engineering matters for and in behalf of the county.

This department cannot see that the Commission mentioned by you has any legal standing before the Board of Supervisors, clothed with authority to supervise the expenditure of public moneys. Of course, the county engineer would have power to appoint all assistants necessary for the proper prosecution of his work, but it seems to be obligatory upon you to appoint an engineer, in accordance with the provisions of our law, instead of attempting to appoint a commission clothing it with the authority by law vested in the county engineer.

You also ask whether or not any road which has not been surveyed and platted, but which has been used for a number of years as a public highway, can be closed as against the county.

I would refer you to Paragraph 5055 of the Revised Statutes, which provides that all roads and highways in the State which have been located as public highways, by order of any of the Boards of Supervisors of the several counties, and all roads in public use, which have been recorded as public highways, or which may be recorded by authority of any Board of Supervisors, are hereby declared to be public highways.

I know of no authority in law for holding a road to be a public highway, unless it has been located or recorded as provided by law. I would suggest that if you have any doubt about any of your public highways, that you immediately take the matter up with the Board of Supervisors, and have all your roads located or recorded in compliance with the provisions of law.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Board of Supervisors. Member of. Cannot Accept Employment from Board.

Phoenix, Arizona,
March 29, 1915.

Hon. Gilbert E. Greer,
County Attorney,
St Johns, Arizona

Dear Sir:

I have before me your inquiry of the 12th inst., but have delayed answering the same on account of the accumulation of business upon our desks in this office.

You are correct in holding that the Commission has no legal standing before the Board, clothed with authority to supervise the expenditures of public money, as it could only act in keeping the accounts and exercise supervision over work subject to such expenditures as are approved by the Board of Supervisors.

I will refer you to Paragraph 173, 174 and 175, page 283, and Paragraph 2437, page 853, of the Revised Statutes of Arizona, 1913, which render void any contract made between the Board of Supervisors with any member of their body during his term of office. I think this forbids a contract of employment for daily services, as well as any other form of contract, that is, his claim for compensation for such services could not be legally allowed by the Board.

I understand that the member of the Board of Supervisors to whom you refer, is very competent and could be of service to the County in the manner desired by the Board, but the payment of his claim for such services seems to be forbidden by law.

Respectfully yours,

WILEY E. JONES,
Attorney General,

Hours of Labor in Emergency. Boleta, Illegal in Arizona.

Phoenix, Arizona,

August 21, 1915.

Hon. Gilbert E. Greer,
County Attorney,
St. Johns, Arizona

Dear Sir:

Your letter of August 19th, addressed to Mr. Harben, my assistant has been duly received, and I have noted its contents. From what Mr. Cobb informs me in reference to the complaint about certain men working upon the road or bridge in Apache County, for more than eight hours a day, I think you are right in stating that in whatever cases it may have been, it was only in cases of emergency, which the law permits, and therefore would not be a violation of the law.

But according to your statement of the facts in reference to the issuance of "boletos," that is, the aluminum or metal checks representing so much cash, as set forth in your letter, you certainly state facts which constitute a plain and direct violation of the criminal law of the State, under Section 709 Penal Code of Arizona, 1913. The company issuing those checks must unquestionably redeem them in cash, and if the mercantile company refuses to redeem them in cash, then most certainly the company is liable for a violation of the Statute. If the sheep or cattle man is knowingly and willfully a party to the transaction and to the discount mentioned in your letter, he is liable along with the mercantile company. But the transaction including the two parties, that is, the mercantile company and the employer of the men, acting together—both would be criminally liable for violation of the Statute, and the joint action of the two, as separate parties carrying on the transaction, would not render either guiltless, but both would be liable.

I state this plainly in order that both the company and the stock man employing the laborer may know the position taken by this office, so that they may avoid such liability in the future. I desire that this law be enforced without hesitation. Let the parties know that it is a violation. Kindly let me hear from you at your earliest convenience.

Very truly yours,

WILEY E. JONES,
Attorney General.

Prohibition. Clause "Under Any Pretense" Was Not Meant to Exempt "Personal Use."

Phoenix, Arizona,
September 8, 1915

Norman J. Johnson, Esq.,
County Attorney,
Globe, Arizona

Dear Sir:

Answering your letter of the 6th inst., I do not think that any unprejudiced person can hold that the words "under any pretense," when properly interpreted, mean "not for personal use," as there is no possible connection between the two, and if that phrase in the first clause of the constitutional amendment shields the criminal who openly and boldly violates the law and not under any pretense, then he can introduce liquors openly in the State and declare openly his purpose for which he has introduced them, and carry out the said purpose. Then, under your suggestions, there would be no violation of the law. Of course no court in the state can possibly so hold, and thus defeat the law.

This question of personal use was not urged in January, nor February, nor March, nor April, nor seriously by anyone during all these months, until the supply of intoxicating liquor began to be very low in the State. To place the words "not for personal use" in the prohibition amendment in lieu of "under any pretence" renders the law largely fruitless for the declaration of the intent of the importer defeats all prosecutions.

Very truly yours,

WILEY E. JONES,
Attorney General.

Prohibitory Amendment. Cider Cannot Be Sold or Transported When It Carries Intoxicating Content.

Phoenix, Arizona,
July 13, 1915.

Hon. P. W. O'Sullivan,
County Attorney,
Prescott, Arizona.

My Dear Sir:

I am in receipt of your letter of the 10th inst., making inquiry about cider and the sale of the same under the prohibitory amendment. Of course you realize that there is cider, and then again there is cider. The specially prepared ciders, under various names, one of which is bull dog cider, of course I have to be carefully watching, as some of them run up to nearly ten per cent alcohol, and are of the vilest and most dangerous character; sometimes it is denatured alcohol, and then it is said to be ether. Of course all such should be frowned upon and prohibited.

As to the plain old fashioned cider, I think that that should not be forbidden at all, except when it is kept on hand long enough to become so hard that complaint is made that it is intoxicating. Then of course the authorities are obliged to act. Anything and everything that is intoxicating is prohibited, of course, but as to cider, each case will have to be judged on the merits of the case, taking into consideration the evidence showing the intent of the party to evade or violate the prohibition amendment.

Very truly yours,

WILEY E. JONES,
Attorney General.

County Classification. Can Be Changed Only By Legislative Action.

Phoenix, Arizona,
October 30, 1915.

Hon. S. F. Noon,
County Attorney,
Nogales, Arizona.

Dear Sir:

For this department I desire to acknowledge receipt of your communication of the 26th inst., inquiring the procedure necessary for Santa Cruz County to advance from a county of the ninth class to a county of the eighth class. From an investigation of the Statutes, I observe that Santa Cruz County is, by section 3226 of the Civil Code, 1913, declared and determined to have a population of 7,000, which by Paragraph 3227 of the same code, makes it a county of the ninth class. There is no provision of law which provides that a county may automatically progress or retrogress in respect of classification; on the other hand, Santa Cruz County, as all other counties, is, by Paragraph 3226 and 3227, supra, given a definite classification, and until future legislative action, it must remain a county of the ninth class, and therefore be governed by the provision of Section 3236 of the Civil Code, 1913.

Of course you are aware that Section 3236 of the Civil Code, 1913, was amended by Chapter 7 of the Laws of the Second Special Session of the Second State Legislature.

Respectfully yours,

LESLIE C. HARDY,
Asst. Attorney General.

Misdemeanor Sentence. Imprisonment in Penitentiary Erroneous. Jail Sentence Proper.

Phoenix, Arizona,
April 26, 1915.

Hon. S. F. Noon,
County Attorney,
Nogales, Arizona.

Dear Sir:

I am in receipt of yours of the 23d inst., and glad to hear of your activity in your efforts for the enforcement of the prohibition amendment.

In this connection, however, my attention has been called to the case of the State of Arizona vs Simon Acosta, sentenced on the 19th inst., to a term of one year in the prison at Florence, for a violation of the prohibition amendment in Santa Cruz County, a copy of the commitment being now before me, having been sent to me by the State Prison authorities.

This is an erroneous sentence. Under the holdings, only a jail sentence can be imposed, even though the limit be fixed at two years, as the constitutional amendment declares its violation to be a misdemeanor. Have all jail sentences hereafter be imprisonment in the county jail, and not in the State Prison.

Very respectfully yours,

WILEY E JONES,
Attorney General.

Jurisdiction. Crime Committed on "The Strip," Formerly Part of Indian Reservation, in Jurisdiction of Courts of the State.

Phoenix, Arizona,
May 18, 1915.

John McGowan, Esq.,
County Attorney,
Safford, Arizona.

Dear Sir:

I find upon my table, amid a mass of correspondence, a letter from you of the 24th ult., which I have no recollection of having answered. It makes inquiry about the question of jurisdiction in the case of a felonious homicide committed upon the "strip" near Stanley, Arizona.

I remember well when the "strip" was segregated from the reservation, which I think was about 1898, when it became effective, the act having been passed a short time prior thereto. The exact language of the act I am not familiar with, but we certainly have exercised jurisdiction in the state courts of offenses committed upon the "strip" ever since its segregation.

I don't think there is any doubt upon the subject, and would certainly proceed in the Superior Court. In the Kibbey and Hillpott murders, com-

mitted by Stewart and Goodwin, those were on the Indian Reservation undoubtedly, and of course the jurisdiction was in the Federal courts, but the "strip" has not been a portion of the San Carlos Reservation since its segregation in 1898. The act, so far as I remembered, changed the boundaries of the reservation, placing the "strip" outside of such boundaries.

Very truly yours,

WILEY E. JONES,
Attorney General.

**Prohibition Amendment. No Exceptions Made for Druggists,
Physicians or Others.**

Phoenix, Arizona,
January 4, 1915.

Honorable C. H. Jordan,
County Attorney Navajo County,
Holbrook, Arizona.

Dear Sir:

Your letter of January 7th received, in which you ask for an opinion regarding the prohibition amendment.

In reply will say that liquors cannot be introduced into the State of Arizona by drug stores for use on doctors' prescriptions for medical purposes. Neither can the so-called "two per cent beer" be sold by soft drink stands for the reason that the prohibition amendment, now in force, states very plainly that no person can introduce into the State of Arizona any ardent spirits, ale, beer, wine or intoxicating liquors of any kind. You will see thereby that no exceptions are made in favor of the druggists, physicians, sellers of soft drinks, or any other person, and that no per cent is mentioned in this Act, but is specifically mentions ale, beer or intoxicating liquors.

Very truly yours,

^c
GEORGE W. HARBEN,
Asst. Attorney General.

**Taxation. Indians Residing on Navajo Extension Should Be
Taxed By State Authorities.**

Phoenix, Arizona,
January 13, 1915

Mr. C. H. Jordan,
County Attorney Navajo County,
Holbrook, Arizona.

Dear Sir:

In response to your communication of the 11th inst., I desire to inform you that the opinion of this department heretofore rendered on June 11th.

1914, respecting the taxation of Indians residing upon the government extension of the Navajo Reservation has in no ways been changed

If the same conditions prevail upon the Government Extension of the Navajo Indian Reservation as they did at the time of the rendition of that opinion, then there is no reason why the Indians residing upon this reservation should not be taxed by the authorities of the State of Arizona.

Very truly yours,

LESLIE C. HARDY,
Asst Attorney General.

Billiard Tables. Also Include Pool Tables.

Phoenix, Arizona,
January 28, 1915.

Honorable C. H. Jordan,
County Attorney,
Holbrook, Arizona.

Dear Sir:

Your letter of January 27th received, in which you ask for an opinion from this office as to whether or not the term "billiard tables", as mentioned in Paragraph 3590 of the Revised Statutes of Arizona 1913 also includes "pool tables"

You are advised that the opinion of this office is that the term "billiard tables," as used in our law, would also include "pool tables", as both games might easily be played upon the same table and it is evidently the intent of the law to include both pool and billiard tables under the term of "billiard tables" in the section of law above referred to. See Sykes vs. State, 67 Ala. 877.

Yours very truly,

GEORGE W. HARBEN,
Asst. Attorney General.

Liquor Can Be Shipped on Military Reservations.

Phoenix, Arizona,
March 27. 1915.

Honorable Clarence H. Jordan,
County Attorney,
Holbrook, Arizona.

Dear Sir:

Answering your inquiry of the 25th inst., in reference to the shipment of liquor consigned to parties residing within the Fort Apache Military Reservation, from the City of Chicago, or other outside points, I would refer you

to Paragraph 4636, page 1499 of the Revised Statutes of Arizona, 1913, which declares that exclusive jurisdiction of Fort Apache Military Reservation and other military reservations therein mentioned, is ceded to the United States, for all purposes except the mere right to serve civil and criminal process in the courts of this State within said military reservations.

Said law, while being merely statutory, is in accordance with Subdivision 17 of Section 8, Article 1, of the Constitution of the United States, which is the supreme law of the land, and is binding upon the State of Arizona.

From the foregoing you will see that such a shipment is just the same as a trans-state shipment, that is, a shipment from a point without our jurisdiction, across the State of Arizona, or a portion of said State, to another point without the jurisdiction of the State.

I think this will be plain to you.

Respectfully yours,

WILEY E. JONES,

Attorney General

Precinct Offices are Public Offices and Entitled to Expenses Incurred.

Phoenix, Arizona,

February 4, 1915.

Honorable C. H. Jordan,
County Attorney,
Holbrook, Arizona.

Dear Sir:

Your letter of the 1st inst received, in which you ask if it is legal for the Board of Supervisors to pay expenses incurred by precinct officers in giving surety bonds

In reply thereto, will say that a Precinct officer is a public officer and as such is entitled to be reimbursed for expenses incurred by him in giving surety bonds as official expenses of his office, to be paid out of the fund from which such expenses are paid. Subject, however, to limitations prescribed in Paragraph 2393 of the Revised Statutes of Arizona, 1913.

Yours very respectfully,

GEORGE W. HARBEN,

Asst. Attorney General.

Jurisdiction: Justice of Peace has None. Violation of Prohibition Law Except as Committing Magistrates.

Phoenix, Arizona,
March 26, 1915

Clarence H. Jordan, Esq.,
County Attorney,
Holbrook, Arizona.

Dear Sir:

Answering your inquiry of yesterday, which has just been received, I would state that the jurisdiction of all violations of the prohibition amendment, and the authority, if any, to settle the same, is in the Superior Court of the State of Arizona. The Justice only has authority to sit as a committing magistrate, and to hold the defendant to answer before the Superior Court.

I have so instructed every County Attorney of the State, and would cite you to the case of Brookner Co vs State (14 Arizona 546). Even the legislature has no right or authority to confer jurisdiction upon the Justice of the Peace, further than as a mere committing magistrate

Very truly yours,

WILEY E. JONES,
Attorney General.

Lake Mary, Private Reservoir. No Violation of State Game Law to Fish Therein.

January 19, 1915

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

In compliance with your verbal request made a few days ago regarding the right of persons to fish without license in Lake Mary in Coconino County, will say that if I remember the facts correctly, as stated to me by you, they are: That Lake Mary is not a natural but an artificial lake built and maintained by private individuals, covering both private and government land, the fish having been placed in the lake by private individuals.

In that event, the water would belong to the private individuals who built and are maintaining the said Lake or reservoir. Provided, they have complied with the law regarding the appropriation of water and they would own that element in which alone the fish could exist. Ownership of water may be separate from the ownership of soil; for example, dams and reservoirs built upon land belonging to the United States Government, where this is done the right of fishing goes with the ownership of the water. See

Turner vs. Selectmen, 61 Conn. 175; Lee vs. Mallard, 116 Ga. 18; Cobb vs. Davenport, 32 N. J. L. 369.

From the above statement of facts, my opinion is that persons fishing in said lake would be excepted from the provisions of Title XVIII P. C. R. S. of Arizona, 1913 relating to the preservation of game and fish, under Paragraph 688 of the Penal Code, 1913, which provides that said title shall not apply to the taking of fish from private artificial ponds or reservoirs with the permission of the owner.

I think this is a correct interpretation of the above statement of facts, but if I have misunderstood you I shall be glad to take up the matter with you again if you will write me

Assuring you of my willingness to serve you at any time, I am

Very truly yours,

GEORGE W. HARBEN,

Asst. Attorney General.

Bonds, When No Sale Made as Advertised, Must be Readvertised.

Phoenix, Arizona,

January 28, 1915.

Hon. Fred W. Nelson,
County Attorney,
St. Johns, Arizona

Dear Sir:

Your letter of January 13th received, in which you ask for an opinion regarding the right of the Board of Supervisors of Apache County to dispose of County Road bonds after the same have been published according to law and no bids offered on the date set by the Board of Supervisors in said publication.

I will refer you to Paragraph 5276, Title 52, Revised Statutes of Arizona, 1913. From an examination of said paragraph, you will find that notice of sealed proposals should be received by the Board of Supervisors on the date and hour named in their order of publication. I do not think it would be legal to sell these bonds at private sale, but think the proper way would be for a readvertisement, and sale, as if no publication had heretofore been made.

Very truly yours,

GEO. W. HARBEN,

Asst. Attorney General.

Contract System Abolished.

Phoenix, Arizona,
August 24, 1915.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

I notice in the morning Republican of this city an advertisement calling for sealed proposals or bids to be submitted on or before noon of the 31st day of August, 1915, for the construction of a dormitory building and alterations to an existing dormitory building for the Northern Arizona Normal School at Flagstaff, the said advertisement being signed by the "Board of Education, Northern Arizona Normal School, by R. J. White, Secretary"

The dormitory building and all the Normal School buildings at Flagstaff are State buildings. The advertisement calls for bids or proposals for the construction of a State building, and is directly forbidden by Section 4 of "AN ACT TO PROMOTE THE WELFARE OF THE PEOPLE OF THE STATE OF ARIZONA, etc.", initiated in 1914, and adopted by vote of the people of the State on the 3rd day of November, 1914. Section 4 of the said Act reads as follows:

"All work on all State buildings, dams, reservoirs, flumes, water plants, gas plants, and all other State construction, shall be done by days' pay, by the State, and the system of letting contracts by the State is hereby abolished."

I desire that you notify the Board of Education above mentioned, that the construction of such building by contract is in direct violation of said law. Kindly let me hear from you at your earliest convenience, after you give said notification to the Board.

Very truly yours,

WILEY E. JONES,
Attorney General.

Superintendent of Public Health. Salary. Limit.

Phoenix, Arizona,
September 2, 1915.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

Answering your letter of the 31st ult., wherein you make inquiry about the matter of the payment of a salary to the County Superintendent of

Health, whom you designate as "Health Officer", instead of per diem and mileage—I will say that I know of no law authorizing any fixed salary.

Paragraph 4379 of the Revised Statutes of Arizona 1913 limits the amount of compensation that can be paid annually to \$300.00, and that no more than \$10.00 compensation should be paid per day. That seems to me to be plain, and does not authorize in my opinion a fixed annual compensation, but limits the amount to \$10.00 per day, and \$300.00 in any one year.

Very truly yours,

WILEY E. JONES,
Attorney General.

Criminal Law. Justice of Peace Should Hold Defendant to Answer Before Superior Court When He Has No Jurisdiction.

Phoenix, Arizona,
April 1, 1915.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

I have before me an inquiry from Dr. A. C. Meserve in reference to a Superior Court criminal matter in your county, and I desire to call your attention to the matter of proceeding against defendant by information.

Section 30 of Article II of the State Constitution says:

"No person shall be prosecuted for felony by information without having had a preliminary examination before a magistrate or having waived such examination."

The Penal Code of 1913 provides as follows:

Paragraph 885 of the Penal Code provides that if a case is before a Justice, which he has no jurisdiction to try, he shall hold the defendant to answer before the Superior Court, and that the County Attorney, within thirty days after the order holding to answer, shall file an information against the defendant in the Superior Court.

Subdivision 1 of Paragraph 272, dealing with information, gives as a ground for setting aside an information, the following:

"That before the filing thereof, the defendant has not been legally committed by a magistrate, except in such case where such commitment is not required by law.***"

Those exceptions you will find in Paragraph 889 of the Penal Code.

I would suggest in reference to the case about which Dr. Meserve inquires, that you take up the case only at the time you expect to be ready

to try the case before a Justice in the Superior Court; that you have the defendant held to answer by a Justice Court, a day or two before the meeting of your trial court, and immediately after the order holding to answer, file your information against the defendant in the Superior Court when your witnesses are on hand, thus saving the expense of two trips.

I am sending a copy of this letter to Dr. Meserve.

Very truly yours,

WILEY E. JONES,
Attorney General.

Lake Mary. Private Reservoir. Persons Fishing Therein, exempt from State Criminal Law.

Phoenix, Arizona,
February 12, 1915.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

Your letter of January 25th, enclosing letter from Mr. A. O. Waha, Acting District Forester, with reference to the reservoir built by the A. L. & T. Lumber Company in Coconino County, has been received, and in reply thereto, will say that, owing to the vast amount of work in this office at the present time, it has been impossible to reach you any earlier.

You ask if, after considering the information contained in Mr. Waha's letter, the Attorney General is still of the opinion that persons fishing in the reservoir above referred to and known as Lake Mary, are exempt from the provisions of Title 18 of the Penal Code of the State of Arizona, relating to the preservation of game and fish. I presume that the statement of facts furnished this office, upon which the opinion was rendered to you on January 19, 1915, was correct. If so, it is still my opinion that persons fishing in said lake would be exempted from the provisions of Title 18 of the Penal Code of Arizona, 1913, relating to preservation of game and fish. I have examined the records in the U. S. Land Office, and I can see no reason why I should deviate in the least, from my former opinion rendered to you on this same subject.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Health Officers. Traveling Expenses. Compensation, Maximum.

Phoenix, Arizona,

March 5, 1915.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

Your letter of March 4th, addressed to this department has been received, in which you state that the claim of the County Superintendent of Health has been filed with the Board of Supervisors, for \$10 per day, mileage at 10c per mile each way, together with his berth, meals and hotel bills on a trip to Fredonia, Arizona.

You ask whether or not he is entitled to such charges as are contained in his claim filed with the said Board of Supervisors.

You are advised that my opinion of the law is that \$10 per day is the maximum salary that can be allowed, but it is not compulsory on the Board of Supervisors to allow that amount, as the law says "not to exceed \$10 per day"; therefore they may allow any sum not to exceed that amount. Ten cents per mile going to and returning from a place visited by the County Health Superintendent, is fixed, and must be allowed, no more and no less; but I am of the opinion that the 10c per mile each way is meant to cover all railroad fares, berths, meals, hotel bills and like traveling expenses. However, if the Health Officer should incur extra expenses in stamping out disease, enforcing quarantines, destroying diseased or impure food, etc.—then that would be a legal charge against the County, in addition to all traveling expenses and salary. Of course, the Board of Supervisors would not be compelled to pay out any sum for carrying out and performing the various duties of the County Superintendent of Health, unless the same is first directed to be done by the Board of Health, but if the State Board of Health has the right to prescribe and does prescribe that the County Health Officer shall visit all such towns at least once each year, it would seem to be compulsory upon the County Health Officer to make such visits, and in that event the Board of Supervisors would be obliged to pay for such services 10c per mile, going to and returning from such places, and such sum as they see fit, not exceeding \$10 per day, together with any other necessary expenses incurred as above mentioned, in carrying out the provisions of the State Health Laws.

Hoping that this will give you desired information, I am,

Very respectfully,

GEORGE W. HARBEN,
Asst. Attorney General.

**Roads. Warrants Cannot Be Drawn Unless Funds in Treasury
To Pay Same. Tax Limit.**

Phoenix, Arizona,
July 16, 1915.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona

Dear Sir:

Your letter of July 15th received, in which you ask for an opinion from this department as to whether or not it is within the power of the Board of Supervisors to complete road work with the road fund exhausted, and also if arrangements could be made with the bank to handle the road warrants with interest until paid by the county.

I will call your attention to Paragraph 2431 of the Revised Statutes of Arizona, which provides that the Board must not for any purpose contract debts or liabilities except in pursuance to law.

Paragraph 2433 provides that no payment shall hereafter be made from the treasury of the counties of this state unless claim or demand shall be duly allowed according to the provisions of this title. All accounts filed according to law with the Board of Supervisors of course should be considered and passed upon at the next regular session after the same are presented, unless for some cause the matter is postponed for a future meeting.

Of course Paragraph 5061 referred to in your letter prohibits a warrant being drawn or a claim allowed on the road fund unless there is at the time money in the fund to pay the same. This of course would be a legal reason for the Supervisors' refusing to consider and pass upon an account placed before them, until they have the proper funds with which to pay the same.

We therefore concur in your opinion that no warrants can be drawn against the road fund until there is money in the road fund with which to pay such warrants.

This department is also of the opinion that the tax limit of 60c on each \$100.00 valuation of property was made to meet a condition existing at the time the law went into effect, where counties had outstanding warrants against the road fund and no money to pay the same. After this law went into effect, and all outstanding warrants had been paid, the tax levy would then be limited to 25c on each \$100 valuation of property for road purposes.

I know of no law by which the Board may contract indebtedness for road purposes unless it be by a bond issue, in accordance with the holding of our Supreme Court in the case of Board of Supervisors vs. Hawkins, 140 Pac. 821, with which of course you are familiar.

You also state that in the event the opinion of this department is to the effect that the Board of Supervisors would not be permitted to draw warrants when they have no funds, that you desire that we suggest some

other plan by which they might be able to handle this situation. I know of no plan other than what has already been suggested, unless the bank would be willing to take an assignment of claims against the county road fund, and file them with the Board of Supervisors and take chances when the Board considers said accounts and draws warrants for same. I doubt very much if this would be a feasible plan to pursue.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Bond Issue. Election Necessary.

TELEGRAM.

C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Phoenix, Arizona,
July 15, 1915.

Answering your letter of twelfth and telegram of fourteenth instant opinion this department that election necessary to authorize bond issue under chapter two title fifty-two Civil Code nineteen hundred thirteen even though indebtedness to be thereby incurred does not exceed together with other indebtedness four percentum of assessed valuation of county. See Board of Supervisors versus Hawkins, one hundred forty Pacific eight twenty-one.

LESLIE C. HARDY,
Asst. Attorney General

Contract System Abolished. Must Be Done By Day's Pay.

October 5, 1915.

Hon. S. C. Redd,
County Engineer,
Clifton, Arizona.

Dear Sir:

Your letter of October 2nd received, in which you ask about the law concerning the sinking of wells in Greenlee County by the contract system. You are advised that work on all State construction must be done by day's labor by the State, and the system of letting contracts is abolished.

It would therefore be illegal for you to contract for the sinking of these wells by the contract system. It must therefore be done by day's pay. It would be legal for you to rent an outfit, and hire a foreman by day's pay. Of course you can buy your casing and all like materials, but the placing of same, drilling of wells and all such work must be done by day's pay.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Teachers' Institutes. Limit of Expenses.

May 3, 1915.

J. W. Brown, Esq.,
County Supt. of Schools,
St. Johns, Arizona.

Dear Sir:

Yours of the 30th ult. received this morning, making inquiry about authority to use a sum not to exceed \$500 in holding teachers' institute at Flagstaff, Arizona.

The law does not direct the expenditure of \$500.00, but merely permits the necessary sum to be expended for teachers' institute, and declares that it shall not exceed the sum of \$500.00. Considering the deplorable condition of the unfortunate people of Apache County, brought about by the recent disaster, I would suggest that the strictest economy be observed in this matter. However, a joint institute can be held at Flagstaff, providing Apache Navajo and Coconino Counties join in such institute and observe all the provisions of Chapter 6, Title XI, Revised Statutes of Arizona, 1913. This law should not be taken advantage of merely for a summer jaunt to Flagstaff, is my suggestion.

My observation of institutes in the past is just what causes me to make the "observations" herein contained. Would it not be better to have a week or more session at St. Johns or some suitable point in Apache County, than to have merely three days' session at Flagstaff, and the entire \$500.00 consumed?

However, as to the question of law, if the three counties mentioned join in such session, it can be held at Flagstaff by following the provisions of Chapter 6 above mentioned.

Very truly yours,
WILEY E JONES,
Attorney General.

Board of Supervisors. Payment to by Corporation for Trip Outside State Prohibited.

Hon. E. S. Stafford,
County Engineer,
Florence, Arizona.

Phoenix, Arizona.
October 14, 1915.

Dear Sir:

Your letter of October 14th received, in which you state that the Board of Supervisors of your county has received a letter with a check for \$400.00 enclosed, from a corporation of Indiana, asking that the members of the Board of Supervisors make a trip to their factory so that they may see a demonstration of the corporation's road machinery and material, with a view of purchasing from them the said machinery and material, if it be

satisfactory, and that the Board of Supervisors has asked you to accompany them in case they make the trip; and you ask the opinion of this office as to whether or not the tender of said \$400 00, in payment of expenses to the corporation's establishment, could be construed in the nature of a bribe, and whether or not it would be advisable for you to reject their offer.

Sub-Section 6 of Paragraph 7 of the Penal Code of Arizona, 1913, defines a bribe to be "anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote or opinion, in any public capacity."

Paragraph 155 of the Penal Code of Arizona, 1913, provides that "every person who gives or offers a bribe to any.....Board of Supervisors.....with intent to corruptly influence such member in his action on any matter or subject pending before, or which is afterwards to be considered by the body of which he is a member, and every member of any of the bodies mentioned in this section who receives or offers to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular matter or upon any particular side of any question or matter upon which he may be required to act in his official capacity, is punishable by imprisonment in the state prison for a term of not less than one nor more than fourteen years, and is disqualified from holding any office in this state."

From the provisions of law above referred to, will say that even though I know the officers of your county, above referred, to be honest and fair-minded men, who would not be guilty under any circumstances of any improper motives, nevertheless, in my opinion it would not be advisable to accept the money from this corporation for the purpose above mentioned.

Very truly yours,

GEORGE W. HARBEN,

Asst. Attorney General

Indians. Insane. Wards of Government. No State Charge.

May 7, 1915.

Hon. W. F. Cooper,
Judge, Superior Court,
Tucson, Arizona.

Dear Judge:

Pardon my delay in answering yours of April 5, making inquiry about an insane Papago Indian, for the letter got hidden under a bunch of other correspondence—hence the delay.

I think you are correct in your views that the insane Indian, being a ward of the government, should be taken care of by the government.

Mr. Hardy informs me that this office has heretofore rendered an opinion to this effect, to the Governor of the State.

Very truly yours,

WILEY E. JONES,
Attorney General.

Court Commissioner's Compensation.

March 4, 1915.

Honorable William F. Cooper,
Judge Superior Court,
Tucson, Arizona.

Dear Judge:

I am just now in receipt of your letter of yesterday, inquiring my opinion in the matter of the compensation of the Court Commissioner, appointed by you, and acting in your absence.

In referring to Subdivision 4 of Paragraph 379, page 327 of the Revised Statutes 1913, it seems to me that this compensation is fixed at \$5.00 per day, payment thereof to be made in equal proportions by Pima County and the State of Arizona. That certainly seems to be plain to me under that provision, unless there is some other provision touching the subject. That certainly is my view of the matter.

Very respectfully yours,

WILEY E. JONES,
Attorney General.

Traveling Expenses, Includes What.

February 15, 1915.

Mr. Fay I. Gardner,
County Assessor,
Holbrook, Arizona.

Dear Sir:

Your inquiry of the 12th inst., with reference to what is meant by the term "traveling expenses", is received, and I hasten to reply.

The term "traveling expenses" would include your bills for meals and lodging of course, as well as the necessary railroad fare, livery, etc., in getting about the county. The county really is your employer; you are simply an employee, and the expenses incurred under the term mentioned, cover all such incurred while you are absent from your county seat on official business. Of course it must be reasonable, economical and not extravagant, but certainly includes all the items which I have mentioned.

It would be unjust to you as an official to place any other construction upon it.

Most respectfully yours,

WILEY E. JONES,
Attorney General.

Probate Proceedings. Fees in Superior Court.

November 18, 1915.

H. B. Farmer, Esq.,
Clerk of the Superior Court,
Yuma, Arizona.

Dear Sir:

Your letter of October 18th received, in which you ask for an opinion from this department as to the construction of Paragraph 3184 of the Revised Statutes of Arizona, 1913, relating to the payment of fees in estate matters. You state that you have a petition for the probate of a will in an estate where a petition for special letters of administration has been filed, and a fee of \$10.00 charged, and you ask whether or not you should charge another fee of \$10.00 for filing a petition for probate of the will in the same case and ask if the probate proceedings should be considered as a different case.

You are advised that our construction of this law is that where proceedings should be commenced in a court such as "in re the estate of John Smith," and a petition for the appointment of a special administrator should be filed, and a fee of \$10.00 paid, and later a petition for the probate of a will in the same case should be filed, and later a petition for the appointment of a permanent administrator, that the \$10.00 would be considered as payment in full for all proceedings under the same case. Of course if it should become necessary to file a different suit not connected in such a way that it could properly be a part of the same proceedings, it would then be necessary for you to docket that as a new case and give it a new number, and of course collect the regular fees allowed by law, but I am of the opinion that such proceedings as you have inquired about in your letter, such as petitions for special and permanent administrators and the probating of the will in the same case, are all matters belonging to one and the same case, and that \$10.00 would be all that you would be allowed by law to charge.

Hoping this gives you the desired information, I am,

Very truly yours,

GEORGE W. HARBEN,

Asst. Attorney General.

Clerks Superior Court. Fees for Affidavits and Affirmation.

June 17, 1915.

Hon. H. B. Farmer, Clerk
Superior Court,
Yuma, Arizona.

Dear Sir:

Your letter of the 16th inst. received, in which you inquire as follows:

1. Should the Clerk of the Superior Court charge a fee for certified copies of the decree of distribution in probate matters?

2. What charge should be made by Clerks of the Superior Courts for taking affidavits or affirmations?

Replying to your first inquiry, will say that I am sending you a copy of an opinion rendered to your County Attorney some time ago, which will give you the desired information on that subject.

Replying to your second inquiry, will say that Paragraph 3210, Revised Statutes 1913, provides that

“all officers authorized by law to take acknowledgments or proofs of deeds or other instruments of writing will receive the same fees for taking such acknowledgments or proof as are allowed notaries public for the same services”

Of course this Paragraph, technically speaking, does not answer your question, but I am of the opinion that from the language of this law, it is the intent to include affidavits and affirmations along with other work which usually comes before notaries public. I think you will be safe in charging the same fees for oaths, affirmations, etc., as are by law allowed to notaries public for the same services.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Deputy County Attorney. Qualifications.

June 29, 1915.

Hon. J. W. Estill,
Chairman Board of Supervisors,
Tucson, Arizona.

Dear Sir:

For this department I desire to acknowledge receipt of your communication of yesterday, inquiring if the appointment by County Attorney Hiltzinger, of Mr. L. G. Hummel, as Deputy County Attorney, under and by virtue of paragraph 3230 R. S. Civil Code, 1913, is lawful, in view of the fact that you are advised that Mr. Hummel's name does not appear upon the great register of Pima County, but that according to your information and belief, he was registered in Santa Cruz County, and voted at the last general election in Santa Cruz County, wherein he at that time claimed his residence.

By Section 15 of Article 7 of the Constitution of the State, it is in effect provided that every person elected or appointed to any office of distinction or profit, under the authority of the State, or the political subdivision thereof, shall be a qualified elector of such political subdivision. You will observe that the constitution does not provide that the officer or appointee shall be a qualified voter of the political subdivision, but on the contrary, the qualified elector. The courts have made a distinction, and

this department has heretofore advised that there is a distinction between a qualified elector and a qualified voter.

By Section 2879 Civil Code, 1913, a qualified voter is defined, and it is the opinion of this department, therefore, that Mr. Hummel would be eligible to hold the position of the Deputy County Assessor, if he possessed the qualifications of that section, at the time of his appointment, notwithstanding his name did not appear upon the great register of Pima County, at the time of his appointment.

Very respectfully,

LESLIE C. HARDY,

Asst. Attorney General.

Public Offices. Cannot Ride an Railroad Pass.

July 16, 1915.

Dr. J. M. Bazell,
Holbrook, Arizona

Dear Sir:

I am in receipt of yours of the 14th inst, making inquiry about the legality of a public official riding upon a railroad pass. This matter has heretofore come before me, and I am calling your attention to the same provision of law to which I have directed the attention of others.

Paragraph 700 Penal Code of Arizona, 1913, reads as follows:

"It shall be unlawful for any person holding a public office in this state to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as such transportation may be purchased by the general public; provided, that this shall not apply to members of the National Guard of Arizona traveling under orders; a notary public shall not be deemed a public officer within the meaning of this section."

The law therefore is plain, as you see, and the above section 701 provides the penalty for violating the above section, making such violation punishable by fine of from \$50 to \$500, imprisonment in the county jail from six months to one year, or both such fine and imprisonment.

This statutory law was passed to meet the requirements of Article 4, Section 23 of the State Constitution, which reads as follows:

"It shall not be lawful for any person holding public office in this state to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as such transportation may be purchased by the general public; Provided that this shall not apply to members of the National Guard of Arizona traveling under orders. The Legislature shall enact laws to enforce this provision."

It has been impossible to do otherwise than cite you to the above section of the Constitution and Paragraphs 700 and 701 Penal Code.

Very truly yours,

WILEY E. JONES,

Attorney General.

**Oaths and Acknowledgments. Persons and Officials Authorized
To Administer Same.**

January 29, 1915.

Mr. Franklin Taylor,
Attorney-at-Law,
Woolworth Bldg., 233 Broadway,
New York City.

Dear Sir:

Your letter of January 19th, addressed to the Secretary of State, has been referred to this department for response.

You ask for information regarding who may and who may not take affidavits or acknowledgments in this State. In reply thereto, will state that the laws of Arizona provide that oaths or affirmations may be administered by any judge, clerk or deputy clerk of any court of record, justices of the peace, notaries, public, referee or commissioner duly appointed by any court of record. Acknowledgments of any instrument in writing for record, may be made before any of the following officers: A clerk of a court having a seal, a notary public or justice of the peace.

We have no law in this state allowing attorneys and counsellors at law to administer affidavits or take acknowledgments, unless duly appointed or commissioned by the proper authority.

Yours very truly,

GEORGE W. HARBEN,
Asst. Attorney General.

**Voter. Must be Resident of State One Year and County Thirty
Days. Qualification Does Not Relate to Payment of School and
Road Tax.**

June 10, 1915.

W. W. Wells, Esq.,
Chin Lee, Arizona.

Dear Sir:

In answer to yours of the 7th inst., beg to say that a year's residence in the State, thirty days in the county, is necessary to qualify one as a voter under the law of this State.

One may be subject, however, to the payment of a road tax and a school tax, without being a voter at all, providing he is a resident of the State, and aged between the years of twenty-one and sixty.

Very truly yours,

WILEY E. JONES,
Attorney General.

Segregation of School Children. Mexican Children Not Embraced in Segregation Law.

Phoenix, Arizona,
December 22, 1915

Mrs. Luther Stover,
Williams, Arizona.

Dear Mrs. Stover:

Your letter of December 30th, addressed to the Attorney General, has been received, in which you ask whether or not Mexican children can legally be segregated from the white children in the public schools.

In reply thereto will say that Subdivision 2 of Paragraph 2733, Revised Statutes of Arizona, 1913, in prescribing the powers and duties of the Board of Trustees of School Districts, provides:

“ * * * * * They shall segregate pupils of the African race from pupils of the white race, and to that end are empowered to provide all accommodations made necessary by such segregation.”

You will therefore see that our law empowers the trustees to segregate children of the African race, but does not empower them to segregate children of the Mexican race unless, of course, children of the Mexican race might also be of African descent, by being intermingled with African blood through birth.

I am therefore of the opinion that we have no law empowering trustees to segregate Mexican children from white children in our public schools.

Very truly yours,

GEORGE W. HARBEN.
Asst. Attorney General.

Return Pass. There is No Law Requiring a Corporation to Supply a Return Pass to an Employee from Another State.

G. A. Van Slyke, Esq.,
Grand Canyon, Arizona.

Phoenix, Arizona,
July 23, 1915.

Dear Sir:

Yours of the 21st received, and in response to your inquiry as to whether there is a state law requiring a corporation who brings an employee into Arizona from other States, to supply him with a return pass, will say that there is no such law in Arizona, neither is there any such law in any of the States of the Union that I know of.

Very respectfully,

WILEY E. JONES,
Attorney General.

Butcher's License Bond. Must Be Renewed Annually.

Catesby C. Tham,
Agent National Surety Co.,
Los Angeles, Cal.

Phoenix, Arizona,
Sept. 9, 1915.

Dear Sir:

Your letter of July 27th received, and owing to the vast accumulation of business in this office, it was impossible to reach you earlier.

You ask whether or not, under the laws of Arizona, a butcher's license bond expires by limitation or whether it runs indefinitely. For this department I desire to say that the rule of the Live Stock Sanitary Board of this State is to require a new license and new bond to be given for each year that a person desires to engage in the butcher business. Of course when the new license is taken out and new bond given, the new bond would then be for the new license only. A suit could be brought on the old bond at any time before the statute of limitations had run against the bringing of such suit.

Very truly yours,

GEORGE W. HARBEN,
Asst Attorney General

**Winkelman Bridge Contract. Erected With County Funds
Therefore Does not Come Under Industrial Act.**

J. L. Donnelly, Esq.,
Secretary Miami Miners' Union,
Miami, Arizona.

Phoenix, Arizona,
Sept. 22, 1915.

Dear Sir:

Having returned some two days ago from a trip on business to California and the northern part of the State, I have just now reached your letter of the 17th inst., calling my attention to the proposed construction under contract of the bridge at Winkelman, together with the clipping from the Silver Bell. I have called up the State Engineer's office to make inquiry, and find that no portion of the State funds are being used in the construction of the bridge at Winkelman, and that such construction of the bridge is wholly at the expense of Gila County. If this is true, it would appear that the Industrial Pursuits Act does not reach county contracts or forbid the same. Gila County borrowed money from the State Treasury, for which the county is responsible, but that money was merely loaned to Gila County, and her supervisors are carrying on the work in behalf of Gila County. I am answering hurriedly this afternoon, as I am confronted with official opinions on other matters, but would like to hear further from you upon the subject.

Thanking you for calling my attention to the matter, and assuring you of my continued desire to uphold this law, I remain,

Respectfully yours,

WILEY E. JONES,

Attorney General.

P. S. When the matter was brought to my attention by Pres. Warren of the State Federation of Labor, of the advertisement calling for bids, having in view a proposed contract for the construction of a dormitory at the State Normal School at Flagstaff, I promptly took action in the matter, and immediately suspended further proceedings, and the work is now starting forward according to the provisions of the law, by day's labor.

**Occupation Tax. Tailoring Establishment in Incorporated Town
Subject to Such Tax.**

Phoenix, Arizona,

February 19, 1915.

Mr J. M. Russell,
Winslow, Arizona.

Dear Sir:

Your letter of February 16th received, in which you ask if you are subject to an occupation tax or a city license tax for a tailoring establishment in the town of Winslow.

You are advised that Section 22 of Paragraph 1831, Revised Statutes of Arizona, 1913, specifically provides that the Common Council of a town shall have the power, within the corporate limits of a town, to license, tax and regulate, among other things, agents for tailor-made clothing and tailoring establishments. I am, therefore, of the opinion that the Council would have the right, from the statement of facts furnished by you, to impose an occupation tax on you.

Very truly yours,

GEORGE W. HARBEN,

Asst. Attorney General.

**Guide Posts. Destruction of Signs and Guide Posts Upon Highways
Constitutes Misdemeanor.**

Phoenix, Arizona,

Sept. 8, 1915.

T. A. Pugh, Esq.,
125 Heff St.,
Tucson, Arizona.

I am just in receipt of your letter of yesterday complaining of certain individuals threatening to destroy the signs placed along the road, to mark the highway, as guide-posts in Pima County.

Most certainly we have two paragraphs of the Penal Code which seem to exactly fit the case. Paragraph 569 of the Penal Code of 1913 reads as follows:

“Every person who maliciously removes or injures any mile board, post, or stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.”

You will notice that it does not mention “public highway,” but simply uses the word ‘highway.’ Also Paragraph 590 of the Penal Code reads as follows:

“Every person who maliciously injures or destroys any real or personal property not his own, in cases other than are specified in this Code, is guilty of a misdemeanor”

Under this latter section, if a complaint should be made, I would suggest that it allege that the property is not his own, or not the property of the defendant; also it might be best to specify who constructed sign posts, and for what purposes they were constructed.

I desire, however, that you take this letter to Mr. Hilzinger, as he has always been courteous with this office, and he can readily look after the matter for you

Very truly yours,

WILEY E. JONES,
Attorney General

Farmer's Cooperative Company. Voting Power Rests in Shares of Stock.

C. W. Ingham, Esq.,
Gadsden, Arizona.

Phoenix, Arizona,
August 25, 1915.

Dear Sir:

I am in receipt of your inquiry of the 23d inst, in reference to your proposed organization of the “Farmers Co-operative Company,” as a corporation. I think, without going extensively into the subject, that you can use the name for your corporation, but I do not think that you can organize as a corporation and provide by your constitution or by-laws that a stockholder of but one share of stock would have the same power as a voter of the organization possessed by one who holds ten or one hundred shares of stock. It is the shares of stock that actually do the voting no matter who may be the holder. At least they measure the magnitude of a vote given by the holder or possessor of the stock. Of course the holder may be one who merely holds the stock by proxy, but is authorized to cast the vote of such stock.

Trusting that I have made myself clear to you, I remain,

Very truly yours,

WILEY E. JONES,
Attorney General.

Blacklist Law Does Not Apply to Examination of Teachers.

Hon. George R. Hill,
Supt. of Schools,
Globe, Arizona.

Phoenix, Arizona,
April 7, 1915.

Dear Sir:

Your letter of April 3d has been received, asking for the opinion of the Attorney General relative to the so-called blacklist law, as applying to the duties of a school trustee in investigating the training, past experience, efficiency, etc., of teachers applying to the school trustees for positions.

Answering your inquiry, I would say that Mr. Jones asked me to answer you for him, as he is very busy at this time with business in the office, and I will therefore state that a favorable testimonial can readily be given at any time, as it will be in aid of securing employment. Also, school officials having under consideration the employment of a teacher or teachers, may legally inquire for information whether favorable or unfavorable to the applicant.

Hoping this gives you the desired information, I desire to remain,
Respectfully yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Denatured Alcohol. What Is.

Western Wholesale Drug Co.,
Los Angeles, Cal.

Phoenix, Arizona,
May 3, 1915.

Gentlemen:

After consultation with Dr. Thomas of this city, before whom I laid your communication of the 29th ult, inquiring about grain alcohol, denatured by the addition of menthol, I beg leave to suggest that alcohol denatured by such addition would require not less than seven grains of menthol to the ounce of alcohol, although the doctor has suggested ten grains. Knowing that this would be very expensive, I would ask you if you cannot make an addition of something else for denatured purposes in line with the requirements of the United States Revenue Service.

I desire you to understand that I am anxious to aid in any efforts for the beneficial use of denatured alcohol in the State of Arizona; yet I cannot be too careful in my suggestions. Will be pleased to hear from you at any time, and hope you will work with me along the lines of my suggestion.

Very truly yours,

WILEY E. JONES,
Attorney General.

Extracts. Can't Be Sold for Beverage.

Mr. F. B. Goodwin,
Box 687,

Phoenix, Arizona.

Phoenix, Arizona,
January 15, 1915.

Dear Sir:

Replying to your request for an opinion from this office in which you ask, "Can we or can we not sell extracts in the State of Arizona?" will advise that before you can sell extracts in this State, under our new prohibition law, they must contain ingredients and be compounded in such a way as to absolutely preclude the possibility of their use as a beverage.

Hoping this will give you the desired information, I am,

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General.

Liquor. Can Be Shipped Onto Military Reservation.

W. J. Brown, Esq.,
R. R. Agent El Paso & S. W. R. R. Co.,
Fort Huachuca, Arizona.

Phoenix, Arizona,
February 19, 1915.

Dear Sir:

I am in receipt of your letter of the 16th inst., with enclosure of the opinion of W. A. Bethel, Acting Judge Advocate General of the Army, with which opinion I entirely concur.

A shipment of liquor on to a reservation is a trans-state shipment, so far as the laws of Arizona are concerned, and only the United States law would govern in such matters. The same also applies to the question of labor upon said Fort Huachuca Military Reservation, the State has no jurisdiction over the same.

Very truly yours,

WILEY E. JONES,
Attorney General.

Tanhauser, Dealer Sells At Own Risk.

Mr. H. H. Huggens,
Constable,
Jerome, Arizona.

Phoenix, Arizona,
June 7, 1915.

Dear Sir:

Answering your telegram, asking if Tanhauser beer is prohibited, beg to say that I do not intend to O. K. or approve officially any brewery products

whatever, but an analysis purporting to be of Tanhauser, was shown to me last week, after having been submitted to County Attorney Lyman and Sheriff Adams of this city.

It does not appear to contain any malt, nor was it fermented, and it contained one-tenth of one per cent of alcohol, which alcohol had been made use of to extract the strength from the hops, and the hop extract being placed in this combination, showed that mere trace of alcohol, and it did not appear from that analysis that such a combination was a violation of the law, but what the next shipment or the next bottle of Tanhauser may contain we do not know. For that reason I will not assume the position of approving any of such products.

The dealer in the product does so wholly at his own risk, and if an analysis at any time of anything the salesman is putting out shows a violation of the law, he will of course be liable. The risk is his—not ours as officials.

Very truly yours,

WILEY E. JONES,
Attorney General.

Alcoholic Beverage. Brewed or Malted Product Prohibited.

Oct. 7, 1915.

Charles L. Levy, Esq.,
Silver City, N. M.

Your letter of October 5th received, in which you ask for an opinion from this office as to whether or not you can sell, in this State, a beverage containing a small percentage of alcohol. I do not know the nature of your beverage, but this office contends that any brewed or malted product, regardless of the percentage of alcohol, is absolutely prohibited in this State, and we shall continue to so hold unless the Supreme Court should decide otherwise in some cases now before it.

Very truly yours,

GEORGE W HARBEN,
Asst. Attorney General

Alcoholic Liquor Can't Be Sold In Arizona.

Phoenix, Arizona,

D. Green Merc. Co.,
Kansas City, Mo.

April 12, 1915.

Gentlemen:

I am just in receipt of some very persuasive literature from you telling of the superior seductive qualities of your beer and whiskeys, and saying:

"Will you drop us a line today—NOW?" So you see I am complying with your request

I enclose a copy of the present law of Arizona, prohibiting absolutely your shipments into this State. You certainly cannot be ignorant of the fact which is known throughout the entire United States among liquor dealers. I also enclose a circular that I have prepared for just such firms as yours, who seem desirous of overriding the Constitutional Amendment of Arizona. Read it and then re-read it along with the enclosed copy of the Prohibition Amendment, and do not seek to continue your trade and traffic in Arizona, for I can assure you that "Prohibition" is going to **prohibit** in this State. Our jails perhaps are not so large as Kansas and Missouri jails, but they are sufficiently commodious. The promptness with which we have "showed" a few bootleggers is having a most beneficial effect. The purchaser and also the salesman are both principals in any attempted introduction into Arizona. We get them first, and thereafter "Uncle Sam" in his courts takes a hand, so the seductive and delightful taste of your wares soon loses its inviting flavor.

Trusting that you will appreciate my prompt reply, and understand that we are "dry" and not "wet," I remain,

Respectfully yours,

WILEY E. JONES,
Attorney General

Indians. Cannot Procure Hunting License in Arizona.

Phoenix, Arizona,
August 19, 1915.

James D. Sellers, Esq.,
Camp Verde, Arizona.

Dear Sir:

Your letter of August 15th received, in which you ask if Indians are legally allowed hunting licenses in this State. Paragraph 675 of the Criminal Code, 1913, of the State of Arizona, provides:

"It shall be unlawful for any Indian in the State of Arizona, at any time, to hunt, take, pursue, kill or destroy any game or fish mentioned in this title, off the government reservation to which he belongs."

I am therefore of the opinion that an Indian cannot legally procure a hunting license in this State.

As to the matter mentioned in your letter, relating to the removal of Indians back to their reservation, will say that this is a matter over which this office has no control, and I would suggest that you take the matter up with the Indian Department at Washington, D. C.

Owing to the restrictions placed upon this office in the matter of giv-

ing opinions, will state that this is only a private and not an official opinion, and is only to be used as such by you

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General

Hostetters Bitters. Cannot Be Sold Unless Compounded So As To Prohibit Use as Beverage.

Phoenix, Arizona,

June 1, 1915

A. R. Gatter, Esq.,
Arizona Eastern Railroad Offices,
Phoenix, Arizona.

Dear Sir:

Answering your inquiry of recent date in reference to the shipment into the State of Hostetter's Bitters, I would state that it would be impossible for me to designate any special preparation, under whatever name, that can be legally shipped into the State.

If a preparation contains any appreciable or perceptible amount of Alcohol, it should be so prepared that it cannot be used as a beverage. I understand the Peruna people now claim that their composition is so prepared at this time that its contents of laxative qualities render it impossible to be used as a beverage. Under those circumstances a medicine of that character would probably not be introduced in violation of any law, but most certainly the old style and "old reliable" Hostetter's Bitters, as marketed for over a quarter of a century, would be forbidden by our Constitutional Amendment, but prepared with laxative qualities mentioned would probably not be forbidden by the law.

I think this fully answers your inquiry. If not, make further inquiry at any time.

Very respectfully,

WILEY E. JONES,
Attorney General

American Flag. Use of for Advertising Prohibited.

Phoenix, Arizona,

July 12, 1915.

Frederick E. W. Darrow,
Counsellor at Law,
Ulster County Savings Institution Bldg.,
Kingston, N. Y.

Dear Sir:

I have before me your letter of the 7th inst., inquiring if the printing

of the representation of the American flag on a paper napkin is prohibited by the Arizona Statutes.

If the napkin bears no advertisement or printing upon it other than the flag, and there is no advertising or printing upon the representation of the flag itself, I do not think the mere printing of it upon the napkins that is inquired about by you, is a violation of our Statute.

Paragraph 702 of the Penal Code of Arizona, in reference to defacing the U. S. flag, reads as follows:

"It shall be unlawful for any person, or persons, firm or corporation, to deface or in any other way show disrespect to the American flag, or to make, display or exhibit for any purpose, an American flag for a pictorial representation of the same, upon which there is printed or written any word or words for advertising, political or commercial purposes.

Very truly yours,

WILEY E. JONES,
Attorney General.

Brewery Products. Shipment of Into Arizona Prohibited.

Golden Ribbon Beverage Association,
Care Kennicott & Patterson Transfer Co.,
Denver, Colo.

Phoenix, Arizona,
April 20, 1915.

Gentlemen:

This letter is written to notify you that any shipments of the products of your brewery into the State of Arizona is a direct violation of the law of Arizona, that is—The Prohibition Amendment to our State Constitution, adopted last November, and a copy of which I herewith enclose. The shipment of such products, as well as the person ordering the shipment of the same, is a principal in the violation of the law.

Arizona is not to be made the "dumping ground" for brewery products manufactured for the sole purpose of shipment into this State. Be assured that the State at the last November election went "dry" and not "wet," as you seem to have been led to believe.

I hope no further word will be necessary from this office to prevent any violation or attempted violation of our Prohibition Amendment.

Yours very truly,

WILEY E. JONES,
Attorney General.

Workman's Compensation Law. Optional with Employee to Adopt.

Phoenix, Arizona,

April 5, 1915.

B. O. Leckens, Esq.,
Secty. W. F. M. No. 125,
Goldroad, Arizona.

Dear Sir:

I am in receipt of your letter of the 31st ult and hasten to reply. I have examined the Ujack case mentioned to you, and reported in 15 Ariz. Rep 382.

I quote that portion of the Court's opinion which will be of interest to you. The Court says:

"If, after the accident, either the employer or employee shall refuse to settle under this act or to proceed or rely upon its provisions for relief, the latter may pursue his remedy under other existing statutes, the Constitution or common law, as their respective rights may exist, except as herein provided—that is, when the employer refuses to settle, the employee may still exercise his option to claim compensation under this act—it seems clear that the legislature recognized and preserved the right of the employee to exercise his option after the accident and injury."

The Court further says: "Also, this seems to us a plain declaration that the employee is at liberty to pursue the remedies provided by law until he adopts one by instituting a suit for redress, when the one adopted becomes exclusive."

Futher the Court says: "Our constitution and compensation act makes the compensation compulsory upon the part of the employer, and optional on the part of the employee."

From the foregoing opinion of the Court, it seems that the employee IS NOT deprived of his option, even AFTER the accident and injury, until he ADOPTS his remedy by institution of suit under the laws giving him redress; then, having selected that remedy, it is EXCLUSIVE. In the Ujack case, no attempted disaffirmance of any character appears in the case. Therefore the court did not pass directly upon that point as an issue in the case, as Ujack brought his action under the "Employers Liability Law," and not under the "Workmen's Compensation Law."

Now, as to the effect of the so-called "disaffirmance," a form of which you send me, I have not gone outside of what I gather from the Ujack case; except the law required the "disaffirmance," or written contract, mentioned in Paragraph 3176 and the "proviso" not to "provide" for less compensation than as provided in this chapter. The Constitution directs the Legislature to "Enact a Workmen's Compensation Law," as well as "An Employers' Liability Law," and aslo says: "Provided, that it shall be

optional with said employee to settle for such compensation, or retain the right to sue said employer as provided by this Constitution."

Very respectfully,

WILEY E. JONES,
Attorney General.

N. B.—Since the foregoing opinion was written the Supreme Court of Arizona, July 7, 1915, in the case of Behringer vs. Inspiration Consolidated Copper Company, 149 Pac. Reporter, 1065, decided that where an injury to the employee resulted in death, the option to adopt the remedy for the injury must be done by the injured employee before death ensues, and that the option to adopt compensation, under the Workmen's Compensation Law, cannot be exercised by the personal representative or beneficiary of the estate of the deceased employe.

Dated December 28, 1916.

(Signed)

WILEY E. JONES,
Attorney General.

Electrical Construction Law. Does Not Apply to Harmless Wires.

Phoenix, Arizona,
July 16, 1915.

President and Secretary of the Arizona State Federation of Labor,
Phoenix, Arizona

Dear Sirs:

I have before me for my consideration a letter of the 14th inst., addressed to you by the Secretary of the Tucson Central Trades Council, relative to the erection of poles and wires by the Mountain States Telephone Co. in the city of Tucson, and asking if the acts mentioned in such letter constitute a violation of the so-called Electrical Construction Law adopted in November, 1914.

I have examined the contents of said letter, as well as that section of the law to which the letter calls direct attention. The letter states that the wires are less than 13 inches from the center of the poles under construction now going on in Tucson, while the statute directs that the wires shall not be placed "within the distance of 13 inches from the center line of said pole."

This restriction as to the 13-inch limit, under sub-section B referred to, does not apply, according to my understanding of the language of the law, to telegraph, telephone or other signal wires (harmless wires) outside of incorporated municipalities. The law requires no municipal ordinance to aid in its interpretation or enforcement; it is a State law, made for the safety of the public and employees of such company.

Very truly yours,

WILEY E. JONES,
Attorney General.

Peddlers License. Does Not Apply to Farm Products.

Phoenix, Arizona,

Sept. 2, 1915.

A. E. Chilress, Esq.,
Wickenburg, Arizona.

Dear Sir:

I have before me your letter of yesterday, making inquiry about the peddler's license law, and asking if you are permitted to peddle without a license fruits and vegetables on the streets at Vulture.

Paragraph 3586 of the compiled laws of Arizona, 1913, provides for a peddler's license, but it also specifically says: "Provided, that nothing in this chapter shall be construed to apply to the sale of farm products."

I construe "farm products" to mean both fruit and vegetables, of course—that which may be grown and produced upon the farm from the soil thereof, and as you ask upon the question of peddling fruits and vegetables, there is no license required for such purpose. Of courses incorporated cities or towns may pass an ordinance providing for a license to be required by peddlers so engaged, but there is no State license required for such peddling outside of incorporated cities or towns.

Very truly yours,

WILEY E. JONES,
Attorney General.

Women Cannot Serve on Juries.

Phoenix, Arizona,

December 17, 1915.

Mrs. Mary Sumner Boyd,
New York, N. Y.

Dear Madam:

I have your letter of the 13th inst., asking a number of questions in relation to jury service by women in the State of Arizona, and I can answer them all by the mere statement that our law does not provide for women serving on juries, and to be specific I will quote Paragraph 3516, Revised Statutes of Arizona, 1913, which defines and fixes the qualifications of jurors as follows:

"Every juror, grand and petit, shall be a male citizen of the United States, a resident of the county for at least six months next prior to his being summoned as a juror, sober and intelligent, of sound mind, and good moral character, over twenty-one years of age, and shall understand the English language. He must not have been convicted of any felony or be under indictment or other legal accusation of larceny or of any felony"

I enclose copy of our constitutional amendment upon the liquor question

Respectfully yours,

WILEY E. JONES,
Attorney General.

Marriage. Negroes and Mexicans. Arizona Law Relating to Same Does Not Extend Over Military Reservation.

Capt C F Boyd,
Tenth Cavalry,
Fort Huachuca, Arizona

Phoenix, Arizona,
July 7, 1915.

Dear Sir:

I have before me your inquiry of the 5th inst., asking me if it is illegal in Arizona for a colored man to marry a Mexican woman, and in answer thereto will state that such a marriage is forbidden by the laws of the State of Arizona.

As to your second inquiry, if such a marriage could be legally consummated upon the Federal Military Reservation of Fort Huachuca, Arizona, will state that in my opinion the Arizona law forbidding such marriage does not extend over the Fort Huachuca Military Reservation. Although I have not the Federal law in reference to that matter at hand just at this moment. However, such is my opinion.

This opinion is not given to you as an official opinion of this office, under the law of the State, but I have answered your inquiry as a mere matter of courtesy.

Very respectfully yours,

WILEY E JONES,
Attorney General.

Contract System Abolished. Machinery Must Be Installed by Day's Pay.

Hon. Frank H. Hereford, Chancellor,
University of Arizona,
Tucson, Arizona.

Phoenix, Arizona,
October 7, 1915.

Dear Sir:

Your letter of September 29th has been received, but owing to the fact that both Mr. Jones and Mr. Hardy are out of the State, it has been impossible for me to reach you any earlier.

In your letter you ask whether or not it is legal for you, in the construction of the heating plant for the University of Arizona, to purchase this heating plant machinery set up, or must you do it by day's pay. You are advised that our law abolishing contracts in this State seems to be very specific in matters of this kind. Of course you would have the right to purchase all machinery or material and supplies laid down at the University, but I am of the opinion that when it comes to installing this machinery, this would have to be done by day's pay, and not by the contract system.

Very truly yours,

Approved:

WILEY E. JONES,
Attorney General

GEORGE W. HARBEN,
Asst Attorney General.

Billiard and Pool Tables. License Tax, \$10.00 Each Person, Per Quarter.

Phoenix, Arizona,
September 16, 1915

Messrs Barry & Barry,
Attorneys at Law,
Nogales, Arizona.

Gentlemen:

For this department I desire to acknowledge receipt of your communication of the 14th inst, asking for a construction of Section 3590 of the Civil Code 1913, in respect of the license to be charged a person operating billiard and pool tables.

The section of law in question presents an ambiguity, but ye are constrained to adopt the interpretation which has generally been given to it by the taxing officers of the state, namely: that each proprietor operating a billiard hall shall pay a license tax of \$10.00 each quarter—this interpretation to apply where either billiard or pool tables or both are operated.

Very truly yours,

LESLIE C HARDY,
Asst. Attorney General.

Officer, Holding Two Offices. Can Be Done When No Conflict.

Phoenix, Arizona,
January 28, 1915.

Dr. C. A. Meserve,
Director State Laboratory,
Tucson, Arizona.

Dear Sir:

Your letter of January 20th received, in which you ask for an opinion from this office regarding your right to hold both the offices of Director of the State Laboratory and Chief Inspector under the Supt. of Public Health.

In reply thereto, will say that the general rule of law is that a person can hold more than one office, provided the duties in no way conflict one with the other. There is no constitutional or statutory provision against a person holding two offices in this State in such cases as you have mentioned. So the question would be one of common law incompatibility. The office must subordinate one the other and they must, per se, have the right to interfere one with the other before they are incompatible. In common law, offices are said to be incompatible and inconsistent so they cannot be executed by the same person, first, when, from a mutiplicity of business in them they cannot be executed with care and ability; secondly, because subordinate and interfering one with the other, they produce the assumption that they cannot be executed with impartiality and honesty

The inconsistency which makes two offices incompatible does not consist entirely in the physical impossibility to discharge the duties of the

several offices, but it may consist in a conflict of interest, as, where an incumbent of one office has the power to exercise supervision over the other.

This office, not being familiar with your official duties in detail, cannot advise as to whether or not the two offices would be inconsistent one with the other. If there is no inconsistency in the two offices of Director and Chief Inspector, as above set forth, I see no reason why you could not hold both offices when legally appointed by the proper appointing power.

Your claims would have to be audited and paid separately in the same manner as if the two offices were held by two different persons.

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General

Pure Food Law. Violations. Procedure for Punishment.

Phoenix, Arizona,

January 29, 1915.

Dr. C. A. Meserve,
Director State Laboratory,
Tucson, Arizona.

Dear Sir:

Your letter of January 20th received, in which you ask for an opinion from this department as to the proper method of procedure in the prosecution of violations of the pure food law.

In reply thereto, will state that I think the proper method is the one suggested to you by the County Attorney of Maricopa County, for the reason that the magistrate must have a sworn complaint before he can issue a warrant. The County Attorney could only make a complaint on information and belief of a violation of the law, as we have numerous decisions of the Supreme Courts of different states to the effect that a complaint not sworn to positively is defective. See City of Garnett vs. Guynn, 53 Pac. 275.

Your procedure seems to be in accordance with the law, except that you or some one else who can swear positively to the facts should, in addition to the certificate which you furnish, sign the criminal complaint, setting forth facts upon which a warrant will issue, which complaint will be furnished you by any magistrate before whom you may go for the prosecution of any violations of the pure food law.

Yours very truly,

GEORGE W. HARBEN,
Asst. Attorney General

Barber Shops. License Tax Constitutional.

E. S. Wells, Esq.,
 Santa Rita Barber Shop,
 Tucson, Arizona.

Phoenix, Arizona,
 November 29, 1915.

Dear Sir:

I have before me your letter of the 26th inst., making inquiry whether or not a city has the power to fix and collect a license fee or tax for carrying on barber shops

That question has been passed upon by my predecessor to the effect that a reasonable license, fixed as an occupation tax on barber shops and all character of business carried on in a city, is constitutional.

I am compelled to agree with my predecessor in his opinion, as the courts have universally sustained such license as legal and constitutional. Of course there might be some question of legality raised as to the manner of the passage of an ordinance, but as to the power to pass it, there seems to be no question about it.

I am simply stating to you how the courts have held upon this question
 Very truly yours,

WILEY E. JONES,
 Attorney General.

Blacklist Law. Does Not Prohibit Giving Service Letter To Aid in Getting Employment.

Mr. O. L. Baynes, Sec. & Treas.,
 Brotherhood of Railroad Trainmen, No. 477,
 Box 547, Winslow, Arizona.

Phoenix, Arizona,
 January 15, 1915.

Dear Sir:

Yours of the 11th inst., duly received, with a mass of correspondence now on hand, and I hasten to answer as soon as possible.

The black list law nowhere forbids any employer to give an employee or former employee such a service letter as you have mentioned, which might aid an employee in obtaining employment elsewhere. It is entirely optional with the employing company or individual to give such letter.

Very truly yours,

WILEY E. JONES,
 Attorney General.

School Elections. Qualifications of Electors Voting At. Minor Child, What Is.

Phoenix, Arizona.

February 23, 1915

Mr. M. T. Lavelle,
Clerk of School District No. 20,
Elgin, Arizona.

Dear Sir:

Your letter of February 12th received, in which you ask for an opinion regarding the qualifications of an elector for election of school trustees

You ask, wherein the law states that a person to vote at such election must be the parent or guardian of a minor child, if the law means a minor child of school age, or a child from birth to twenty-one years of age.

You are advised that the law of 1901 states "who is the parent or guardian of a child of school age, residing in the District"; that the law of 1913 was changed by the Legislature to read "who is the parent or guardian of a minor child residing in the district." You are advised that it is the opinion of this Department that the legislative intent is clearly expressed in the amendment to the law, and means that any one is qualified to vote at such election who is the parent or guardian of a minor child, regardless of what might be its age.

You also ask, that where the law states "where a person or a woman whose husband has paid in the County a State or County tax, exclusive of poll, road or school tax, during the past year," is the past school year meant, which expires on the first of the past July, or the past tax year, which ends on the first of the past January? You are advised that the law states "who has paid a State or County tax, exclusive of poll, road or school tax during the preceding year," and means the year preceding 1915, which is 1914, without reference to the school year.

Hoping this will give you the desired information, I am,

Very truly yours,

GEORGE W. HARBEN,
Asst. Attorney General

In Re Fee for Filing Amendments to Articles of Incorporation.

Phoenix, Arizona,
December 15, 1916.

Arizona Corporation Commission,
Phoenix, Arizona.

Gentlemen:

This will acknowledge receipt of your letter of December 12, signed by Miss Wise, and enclosing letter of January 27, 1906, addressed to Hon. John H. Page, and signed by the then Attorney General, E. S. Clark.

While Section 2274 of the Revised Statutes of Arizona, 1913, Civil Code, which is a re-enactment of Chapter 70, Section 3, regular session of the First Legislature of the State of Arizona, as amended by Chapter 72 of the special session, Laws of 1912, does not provide in terms for the payment of the \$10.00, for filing amendments to articles of incorporation, still this office does not feel warranted in disturbing the said opinion of former Attorney General Clark, under which your incorporating department has been working; hence, it is the opinion of this office that your incorporation department should continue to charge the usual \$10.00 fee for filing amendments.

As requested, I return herewith ex-Attorney General Clark's said letter of January 27, 1906.

Very truly yours,

R. WM. KRAMER,
Assistant Attorney General.

Corporations. Statutory Agent, Fees of.

Phoenix, Arizona,
October 4, 1916.

Hon. A W Cole,
Arizona Corporation Commission,
Phoenix, Arizona.

My Dear Mr. Cole:

In answer to your letter of October 3, addressed to Attorney General Jones, please be advised that it is the opinion of this office that under Section 2274, Revised Statutes of Arizona, 1913, the Arizona Corporation Commission is warranted in charging five dollars (\$5.00) for filing the appointment of each statutory agent designated by corporations; that is to say, where two or more agents are named in appointment of agent, it is the opinion of this office that the Commission is warranted in charging and collecting five dollars (\$5.00) for each agent appointed.

Very truly yours,

R. WM. KRAMER,
Assistant Attorney General.

Deputy State Veterinarian.

Phoenix, Arizona,
June 14, 1916.

Hon George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

The letter of Secretary Ladd, dated the 10th inst., reached my office during my absence at Nogales, and on my return this morning I hasten to examine into the law touching the matter of State Veterinarian, for the purpose of giving you a speedy reply.

Paragraph 3690, Revised Statutes of Arizona, 1913, provides for the nomination by the Governor, confirmation by the Senate, of a "veterinary surgeon for the State of Arizona." I find no provision for the appointment by the Governor of a special veterinarian, neither do I find in the Live Stock Law any provision for the appointment of any deputies by the State Veterinarian, but on consulting Chapter 19, beginning on page 282 of the Revised Statutes of Arizona, 1913, I find Paragraph 166 reads as follows:

"All deputies, assistants and subordinate officers whose appointments are not otherwise provided by law, shall be appointed by the officer or body to whom they are respectively subordinate."

Paragraph 167 provides that such appointment shall be in writing, and filed with the Secretary of State.

Paragraph 172 reads:

"No deputy of any State office or board, or of any county office or board, shall be paid compensation by the State or any county unless compensation is specifically provided by law."

Under these provisions of law, and under the conditions and circumstances existing in Navajo County, I think the Governor could very properly suggest to the State Veterinarian the name of Dr. Geo. Bedinger for appointment as deputy State veterinarian at Holbrook, for the convenience of the citizens who have petitioned the Governor for his appointment and for the accommodation of the residents generally of that locality.

Dr. Bedinger could make such reasonable charges for his compensation, and collect the same from those requesting the same, and benefited thereby. I think this is about the best solution of the dilemma, and believe it to be within the law.

Respectfully yours,

WILEY E. JONES,
Attorney General.

Prize Fights Prohibited.

Phoenix, Arizona,
January 22, 1916.

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

I am just in receipt of your letter of yesterday, calling for my opinion upon a telegraphic inquiry received by you from the Oatman Miner as follows:

"We are endeavoring to secure Willard-Moran championship match for Oatman, July 4th next. New York fight promoters are negotiating with us for contest. Can special permit be arranged? Will mean millions for Arizona. Wire us. Business interests asked us to wire you. OATMAN MINER."

The inquiry apparently discloses the fact that a prize fight is contemplated to take place as a "championship match" at Oatman, on the date mentioned, if a permit is granted therefor.

Paragraph 421 of the Penal Code reads as follows:

"Every person who engages in, instigates, encourages or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the State prison not exceeding two years."

Thus it will be seen that prize fighting in the State of Arizona has absolutely been forbidden by the Penal Code, which makes it a felony, as set forth in the paragraph quoted above. There is no provision of law whatever providing for any permit to be granted for such a contest, and you are absolutely correct in your statement that the law on that subject is very stringent, and there is no way subject to modification by the issuance of permits.

Very truly yours,

WILEY E. JONES,
Attorney General.

Civil Rights Restored.

Phoenix, Arizona,
June 8, 1916.

Hon. George O. Hilzinger,
County Attorney,
Tucson, Arizona.

Dear Sir:

I am just in receipt of your letter of yesterday in reference to conviction of a felony and suspension of civil rights during such imprisonment.

I have also noted the case of Osborn vs. Kanawha, City Court, cited

by you. The West Virginia statute does not, however, conclude with the same language as does Paragraph 2879 of our Civil Code, which uses the words "unless restored to civil rights." That would seem to require a restoration to civil rights, though I would suggest this plan:

Let such persons as you mention, who have served their term, make application by letter to the Board of Pardons and Paroles, and I think they will cheerfully recommend to the Governor a restoration of civil rights in every instance without delay, unless some objection to citizenship should prove an exception.

Very truly yours,

WILEY E. JONES,
Attorney General.

Recall Petition Filing.

Phoenix, Arizona,
April 20, 1916.

Hon. George O. Hilzinger,
County Attorney,
Tucson, Arizona.

Dear Sir:

I have before me your letter of yesterday, submitting to me three inquiries, and in accordance with your desire that I send an early reply I am endeavoring to do so, notwithstanding the limited time for legal investigation of the subject.

First, I think all the law that has come under my notice justifies the opinion that a "qualified elector" within the meaning of Section 3340 of the Civil Code, means one who is a regularly registered elector within the county or district wherein the recall petition is circulated. If not a regularly registered elector within such county or district, he could not vote at the special election called therefor.

Second, I can find no authority or decisions upon this question submitted, but am of the opinion that recall petitions as well as nominating petitions may be filed in separate sections or "installments" until the requisite number under the law and the Constitution is complied with; and the whole will then compose or embrace a complete petition. The custom heretofore in Arizona has been on the part of the Secretary of State to receive such petitions and file them when received, or as I have stated, in "installments" until a sufficient number of qualified electors were represented upon the nominating petition to authorize that officer to place the name of the person thus nominated upon the official ballot.

Therefore, I am of the opinion that up to the time that a sufficient number of petitioners have placed their nomination or recall petition on file, to comply with the requirement of the law, any petitioner signing for the purposes of recall of nomination may cancel his name from said petition by filing with the proper officer a withdrawal or cancellation of his signature. When the recall petition has a sufficient number of petitioners under

the law, Paragraph 3344 requires the officer with whom such petition is filed to "immediately give notice to the person against whom such petition is filed." When that moment arrives, I have grave doubts about the authority of a petitioner thereafter to cancel or withdraw his name from such petition.

Third, following the custom above mentioned of filing petitions in sections or "installments," I am inclined to the opinion that if some names previously filed as petitioners have been cancelled or withdrawn that other petitions might be filed containing the names of petitioners sufficient to meet or overcome any deficiency caused by such withdrawals or cancellations. I think all petitions for a recall should be expressed in the same language for the reason that all of such petitions when signed up and filed, either at the same time or at intervals of time intervening, constitute one complete and sufficient legal petition, calling for the officer to give immediate notice.

While I am giving this opinion to you officially, I desire to state most emphatically that it is given with very little light upon the subject afforded me by precedents, or decisions thereon.

Very truly yours,

WILEY E. JONES,
Attorney General.

Pardoning Power Restored to Governor.

Phoenix, Arizona,
December 13, 1916.

Hon. George W. P. Hunt,
Governor of Arizona,
Phoenix, Arizona.

Dear Sir:

I am just in receipt of your letter of yesterday, asking my opinion on the effect of the initiated measure recently adopted by vote of the people amending Paragraph 173, Penal Code of Arizona, 1913, and in which letter you ask what effect it has upon the matter of restoring to the Governor the pardoning power.

Your letter informs me that my opinion is desired for the reason that applications have come to you from persons affected thereby who are asking official action upon your part.

I will state that the pardoning power has always rested with the Governor under the Constitution, but in 1914 the creation of the Board of Pardons and Paroles, by the adoption of the referendum measure submitted to the people, placed a restriction upon the exercise of such power by the Governor, and the Court held that measure to be constitutional, as a mere restriction upon the exercise of the pardoning power of the Governor—that is, that the Board could neither pardon nor parole, but could recommend such, and final action thereon rested solely with the Governor of the State. The power conferred upon the Board in 1914, in murder cases has

been repealed and practically annulled by the following language in the new law adopted in 1916:

"Section 1. That Paragraph 173, Chapter I, Title VIII, Penal Code, of the Revised Statutes of Arizona, 1913, be and the same is hereby amended so as to read as follows:

"173 Every person guilty of murder in the first degree shall suffer imprisonment for life, and every person guilty of murder in the second degree shall be confined in the State Prison for not less than ten years. No person convicted of the crime of murder shall be recommended for pardon, commutation or parole by the Board of Pardons and Paroles, except upon newly discovered evidence establishing to the satisfaction of all the members of said Board his or her innocence of the crime for which conviction was secured."

"Section 2. All acts and parts of acts in conflict with this act are hereby repealed"

The new Act nowhere mentions the Governor, nor does it refer to his power in the premises; but it does take from the Board of Pardons and Paroles the power given to it in 1914 to recommend pardons, commutations or paroles in murder cases, thus enabling the Governor to exercise his constitutional power of pardon, commutation or parole in such cases without the restrictions placed upon his action by the law adopted in 1914, which said law has been repealed by vote of the people in 1916.

Your constitutional power cannot be taken away by a statutory enactment passed by the Legislature or adopted by vote of the people. Only an amendment of the State Constitution can destroy it. Also, the new law amending said Paragraph 173 simply takes from the Board of Pardons and Paroles, in murder cases, the recommending power, given to the Board by the vote of the people in 1914, thus leaving the Governor free to act therein, without any conditions, restriction or limitations, heretofore imposed by law.

Therefore, the power of pardon, commutation and parole in murder cases in Arizona now rests wholly and exclusively with the Governor of the State.

Very respectfully,

WILEY E. JONES,
Attorney General.

Offices, Vacancies.

Phoenix, Arizona,
February 21, 1916.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

Your letter of February 19 received, in which you ask this department

whether or not a School Board has the right to declare a vacancy in the office of trustee of a member of the Board who has failed in every particular to discharge the duties of the office for a period of nine months; also if it is within the province of the Board to declare the office vacant within the meaning of Paragraph 222, R. S., and if a resolution to that effect is necessary by the Board, and what notice must be given if a hearing is required.

You also ask if under Paragraph 2708, R. S., it is within the power of the Superintendent of Schools to appoint a trustee without further action upon the part of the School Board.

In reply will state that Subdivision 7 of Paragraph 221, R. S. 1913, provides that an office shall be deemed vacant * * * upon the ceasing to discharge the duties of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the State by permission of the Legislature. I think it is within the province of the Board, and is also their duty, to declare the office vacant when an officer has failed to discharge the duties of the office in any particular for the time prescribed by law. This, of course, is a question of fact, as to whether or not said officer has failed to discharge any of the duties of the office, with which the law cannot deal.

I am therefore of the opinion that if the fact is true that the officer has failed to discharge the duties of said office in any particular for three consecutive months, that the Board has the power and it is their duty by resolution or otherwise to declare the office vacant, and notify the County School Superintendent of their action.

In reply to your second question, will say that Subdivision 7 of Paragraph 2708 provides that the County School Superintendent shall have power to appoint trustees of school districts to fill vacancies caused by a failure to elect or otherwise, which appointee would hold office for the full period of the vacant term.

I am therefore of the opinion that if the Board of School Trustees finds that the office is vacant, and so notifies the County School Superintendent, that the County School Superintendent has the power and it is his duty to appoint a person to fill said vacancy, as declared by the Board of Trustees having authority so to do.

Very truly yours,

GEO. W. HARBEN,

Asst. Attorney General

Billiard and Pool Tables.

Phoenix, Arizona,

April 21, 1916

Hon. S. F. Noon,
County Attorney,
Nogales, Arizona.

Dear Sir:

Your letter of April 5, making inquiry whether the so-called star or

keno pool is a violation of the Penal Code under our Anti-Gaming Law, was duly received, but on account of the great number of inquiries upon legal questions coming to me from over the State, I have not been able to give your inquiry attention until now.

The use of billiard tables and ordinary pocket pool tables has long been permitted in this State, and such use recognized as not a violation of our gaming law, and although I never gambled in my life at any game, it certainly seems to me that this star or keno pool is no more a violation of the gaming law of Arizona, than is the use of billiard or ordinary pool tables. There may be some element of chance in the use of all three of these tables; yet in the long run most certainly the skilled player will win out. A scratch, as it is termed, might be made on any of these tables by the unskilled player; yet it seems the general result in all of them is determined by the skill of the player.

From the information that I have in your letter, I cannot declare the use of the star or keno pool to be a violation of our law. If anyone desires to test it, you can use your own judgment in the matter.

Very truly yours,

WILEY E. JONES,
Attorney General

Motor Vehicles. What Are.

Phoenix, Arizona,
April 25, 1916.

Hon. Sidney P. Osborn,
Secretary of State,
Phoenix, Arizona.

Dear Sir:

For this department I desire to acknowledge receipt of your communication of the 19th inst., which inquires if Chapter VIII, Title 50, of the Civil Code, Revised Statutes of Arizona, 1913, relating to the use of public highways by motor vehicles, applies to what is commonly designated as a "motor-bike."

From your communications I gather that a motor-bike is the combination of an ordinary bicycle, to which is attached a motor, so that by the combination of the two there becomes a motor propelled vehicle.

From my observation, together with your communication, I am constrained to the opinion that the motor-bike is in reality a motor cycle, for the reason that it is a combination of a motor and a cycle. Accordingly, owners thereof should pay the license prescribed by Section 1 of Paragraph 5133, Civil Code of Arizona, 1913, for the operation of motorcycles.

I am aware of the fact that motor-bikes are generally used by children, and for that reason I have attempted to except the operation of that vehicle from the motor vehicle law, but it is so plainly a motor vehicle, within the contemplation of that law, that the only conclusion that could be reached is the one expressed herein.

At the time the law in question was enacted, the motor-bike had not made its appearance, and accordingly the Legislature made no direct provision for the payment of a license fee by persons who operated such vehicles, but under the general provisions of the motor vehicle law it is impossible to escape the conclusion that a motor-bike should pay the license fee for the owners of motor vehicles, and in all other respects be governed by the provisions of the motor vehicle law.

Very truly yours,

LESLIE C HARDY,

Assistant Attorney General.

Candidates. Time for Filing Nomination Petitions.

Phoenix, Arizona,

Hon. Sidney P. Obsorn,
Secretary of State,
Phoenix, Arizona

My Dear Sir:

Your letter of August 31 received, in which you ask: "What is the final date upon which petitions could have been filed in order that a candidate's name might appear on the ballot to be used at the primary election to be held on September 12 next?"

In reply will state that Paragraph 30112, Revised Statutes of Arizona, 1913, provides that:

"Any person desiring to become a candidate at a primary election, as herein provided, that a political party nomination, or a non-partisan nomination, shall if he desires to have his name printed on the official ballot at such primary election, not less than twenty (20) days, nor more than sixty (60) days before said primary election, file a nomination petition as hereinbefore provided."

I have carefully considered the law and the calendar and have arrived at the conclusion that a candidate in order to have his name placed upon the official primary ballot must file his petitions not later than midnight of August 22-23. That when the law provides that he must file his petition at least twenty (20) days before the primary election, I am of the opinion that it means twenty whole days must elapse between the time of filing and the date of the primary election.

Hoping this will give you the desired information, I am,

Yours sincerely yours,

GEO. W. HARBEN,

Assistant Attorney General.

Claim Against State. Limitation of.

Phoenix, Arizona,
August 21, 1916.

Hon. J. C. Callaghan,
State Auditor,
Phoenix, Arizona.

Dear Sir:

Your letter of August 7 received, enclosing General Fund claim in favor of W. C. Combs, in the amount of \$390.00, said claim being dated April 14, 1915, and you ask for an opinion as to whether or not the claim can be allowed.

I note that this claim is for salary as Sheep Inspector, which salary, according to the provisions of Paragraphs 3807 and 3080, Revised Statutes of Arizona, 1913, is to be paid out of the General Fund after the Auditor draws his warrant, as in other cases.

Paragraph 73, Revised Statutes of Arizona, 1913, provides that persons having claims against the State must exhibit the same in the proper form to the Auditor to be audited and allowed, within one year after such claim shall accrue, and not afterwards.

I am therefore of the opinion that the limitations prescribed by law will not allow you to pay this claim. We regret very much to be compelled to advise you against the payment of what we are satisfied is a just claim, but we are not responsible for the law as it stands.

By way of suggestion, I might recommend that this man to whom the State owes this money, should present his claim to the next Legislature, and if it be a just claim, I feel sure that he could get relief in that way.

I am returning the claim, together with the letter written by the Secretary of the Sheep Sanitary Commission to you.

Very truly yours,

GEO. W. HARBEN,
Assistant Attorney General

Claim Against State. Limitation of.

Phoenix, Arizona,
March 1, 1916.

Hon. J. C. Callaghan,
State Auditor,
Phoenix, Arizona.

Dear Sir:

Your letter of the 26th ult. received, in which you state that a claim has been presented to you in the amount of \$24.00, representing a subscription to a newspaper, covering four years' subscription, from February 14, 1912, to February 14, 1916, at \$6.00 per year, and you ask whether or not the State, which prohibits the payment of claims more than one year old, would intervene to prevent the payment of this claim.

In reply will state that Paragraph 712 of the Revised Statutes of Arizona, 1913, provides that "in all accounts except those between merchant and merchant, their factors and agents, the respective times or dates of the delivery of the several articles charged, shall after demand made in writing, be particularly specified and limitation shall run against each item from the date of such delivery, unless otherwise specifically contracted."

Of course you are familiar with the provisions of Paragraph 73, Revised Statutes of Arizona, 1913, which provides that all claims shall be presented within one year after such claim shall accrue, and not afterwards. It would seem that if a bill has been rendered for \$6.00 for each of the years mentioned, that only the last year could be paid, under the provisions of the law above quoted, for if each year constitutes an item in this account, they certainly should have been presented before the expiration of the one year limitation provided in Paragraph 73.

If we have not answered your inquiry fully, please give us more details of this matter, and we will endeavor to advise you more definitely in the matter.

Very truly yours,

GEO. W. HARBEN,
Assistant Attorney General

Library Fund. Disposition of.

Hon. J. C. Callaghan,
State Auditor,
Phoenix, Arizona.

Phoenix, Arizona,
May 18, 1916.

Dear Sir:

Your letter of some time ago received, in which you state that there was a credit balance remaining in the old Library Fund, against which numerous obligations had been contracted, and that the present State Librarian, Mr. Cronin, contends that that balance, which exists under the provisions of Chapter 19, Title 42, Revised Statutes of Arizona, should be transferred to the present Library Fund.

The Second Legislature of the State of Arizona, First Session, Chapter 62, created a State Library without making any provision for the transfer of funds to the present library; yet the present library succeeded to all assets such as books, etc., and it is natural to infer that they intended the present library to succeed to all assets and liabilities of the old library.

I am therefore of the opinion that the Legislature intended the new department to be the legal successor of the old, to all its assets, outstanding obligations, and remaining credit balances. I think it would therefore be legal for you to transfer the credit balances belonging to the old department to the credit balances of the present State Library.

Very truly yours,

WILEY E. JONES,
Attorney General

Governor's Proclamations. Payment of.

Phoenix, Arizona,
May 18, 1916.

Hon. J. C. Callaghan,
State Auditor,
Phoenix, Arizona.

Dear Sir:

I am in receipt of a letter of the 4th inst., written to this office by Leroy A. Ladd, Esq., Secretary to the Governor, in reference to the matter of the payment for the publication of proclamations issued by the Governor's office. He accompanies his letter with a number of copies of letters forming the correspondence upon the subject.

The appropriation for the contingent expenses of the Governor's office, set forth in Subdivision 36, Section 1, of the General Appropriation Bill of the last Legislature, is limited to the objects of the appropriation therein mentioned, but if said appropriation, under said Subdivision 36, is exhausted, then it is beyond question that the expense of the publication of proclamations issued by the Governor can be readily met by the provisions of Paragraph 98, Revised Statutes of Arizona, 1913, which reads as follows:

"The general fund shall consist of money received into the State treasury and not especially appropriated to any other fund, and out of such fund all salaries of State officers, and expenses incident to the offices thereof, as authorized by law, shall be paid."

I feel sure, and hereby express my official opinion, that the expense and claims for publication of proclamations issued by the Governor under the law may be properly met by warrants drawn on the General Fund, under said Paragraph 98, Revised Statutes of Arizona, 1913.

Very truly yours,

WILEY E. JONES,
Attorney General

Surety Bonds.

Phoenix, Arizona,
May 22, 1916.

Hon. Mit Simms,
State Treasurer,
Phoenix, Arizona.

Dear Sir:

Your two letters of May 18 received, in which you enclose bond for our approval or disapproval, by the Commercial Trust & Savings Bank of Prescott, Arizona, as principal, and the National Surety Co. of New York, as surety; also bond by the Old Dominion Commercial Co. of Globe, as principal, and the American Surety Co. of New York, as surety.

The law provides that the sureties upon such bonds shall have all the qualifications required by law in case of official bonds, and shall comply with and be subject to all the terms and conditions of law governing official

bonds. Paragraph 205, R. S. A. 1913, relating to official bonds, provides that in no case is the original bond discharged or affected when an additional bond has been given, but shall remain of like force as if such additional bond had not been given.

Both of these bonds contain a provision that the new bond shall supersede and cancel or nullify the old bond. We have furnished a form for your office, and advised all banks to use this form, and it did not contain such a provision as this, and in view of the law, and for the sake of uniformity, we must insist that they use the form furnished your office some time ago, and leave out this clause, as, under the law there would not be any double liability, but a suit might be brought under either bond.

We therefore cannot approve these two bonds sent to this office by you.

Very truly yours,

GEO. W. HARBEN,

Assistant Attorney General

Sale of State Bonds. Publication for.

Phoenix, Arizona,

July 28, 1916.

Hon. Mit Simms,
State Treasurer,
Phoenix, Arizona.

Dear Sir:

Your letter of July 22 received, in which you state that on January 15, 1896, the Territory of Arizona issued \$300,000 funding bonds, at 5%, for a period of 25 years, with an option to refund the same or any part thereof at the expiration of 15 years. You also state that on the 7th day of June, 1916, you sold \$300,000 of State of Arizona refunding bonds for the purpose of refunding the issue of January 15, 1896; and you also state that you are asked by the attorneys for the company that bought the bonds to publish a notice recalling the old bonds, and you ask for an opinion from this office as to what papers you must publish said notice in and for what period.

In reply will state that the old law, Paragraph 153, Revised Statutes of Arizona, 1901, provided that the Territorial Treasurer shall advertise in some paper published at the capital at least two consecutive times, announcing his readiness to redeem bonds to the extent of funds on hand.....

Paragraph 5255, Revised Statutes of Arizona, 1913, Chapter I, Title LII, relating to refunding of State indebtedness provides that the loan commissioners shall direct the State Treasurer to advertise for a sale of the bonds to be issued for that purpose by causing a notice of such sale to be published once a week for the period of one month, in three newspapers published in the State, no two of which shall be published in the same county.

Of course the publication for once a week for a period of one month, would mean five publications to cover a full month. The law is somewhat

ambiguous upon this question as the old bonds were issued under the territorial law, and the law for refunding the territorial bonds was passed by the Legislature after the State of Arizona was admitted to the Union.

Therefore the opinion of this office is that to be safe, you should publish notice recalling the old bonds, in at least three newspapers (one of which should be published at the State Capital), no two of which should be published in the same county, for a period of five consecutive weeks.

As to what papers this publication is to be made in, of course is discretionary with your office.

Hoping this gives you the desired information, I remain,

Very truly yours,

GEO. W. HARBEN,

Assistant Attorney General

Loan of State Funds on Unpatented Lands.

Hon. Mit Simms,
State Treasurer,
Phoenix, Arizona.

Dear Sir:

Answering your inquiry of the 12th instant, I will state that I advise, at this time, that no loan of State Funds be made upon unpatented lands, that is, upon lands wherein the United States Patent has not actually been issued, even though final proof has been made upon the lands.

The Land Department, through my advice has gone as far as possible to accommodate the lessees of State lands and purchasers thereof, as well as in the matter of the loan of State Funds upon cultivated land, but I do not deem it well to make a loan of State Funds upon lands in cases where the patent has not actually been issued. A private citizen may, on his judgment, at a risk loan his money upon unpatented lands where a final proof has been made; but I do not feel that the State officials, clothed with such authority as the Land Department is possessed of, should take that risk upon the part of the State.

Very respectfully,

WILEY E. JONES,

Attorney General

Loan of State Funds on Undivided Interest in Land.

Hon. Mit Simms,
State Treasurer,
Phoenix, Arizona.

Phoenix, Arizona,
October 2, 1916.

Dear Sir:

In compliance with your request by telephone this morning for an opinion from this office as to whether or not a loan of State funds could

be made on a one-half undivided interest in real estate, will say that in my opinion, if the title in all respects is clear to a one-half undivided interest that a loan could be made to the extent of one-third of the appraised value of a one-half undivided interest, and I therefore recommend that such loans be made.

Very truly yours,

GEO. W. HARBEN,
Assistant Attorney General

Contracts With U. S. Approval of.

Phoenix, Arizona,
August 3, 1916

Hon. Charles R. Osburn,
Secretary Board of Control,
Phoenix, Arizona.

Dear Sir:

Your letter of August 1 received, together with copy of contract with the Federal Government, regarding power for the prison and the town of Florence. You call attention in your letter to the fact that this contract signed by William S. Cone, but does not show approval by the comptroller or director of the U. S. Reclamation Service, and you ask if you are protected in your rights by this document.

In reply will state that this contract provides that William S. Cone, Project Manager of the U. S. Reclamation Service, is duly authorized to enter into a contract, as agent of the United States, but subject to approval of the comptroller or director of the U. S. Reclamation Service.

I also find that Article III of copy or contract submitted provides that "this contract shall become effective upon its approval"

We have examined this contract, and it appears to be all right insofar as we are able to determine from the terms thereof, but this office is of the opinion that it must be approved by the comptroller or director of the U. S. Reclamation Service before it becomes effective.

Hoping this gives you the desired information,,I remain,

Very truly yours,

GEO. W. HARBEN,
Assistant Attorney General

School Election. Who Can Vote.

Phoenix, Arizona,
March 22, 1916.

Hon. C. B. Wilson,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

Your letter of March 18 received, in which you ask for an expression

of opinion as to Paragraph 2730 of the Revised Statutes of Arizona, 1913, and state that your opinion is that a widow who has property assessed at less than \$1,000.00, and who pays no taxes whatever, is not eligible to vote at a school election

This office has carefully considered the provisions of said paragraph, and in view of the oath that a person must take before they vote, must say that we concur in your opinion that a person cannot vote at a school election unless they are the parent or guardian of a minor child, or have actually paid a county school tax during the past year.

Very truly yours,

GEO. W. HARBEN,
Assistant Attorney General

Soldiers Voting at Election.

Phoenix, Arizona,
May 26, 1916.

Hon. Oscar K. Goll,
Secretary Chamber of Commerce and Mine,s
Douglas, Arizona.

Dear Sir:

Your letter of yesterday has just been received, wherein you inquire about the right of a soldier in the service of the United States to vote. Section 3 of Article 8 of the State Constitution is incorporated in the election law of Arizona, under Paragraph 2964, R. S. A. 1913, and reads as follows:

"A person must not be held to have gained or lost his residence by reason of his presence or absence from a place while employed in the service of the United States or of this State, nor while engaged in navigation, nor while a student in an institution of learning, nor while kept in an almshouse, asylum or prison."

Our own soldiers composing the National Guard of Arizona, while stationed at Douglas, can vote for all except county officers, if they are in Douglas at the time of the State election. The Cochise County company or companies, however, can vote the entire ticket.

I would suggest that you consult with the City Attorney, and call his attention to the case of Stewart vs. Kayser, 39 Pac. 19; People vs. Holden, 28 Cal. 124, reading page 137; also Darragh vs. Bird, 3 Oregon 229; also in re Garvey, 41 N. E. 439.

Very truly yours,

WILEY E. JONES,
Attorney General

Fine, Non-Payment of. Imprisonment for.

Phoenix, Arizona,

May 5, 1916.

Hon. S. F. Noon,
County Attorney,
Nogales, Arizona.

Dear Sir:

Answering your letter of the 3d inst., wherein you inquire if there is any law imposing punishment for the violation of Paragraph 5125, Civil Code, 1913, other than the penalty of \$500.00 provided for in Paragraph 5131, will state that I know of no other penalty for such violation.

However, would state that Paragraph 1128 of the Penal Code, 1913, provides that imprisonment for the non-payment of such fine may be imposed at the rate of \$1.00 per day for each dollar of the fine. I know of no other sections or paragraphs touching the subject.

I would call your attention also in this connection and for your future guidance, to the case of ex parte Morris, on petition for writ of habeas corpus, in which our Supreme Court of Arizona on February 25 last held that a term of imprisonment could be imposed for a misdemeanor, coupled with a fine, and that the judgment could lawfully declare that after the expiration of the sentence of imprisonment the defendant could be imprisoned thereafter for non-payment of said fine at the rate of \$1.00 per day until such fine was paid, the sentence of imprisonment not to exceed the maximum of imprisonment for the offense. It is reported in the Advance Sheets 155 Pac. 299.

Very truly yours,

WILEY E. JONES,

Attorney General

Supervisory Districts. Establishment of.

Phoenix, Arizona,

February 24, 1916.

Hon. C. B. WILSON,
County Attorney,
Flagstaff, Arizona.

Dear Sir:

Your letter of February 21 received, in which you enclose a copy of the minutes of a meeting of the Board of Supervisors of September 3, 1914. You ask that we examine said minutes and advise you whether or not the county has been legally divided into supervisory districts, and if not, if the present Board is required by law to establish new districts, and if new districts are established, if it would be possible to elect Supervisors from the districts at the coming election.

In reply will say that I have examined the minutes carefully, and I find that the meeting was held on the third day of September—on Thursday,

when it should have been held on the first Monday in September, as provided by law. I also find that the districts have not been numbered 1, 2 and 3, as provided by law. I find also that in defining the boundaries of said districts, they are described by township lines, alone on all sides, without any mention of range lines, which of course leaves the description meaningless.

As the descriptions of the boundaries of said districts seem to be fatally deficient, and the meeting for the purpose of districting the county was not held on the date prescribed by law, and the districts were not numbered as provided by law and no election was ordered for ratification by the people, I must therefore say that my opinion is that there has been no compliance with the law as provided in Paagraph 2401 of the Revised Statutes of Arizona, 1913, and that your county has never been districted and the attempt to district the county is therefore ineffective.

As to whether or not the present Board is required to establish new districts, will say that the law seems to be merely directory and not mandatory, and would therefore be discretionary with your Board.

As to whether or not it would be possible to elect from new districts Supervisors if your Board should desire to create them during the present year, would say that I do not believe it possible to make said districting effective during the present year in time for the coming election.

I will state that Mr. Woolfolk was here some time ago and in going over with him this matter we thought possibly that the districting of the county might be legal, but upon examination of the copy of the minutes furnished by you I found a lot of matters which Mr. Woolfolk and I had not discussed. I was therefore compelled to arrive at the conclusion set forth in this letter.

Trusting that this is the information you desire, I remain,

Very truly yours,

GEO. W. HARBEN,

Assistant Attorney General

Drug Fiends. Cannot Be Admitted to Insane Asylum.

Phoenix, Arizona,

February 21, 1916.

Hon Charles R. Osburn,
Secretary of the Board of Control,
Phoenix, Arizona.

Dear Sir:

Your letter of February 15, addressed to this department, has been received, in which you state that from time to time the Board received requests from the commitment of persons addicted to the use of drugs, or who are slightly mentally deranged, and whom it is hoped a little treatment at the State Hospital for the Insane would prevent from becoming

entirely so, and you ask whether or not you have authority to accede to such requests.

In reply will say that Paragraph 4468 of the Revised Statutes, 1913, relating to persons to be received into the Asylum, states:

“The Board of Control shall have the power, and are hereby authorized * * * * to cause to be received into and confined in said asylum all persons who are insane and adjudged by competent tribunals to be insane, and to be removed to and kept there confined in said asylum, all persons who have been adjudged insane, and who are now or who shall hereafter be adjudged insane.”

Upon a careful examination of the statutes, I find that the only persons to be admitted to the Insane Asylum are those adjudged insane by a competent tribunal, as provided by law. I can find nowhere in our law any authority for the Board to admit persons to said asylum who have not been adjudged insane as provided by law. I must say, therefore, that I am of the opinion that you would have no authority to admit persons addicted to the use of drugs, and who are slightly mentally deranged until they are judged to be insane as provided by law.

Very truly yours,

GEO. W. HARBEN,

Assistant Attorney General

Intervenor. Court Cases.

Phoenix, Arizona,

August 11, 1916.

Hon. D. F. Johnson,
State Examiner,
Phoenix, Arizona.

Dear Sir:

Your letter of August 10, addressed to this department, has been received, in which you state that in the County of Coconino the San Diego Consolidated Brewing Company filed suit against McCoy and Smith, said suit being numbered No. 1193, and that after this suit was filed Babbitt-Polson Company came in as intervenors, under Suit No. 1203, claiming that the goods and chattels involved in said suit belonged to said intervenors. You state that the plaintiff in Suit No. 1193 paid a fee of \$10, but that the intervenor under Suit No. 1203 paid no fee, and refuses to pay same; and you ask this department whether or not the said intervenor should pay a fee to the Clerk of the Court.

In reply will state that Paragraph 3185 of the Revised Statutes of Arizona, 1913, provides in plain language as follows:

“Any person intervening in any civil action in the Superior Court shall pay the same sum as required to be paid by the plaintiff.”

It seems to me that this law is as plain as language can be made, and

I am therefore of the opinion that the said intervenors must pay a fee as prescribed by said Paragraph 3185, Revised Statutes of Arizona, 1913.

Very truly yours,

GEORGE W. HARBEN,
Assistant Attorney General.

Aliens. Cannot Buy or Lease Land.

Phoenix, Arizona,
June 3, 1916.

Hon. W. A. Moeur,
Phoenix, Arizona.

Dear Sir:

Upon my delivery to you on May 8 of a letter in reference to leasing of State lands by an alien, I stated orally to you that I desired to supplement that letter by another letter calling attention to the provisions of Section 58 of the Land Code, wherein the former law of Arizona has been amended, and which reads as follows:

"No sales, leases or sub-leases of State lands shall be made to persons who are not citizens of the United States or who have not declared their intention to become such, nor to corporations or associations not qualified to transact business in the State of Arizona."

While we discussed orally this provision of said Section 58, I had not placed the matter in writing, and do so at this time in order that it may be officially among your files in your office.

Therefore the applicant for sale, lease or sub-lease of State lands must be a citizen of the United States or have declared his intention to become such. This is the latest expression of the Legislature upon the subject of aliens purchasing or leasing State lands.

Very truly yours,

WILEY E. JONES,
Attorney General.

Prisoner. Good Time Earned.

Phoenix, Arizona,
December 18, 1916.

Hon. R. B. Sims,
Superintendent State Prison,
Florence, Arizona.

Dear Sir:

Answering your inquiry of the 6th instant, will state that Paragraph 1453, Penal Code, 1913, supports my view heretofore explained to you:

That a prisoner on parole during good behavior earns what is usually termed "good time" as provided in Paragraph 1448, of the Penal Code, un-

less he forfeits the good time by violation of parole before the "good time" earned, added to the time elapsing after sentence equals the maximum period.

I will state, further, that the "good time" allowed is earned as each year begins, but "good time" cannot be anticipated and computed for future years and deducted from the sentence to bring about an earlier expiration of sentence.

If my explanation is not plain to you, I will be pleased to answer further upon your request.

Very respectfully,

WILEY E. JONES,

Attorney General of Arizona.

Civil Service Employees. Payment of Taxes.

Phoenix, Arizona,

March 17, 1916

Arizona State Tax Commission,
Phoenix, Arizona.

Gentlemen:

Your letter of March 7 received, in which you ask this department whether or not employees living and working upon Indian Reservations are liable for school, road and personal property taxes.

In reply will state that Paragraph 4846, Revised Statutes of Arizona, 1913, provides that all property, of every kind and nature whatsoever, within this State shall be subject to taxation, with certain exceptions therein enumerated. I do not find in any of said exceptions anything to exempt the property of a civil service employee owning property on an Indian Reservation from paying personal property taxes.

Paragraph 5044, Revised Statutes of Arizona, 1913, provides that each male inhabitant in this State, whether a citizen of the United States or an alien, over 21 and under 60 years of age, with certain exceptions therein enumerated, shall be liable to pay a school tax. I do not find enumerated in said paragraph, among those exempt from the payment of this tax, a civil service employee.

Paragraph 5056, Revised Statutes of Arizona, 1913, provides that every able-bodied male resident of the State, over 21 and under 60 years of age, other than inhabitants of incorporated cities and towns, shall be required to pay a road tax of \$2.00 per annum. I find nothing in the law exempting civil service employees from the payment of this tax.

I am therefore of the opinion that civil service employees, regardless of their place of residence in this State, will be required to pay school, road and personal property taxes, in the same manner as other residents of the State. They have the right to vote by proper registration.

Very truly yours,

GEORGE W. HARBEN,

Assistant Attorney General.

Deputies. Same Power as Principal.

Phoenix, Arizona,
November 25, 1916.

Hon. Dan J. Cronin,
County Recorder, Coconino County,
Flagstaff, Arizona.

Dear Dan:

Your letter of November 23 received, in which you ask if your deputy has the right to take acknowledgements and oaths the same as you have.

Paragraph 196, Statutes of Arizona, 1913, provides that:

"In all cases not otherwise provided for, such deputy possesses the powers and may perform the duties attached by law to the office of the principal."

Paragraph 2512, Revised Statutes of Arizona, 1913, provides that:

"Whenever the official name of any principal officer is used in law conferring power, imposing duties or liabilities, it includes his deputies."

I am, therefore, of the opinion that your deputy has the same right to take acknowledgements and oaths that you have.

Very truly yours,

GEORGE W. HARBEN,
Assistant Attorney General.

Relative, Employment of.

Phoenix, Arizona,
May 1, 1916.

Hon. C. O. Case,
Superintendent of Public Instruction,
Phoenix, Arizona.

Dear Sir:

I am just in receipt of your letter of the 28th ult., wherein you inquire as to the matter of a "relative by affinity or a relative by consanguinity within the second degree," and ask me if the employment of an applicant for teacher in the public school is forbidden under the following statement of facts: "The niece of the wife of a school trustee is the wife of a man who is an an applicant for a position within the school district."

After examining the subject, I am of the opinion that whatever relationship exists, is too remote to come within the definition of "relative" set forth in Paragraph 2733 of the Revised Statutes of Arizona, 1913.

Very truly yours,

WILEY E. JONES,
Attorney General.

Clerk Superior Court Fees.

Phoenix, Arizona,
July 22, 1916.

Hon. H. B. Farmer,
Clerk Superior Court,
Yuma, Arizona.

Dear Sir:

Your letter of July 7 received, but I have been gone from home, and had so much business pressed upon me that it has been impossible to reach your letter any earlier.

You state in your letter than an estate has been probated in the Superior Court, the administrator discharged, and the estate finally closed, and that now a party comes in foreign to the estate and files a motion to set aside the order and decree confirming sale of real estate and all proceedings had thereafter; said foreign party claiming that the fees heretofore paid by other parties under Paragraph 3184 cover all his costs and that he should not be required to pay any fees whatsoever.

You ask us to advise you in the premises. You are advised that it is my opinion that this party coming in foreign to the estate, after it has been closed, and starting in new proceedings, would be required to pay the fees prescribed by law, and that the fees heretofore paid by the other parties in this estate which has been closed up, would not cover the costs of this new proceeding.

Hoping this will give you the desired information, and assuring you of our willingness to accommodate you at any time, I remain,

Very truly yours,

WILEY E. JONES,
Attorney General

High School Building. Approval of Plans.

Phoenix, Arizona,
May 1, 1916.

Hon. O. E. Walker,
Chairman Board of Supervisors,
Kingman, Arizona.

Dear Sir:

I have given some considerable time to the examination of the subject matter of your letter of the 24th ult., relative to the approval of plans and specifications for the construction of the Union High School in Mohave County.

I have a great deal of business upon my desk from inquirers among the State officers and others throughout the State, which accounts for the delay in my reply to your communication.

I will state that I have examined all the sections cited to you by Prof.

Case. I see nothing therein at all to cause me to give an opinion adverse to my letter of April 20, written to the County Attorney, Mr. Herndon. I concurred with him in his interpretation of the law, that the approval of the plans and specifications of the Union High School Building was a matter resting with the Board of Supervisors. The sections quoted in the copy of the letter which you have sent me, refer to the duties of school trustees in various particulars, but nowhere does either of said sections appear to conflict with the Paragraphs 5281 and 5282, conferring upon the Boards of Supervisors the power and duty to adopt a form of bond and plans and specifications of such building, and providing for the construction of the same.

When such building is constructed, then all the powers of the School Boards become operative under Paragraphs 2736 to 2749, mentioned in the letter of Prof Crane.

Very truly yours,

WILEY E. JONES,
Attorney General.

High School Building. Approval of Plans.

Phoenix, Arizona,
April 20, 1916.

Hon C W. Herndon,
County Attorney,
Kingman, Arizona.

Dear Sir:

Your letter of the 18th inst., in reference to the approval of plans for the construction of a Union High School Building, wherein bonds were voted in the sum of \$60,000 for such purpose, has been received.

You state that in your opinion the approval of the plans for such building lies with the Board of Supervisors of the county, and not with the Board of Education, basing your opinion upon Paragraph 5282, Civil Code of Arizona, 1913. I have examined the section referred to thoroughly, and fully concur with you in your opinion. That paragraph nowhere mentions the Board of Education or Board of School Trustees; neither does the preceding paragraph, but it does refer to the duties in such cases imposed upon the Board of Supervisors, City or Town Council. "The Board of Supervisors, City or Town Council, as the case may be, of any county, school district, city or town issuing bonds or other evidences of indebtedness under the provisions of this chapter, etc."

Until some other provision of the law is pointed out to me to show that your construction of the law is wrong, I cannot hesitate to concur in the opinion which you have rendered in the case.

Very truly yours,

WILEY E. JONES,
Attorney General.

Tobacco. Sale of to Minors.

Phoenix, Arizona,
April 28, 1916.

Dr. R. N. Looney,
Secretary State Board of Health,
Prescott, Arizona.

Dear Sir:

The letter addressed to you from New York City by the Secretary of the Albio Society has been received, in which the question is asked whether we have any laws upon our statutes pertaining to the regulation of the sale of tobacco to minors or others.

In reply will state that Paragraph 293 of the Penal Code of Arizona, 1913, is as follows:

"It shall be unlawful for any person in the State of Arizona to sell, give or furnish or cause to be sold, given or furnished, any cigars, cigarettes, cigarette paper, smoking or chewing tobacco of any kind or character to any minor under the age of eighteen years."

Paragraph 300 of the Penal Code, 1913, providing for the punishment, is as follows:

"The violation of the preceding section shall be a misdemeanor and the person guilty thereof shall be fined for each offense not less than one hundred dollars."

Hoping this will give you the desired information, I remain,

Very truly yours,

GEORGE W. HARBEN,
Assistant Attorney General.

Clerk Superior Court. Fees of.

Phoenix, Arizona,
April 27, 1916.

Hon H. E. Farmer,
Clerk Superior Court,
Yuma, Arizona.

Dear Sir:

Your letter of April 7 received, in which you ask for a construction of Paragraphs 3182 and 3192, Revised Statutes of Arizona, 1913, Paragraph 3182 providing that plaintiff on filing a suit shall pay to the Clerk of the Court the sum of \$10.00, and Paragraph 3192 providing that said sum shall be in full payment of all fees to said clerk, excepting for certified copies, etc. You ask if this \$10.00 applies only so long as the case is pending in court, that is, until judgment is rendered, or is it to follow the case all the time and apply to issuing writs of execution, entering satisfaction of judgment, or in case a new trial is granted or the case reinstated.

It is the opinion of this department that the \$10.00 prescribed to be

paid is meant to be full payment of all fees of clerks in a case, and includes such as issuing executions, entering satisfaction of judgments, or in case a new trial is granted, or the case reinstated.

Very truly yours,

GEORGE W. HARBEN,
Assistant Attorney General.

Text Books. Adoption.

Phoenix, Arizona,
February 12, 1916.

Hon. C. O. Case,
Superintendent of Public Instruction,
Phoenix, Arizona.

Dear Sir:

Your letter of February 10 received, in which you state that the State Board of Education desires to make an adoption of Readers for the schools of Arizona, as provided by law. You also state that the Readers for the schools of Arizona are composed of a series of books, and you ask whether or not the adoption of a whole series would be an adoption of more than one text book, as provided in Paragraph 2830 of the Revised Statutes of Arizona, 1913.

I have carefully examined a copy of the requisition blank for free text books which you enclosed in your letter, and find that apparently the Readers for all the grades are by different authors. I remember your conversation with me some time ago regarding this matter, in which you stated that it is impossible for the Board to make an adoption unless they can adopt the whole series as one text book, for the reason that an adoption of books by one author would make a break in the series, which cannot properly be replaced, and that it would require fifteen years under our law to make a change for Readers alone. It does not seem reasonable to me that the law intended to impose an impossibility on the Board. I think the Legislature passed this law in the interests of justice and for the benefit of the public, and that the law should be so construed. I shall therefore attempt to place a reasonable construction upon the said law, which would mean, of course, such construction as would enable the Board to make a change at one time without causing them to wait fifteen years to make a complete change, and during this time, to cause a complete break in the series, which could not, according to your conversation, be properly replaced.

The same difficulty would be encountered five, ten or fifteen years from this date, if a reasonable construction is not placed upon the law. I am therefore of the opinion that when the law has provided that not more than one text book shall be changed in one year for any particular grade, that the term text book for all grades would be a broad interpretation of the

law, meaning the subject, whether or not this subject has been written by one or more authors.

You are therefore advised that you can adopt text books for the subject of reading for all grades.

Very truly yours,

GEORGE W. HARBEN,

Assistant Attorney General.

Summons. Where May Be Published.

Phoenix, Arizona,

January 19, 1916.

A. Y. MOORE, Esq.,

City Attorney,

Winslow, Arizona.

Dear Sir:

Your letter of the 17th inst received, in which you refer to my letter written to Mr. J. H. Chapman, editor of the Winslow Mail. In your letter you state that you filed a complaint in the Superior Court and at the same time filed affidavit of non-residence of defendant, and requested the court to make order directing that summons be published in the Winslow Mail, at which time the court made the order for publication, but changed the paper in which the same was to be published, to the Holbrook News, over your objection. You now ask whether or not it would be legal to have said summons published in the Winslow Mail, and you also ask what steps would be necessary if you desire to force publication in the Winslow Mail.

In reply will state that Paragraphs 447 to 455, Revised Statutes of Arizona, give full information upon this subject. You proceeded properly when you filed your complaint, but it was not necessary that you even ask the court to make an order for the publication of said summons. All that would be required of you would be that when your affidavit of non-residence is properly filed, that you cause said summons to be published in some newspaper published in the county, and before the case is called for trial, have the proper affidavit of publication made in order that the court would be satisfied that the proper service had been made in the case. If you have this summons published according to Paragraph 447 above referred to, and the paragraph succeeding, relating to publication of summons, your service will be complete. See 147 Pac. 722.

Owing to the restrictions placed upon this office regarding the giving of private opinions, will say that this is a private and not an official opinion, given you as a matter of courtesy, and only to be used as such by you.

Very truly yours,

GEORGE W. HARBEN,

Assistant Attorney General.

P. S. It seems that it would be advisable for you in this case, inasmuch as you have asked the judge for an order for publication, and he made the order, that you abide by his decision in this case, but hereafter you will remember that it is unnecessary to ask the judge for an order for publication. You may inform Mr. Chapman, editor of the Winslow Mail, of the contents of this letter.

Deputy Town Marshal. Appointment of.

Phoenix, Arizona,
July 22, 1916.

John H. Lyons, Esq.,
Town Marshal,
Jerome, Arizona.

Dear Sir:

Your letter of the 5th inst. came during my absence in northern Arizona, and I regret that I have not had the opportunity to answer it sooner.

The law may not be entirely clear on the matter of the appointment of a deputy town marshal. I would suggest that, if it is agreeable upon the part of yourself and the town council, that you designate to the council someone to act as your deputy during your absence, and have an entry of the same made on the minutes of the town council. If the town council is not agreeable to that, I would suggest then that you designate the appointment of a deputy and file your appointment in writing with the town clerk. The latter might be sufficient, though out of due caution, I would suggest that the town council approve it; then no question of legality could arise. If everything is moving smoothly between you and the town council, that would be the better course.

Very truly yours,

WILEY E. JONES,
Attorney General

Sheep Sanitary Inspector. Appointment of Deputy.

Phoenix, Arizona,
June 14, 1916.

May S. Allen,
Secretary Sheep Sanitary Commission,

Dear Miss Allen:

Your letter of the 12th inst., making inquiry about the proper process and legality of placing guards over infected sheep under the law, was received during my absence, and on my return this morning I gave it my immediate attention. I would suggest that Paragraphs 3789, 3790, 3791 and 3792 be carefully observed in the matter of your inquiry.

The Sheep Sanitary Commission should enter upon their records the appointment of : | inspectors throughout the State under Paragraph 3789. Under Paragraph 3790 the inspector should carry out all the lawful orders, rules and regulations of the Commission, and in performing such duties, he may call to his assistance such aid as may be necessary for that purpose, and any guard that he shall appoint to aid him will act as his agent or deputy in the matter.

I think the best thing to do is for him to appoint his guard or aid in writing, dating such appointment and keep himself as good a record as possible. The inspector may personally guard the sheep, or he may appoint

a guard acting for him to guard the sheep, at an expense or compensation of \$5.00 per day, to be paid by the sheep inspector. The legal fees, charges and expenses for such care and guarding over the sheep shall be a first lien upon the animals diseased, infected or exposed to disease and infection for 90 days after treatment. In case the owner or owners, or the party in charge representing them in their absence, shall fail or refuse to pay such fees upon the completion of such inspection or treatment, the inspector may recover the same from the owner by an action in court, or he may seize and hold the animals or any part thereof for such payment, and if not paid within 10 days after the treatment is completed, the inspector may sell the sheep at public or private sale, selling a sufficient number to pay all legal fees, charges and expenses, including the expense of seizure and holding, and \$5.00 per day for his time during such seizure and holding.

A full memorandum of all these proceedings, if conducted by the inspector, should be entered or written by him, and all precautions taken to observe the law so that the guarding and treatment expenses and all legal fees may be properly collected.

I think you should have your Sheep Inspection Laws printed in pamphlet form, and that you should see that each inspector be provided with a copy of the same. If you have made no rules, I would suggest that you formulate a full set of rules and enter them upon your records and supply each inspector with a copy. By the Sheep Commission closely observing the law, taking time and trouble to make a full record of their proceedings, the collection of the expenses above mentioned is better insured.

Very truly yours,

WILEY E. JONES,

Attorney General

Candidate. Nomination Petition.

Phoenix, Arizona.

March 2, 1916.

Lewis B. Whitney, Esq.,
Attorney at Law,
Bisbee, Arizona.

Dear Sir:

Your letter of February 22 received, in which you ask for a construction of Subdivision 5 of Paragraph 3015, R. S. 1913, relating to primary elections in cities and towns. You state that the basis of percentage in each case shall be the vote of the party for Governor at the last preceding general election at which a Governor was elected, and you ask that, assuming the vote for Governor to be one thousand in a city or town, and that a vote in a certain ward was 363—would a candidate be required to have not less than 5% of the total vote cast for Governor in the city, or should he have 5% of the vote cast for Governor in his ward only?

In reply will state that my opinion is that a candidate for an office

such as that of mayor, would be required to have the per cent of the vote cast in the whole city or town, but a candidate from a ward only, would only be required to have the percentage of votes from the ward from which he is elected. It would be just as unreasonable to require a candidate from a certain ward in a city to have signers on his petition from all wards, as it would be for a precinct officer to have signers from all precincts within the county from which he is a candidate, and I do not think the law makers intended any such construction to be placed upon the law.

You further ask what would be the effect if a candidate did not have the required amount of signatures, or had too many signatures in his nomination paper. I am of the opinion that the effect would be that his petition could not be legally filed. I think in either event it would be defective, just as defective if he has too many signatures as if he did not have the required number.

Hoping this will give you the desired information, I remain,

Very truly yours,

GEORGE W. HARBEN,

Assistant Attorney General

City Election. Party Affiliations.

Phoenix, Arizona.

March 6, 1916.

Louis B. Whitney, Esq.,
Attorney at Law,
Bisbee, Arizona.

Dear Sir:

In your letter you ask if the law passed by the last Legislature, requiring persons to declare their party affiliations at the time of registration, applies to city primary elections.

In reply will state that Paragraph 1838 provides that "city elections shall be conducted, as near as may be by the law governing the general election of county officers" Paragraph 3010 recognizes primary elections in cities, as does also Paragraph 3011. Paragraph 3042 provides that the provisions as to registration and eligibility to vote required by existing statutes and by any amendment now or hereafter made thereto, shall apply to all primary elections. If our old primary law applies to cities, most certainly the new law amending the old law would apply, unless cities were excepted, and I cannot find that they were so excepted.

I am therefore of the opinion that persons registering to vote at municipal elections must declare their party affiliations in the same manner as they do for other elections, unless the charter provides otherwise.

Very truly yours,

GEORGE W. HARBEN,

Assistant Attorney General

City Officers. Enforcement Prohibition Law.

Phoenix, Arizona.

July 22, 1916.

Rev. Hubert L. Sparks,
Pastor First Baptist Church,
1113 Eleventh St., Douglas, Arizona.

Dear Sir:

Your letter of the 18th inst. duly received, but a large number of official inquiries and other work on hand prevented my answering it until today.

I do not know just which law of the State the City of Douglas is operating under as such, but your letter of inquiry asks about the duties of the local city officers in the enforcement of the prohibition law. Our statute provides that marshals and policemen of cities and towns respectively are peace officers the same as sheriffs and constables, and the power and authority given to peace officers as defined by the statute, goes to all such officers alike, and particularly when an offense is committed within the limits of a city, and applies to all public offenses.

Paragraph 841, Revised Statutes of Arizona, 1913, reads:

"Peace officers are sheriffs of counties and constables, marshals and policemen of cities and towns respectively."

Paragraph 842 provides that a warrant may be directed generally to any of such officers and may be executed by any of those officers to whom it may be delivered in any county. Paragraph 854 provides and enumerates the cases in which a "peace officer" may make an arrest with or without a warrant.

I have pointed out above the power and authority conferred upon peace officers as enumerated by the statute. It is usually customary for the peace officers of a city to deal particularly with offenses against the city ordinances, while sheriffs and constables deal with offenses generally against the State law, and it is also customary for the city peace officers to arrest when they discover a violation of a State law committed in the presence of such officer, and he should consider it his duty to do so.

I think the foregoing answers the questions in accordance with the inquiry which your Law Enforcement League desired you to propound to me

Very truly yours,

WILEY E. JONES,

Attorney General

History of Arizona. Not to Be Distributed to Officers.

Phoenix, Arizona
March 16, 1916

Hon. Thos. Edwin Farish,
State Historian,
Phoenix, Arizona.

I have before me your letter of recent date, accompanied by a letter of inquiry received by you from Con Cronin, State Librarian, asking that your office supply him with a sufficient number of copies of the State History of Arizona, to enable him to exchange with 58 other State Libraries. You ask me to advise you if it is your duty to comply with that request and furnish him with the books asked for. He calls attention to Subsection 8 of Section 7 of Chapter 62, which authorizes and empowers him to make distribution of official State publications with the government, other states, and foreign countries.

I very much doubt that the official State publications therein mentioned refers to the State History which you have compiled and at which you are now at work. However, the concluding portions of said Subsection 8 empowers the librarian "to make requisition upon the Secretary of State for a sufficient number of such publications to enable him to carry out the requirements of this subdivision."

I find no law directing you to place any copies of the State History with the Secretary of State for the purpose mentioned in Mr. Cronin's letter. Chapter 13 of Title 1, creating the office of State Historian, makes no provision for the publication of the history, and hence none for filing copies thereof with the Secretary of State. Subsections 80, 81, 82 and 83 of Section 1 of the First Special Session, Legislature 1915, and known as the General Appropriation Bill, makes appropriation for the office of State Historian, and for the printing and binding of two volumes of the history which you have compiled. I find nothing therein authorizing, requiring or empowering you to place any of those volumes with the Secretary of State. I find no provision even for supplying State officers of Arizona with a copy of the same.

In conclusion, will say that I find no law anywhere empowering or directing you to deliver any copies of the History of Arizona to any official within the State of Arizona.

WILEY E. JONES,
Attorney General

Smith-Lever Act. Appropriations. Title to Bill.

Phoenix, Arizona.

January 24, 1916.

Prof. Stanley F. Morse,
University of Arizona,
Tucson, Arizona.

Dear Sir:

I have made a pretty thorough examination into the matter inquired about in your letter, touching the effect of Senate Bill 34, Chapter 25, passed at the Regular Session of the Legislature in 1915, and named as Chapter 25 in the Laws of that session.

It deals with what is known as the Smith-Lever Act, but strange to say, the investigation shows that the title of the Act provides for no appropriation whatever, and Section 13, Article IV, of the State Constitution, dealing with the legislative department and the passage of laws therein provided for, reads as follows:

"Sec. 13. Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title."

Under that section you will see that no appropriation whatever by the State has been made by the passage of said Senate Bill 34. The title only provides "for the acceptance of an Act of Congress approved May 4, 1914, * * * * and permitting supplementary appropriations by County Boards of Supervisors." Those two matters thus mentioned in the title are provided for in the Bill, but the attempted appropriation made at the end of Section 2 of said legislative act, is nowhere referred to in the title of the Act.

Therefore, under Section 13, Article IV, of the State Constitution, "such act shall be void only as to so much thereof as shall not be embraced in the title." Whether that omission in the title was an oversight or intentional does not change the legal status of the case. The Constitution is plain, and under it no appropriation in that particular Act was made to meet the provisions in the Smith-Lever Act of Congress.

If the Board of Regents can meet the provisions of the Smith-Lever Act, by the use of funds appropriated by the General Appropriation Bill for university and experimental purposes, then probably you can get the benefit of the Congressional appropriation but you cannot do so under Senate Bill 34, Chapter 25, above mentioned.

I may state that both of my assistants, after investigating this question with me, concur in the conclusions herein expressed.

Very respectfully,

WILEY E. JONES,
Attorney General

Corporations. Fee, Filing Amended Articles.

Phoenix, Arizona.

December 15, 1916.

Arizona Corporation Commission,
Phoenix, Arizona.

Gentlemen:

This will acknowledge receipt of your letter of December 12, signed by Miss Wise, and enclosing letter of January 27, 1906, addressed to Hon. John H. Page, and signed by the then Attorney General, E. S. Clark.

While Section 2274 of the Revised Statutes of Arizona, 1913, Civil Code, which is a re-enactment of Chapter 70, Section 3, Regular Session of the First Legislature of the State of Arizona, as amended by Chapter 72 of the Special Session, Laws of 1912, does not provide in terms for the payment of the \$10.00, for filing amendments to articles of incorporation, still this office does not feel warranted in disturbing the said opinion of former Attorney General Clark, under which your incorporating department has been working, hence, it is the opinion of this office that your incorporating department should continue to charge the usual \$10.00 fee for filing amendments.

As requested, I return herewith ex-Attorney General Clark's said letter of January 27, 1906.

Very truly yours,

R. WM. KRAMER,

Assistant Attorney General

Prohibition Law Enforcement.

Phoenix, Arizona

December 26, 1914.

Dear Sir:

On the 24th inst. the Federal Court of three judges, in Los Angeles, California, denied the application for an injunction against the so-called "prohibition amendment" to our State Constitution in the several suits wherein, first, the Adams Hotel Company; second, Melczer Brothers Company; third, Thomas W. Connolly, and, fourth, Owl Drug & Candy Company, were plaintiffs, respectively, against myself, as Attorney General, and the sheriffs and county attorneys of the State.

In denying each application for said injunction, the court, in all cases, refused to grant a stay and nothing remains but for you, officially, and myself, to treat the constitutional amendment as self-executing and to enforce it accordingly on and after January 1, 1915.

This letter goes to all County Attorneys of the State. You can give notice to those engaged in the liquor traffic in your county, and to all others interested, as your good judgment suggests. You and your successor in office will, no doubt, fulfil the official obligations imposed upon you by

the law under your official oath until restrained, if at all, by some action of a competent court in the future. No such restraint is now imposed upon me or any other law officer of the State of Arizona.

Respectfully yours,

WILEY E. JONES,

Attorney General of Arizona

State Lands. Who Can Lease.

Phoenix, Arizona.

Hon. W. A. Moeur,

April 27, 1916.

State Land Commissioner,

Phoenix, Arizona.

Dear Sir:

On my return to my office after my conference with you yesterday afternoon, I found among my files your letter of March 30th, containing the inquiry about which we conversed yesterday. In that letter you inquired if the State can lease State lands to a married woman of the age of 17 years.

In the section of the Public Land Code governing the sale of State lands, it is provided that the purchaser must be over 18 years of age, but I find no age limit specified in the provisions governing the lease of State lands. Paragraph 2852, Civil Code, Revised Statutes of Arizona, 1913, is correctly quoted by you as follows:

“Hereafter married women shall have the same legal rights as men of the age of 21 years and upwards, except the right to make contracts binding the common property of the husband and wife, and shall be subject to the same legal liabilities as men of the age of 21 years and upwards.”

Thus the married woman cannot make a contract binding the common property of the husband and wife. Therefore, I am of the opinion that the Land Department can legally lease State lands to a married woman who may be but 17 years of age; but in safeguarding the interests of the State, as her contract cannot be binding upon the common property of husband and wife, I suggest that the husband be required in all cases where a lease is made to a wife who is a minor, to join with her in the obligation for the payment of the rental price for the lease of said land. She would be named in the instrument as the lessee, but he would join in her obligation created by that lease. If you have any difficulty about following out this suggestion, I will aid you in the matter so as to obligate the husband along with the wife for the payment of such rental price.

This will enable the husband and the wife each to lease the maximum amount provided by the Public Land Code, and at the same time safeguard the interests of the State in the collection of its rentals.

Very truly yours,

WILEY E. JONES,

Attorney General

Contracts Abolished. Does Not Apply to Plans and Specifications.

Phoenix, Arizona.

April 25, 1916.

Dr. R. B. Von KleinSmid,
President University of Arizona,
Tucson, Arizona.

Dear Sir:

For this department, I desire to acknowledge receipt of your communication of the 20th inst., inquiring if you are privileged under the laws of this State, to invite competitive bids for the plans and specifications for the construction of the building for the Department of Mines and Engineering, on the campus of the University of Arizona, authorized by the last Legislature.

Section 40 of "An Act to promote the welfare of the people of the State of Arizona, etc.," initiated at the last general election, provides as follows:

"All work on State buildings, dams, reservoirs, flumes, water plants, and all other State construction, shall be done by day's pay by the State, and the system of letting contracts by the State is hereby abolished."

It does not appear to me that the provisions of this Act immediately quoted, refer to the preparation of plans and specifications for the construction of State buildings, but rather to the work performed upon State buildings during the actual period of construction.

It would be a cumbersome procedure to employ an architect by the day to prepare plans and specifications for the construction of a State building, and it would certainly deprive the State of the privilege of selecting plans and specifications from the combined ingenuity of various architects, such as would result from competition.

Considering the intent of the Act as a whole, in its application to the question which you have submitted, it is my opinion that plans and specifications for the construction of the building in question may be submitted and selected upon a competitive basis.

I understand, in fact your communication so advises me, that the actual building will be constructed in conformity with the provisions of the Act above referred to.

Very truly yours,

LESLIE C. HARDY,
Assistant Attorney General

Candidates. Vacancies, How Filled.

Phoenix, Arizona.

October 23, 1916.

Hon. C. H. Jordan,
County Attorney,
Holbrook, Arizona.

My Dear Mr. Jordan:

Last night this office received the following telegram from you:

"Holbrook, Ariz., Oct. 22, 1916.

Wiley E. Jones, Attorney General, Phoenix, Arizona.

No nomination made on Republican ticket for Recorder. Republican County Committee filed name yesterday with proper officer to fill vacancy. Can name be printed on ballot?

C. H. Jordan, County Attorney."

In answer to which I wire you this morning as follows:

"Phoenix, Ariz., Oct. 23, 1916.

C. H. Jordan, County Attorney, Holbrook, Arizona.

Answering your wire of yesterday to Attorney General under Sections 32, 30, 39 and 29, 25, Revised Statutes of Arizona, name of candidates for Recorder if legally and properly filed October 21 by the committee should be printed on official ballot.

R. W. Kramer, Assistant Attorney General."

Amplifying the foregoing wire from this office, I beg to advise you that it is the opinion of this office that said Section 3039 of the Revised Statutes of Arizona, 1913, provides a means for nomination other than by primary election or by committee as provided by Section 3032.

Section 2925, Revised Statutes of Arizona, 1913, in brief, provides that election ballots must be printed and ready for inspection at least ten days before the general election.

Section 3032 of the Revised Statutes of Arizona, 1913, provides as follows:

"Any vacancy or vacancies appearing, after the holding of any primary election, in the list of candidates necessary to fill all the offices provided for by law in the ensuing election, shall be filled by a party committee of the State, county, city or town, as the case may be, and the name of any candidate so filed with the officer with whom nomination petitions are filed, shall be placed upon the official ballot in the ensuing election."

Section 3032 provides no limitation of time within which the "vacancy" is to be filled, and on that feature said Section 2925 is the controlling statute.

It may be contended that the "vacancy or vacancies" mentioned in said Section 3032, in accord with a broad and liberal interpretation of the spirit

of the primary law, should apply to only such vacancy or vacancies as occur by reason of the death, resignation, etc., of a candidate already nominated at the preceding primary; but a careful reading and analysis of the statute discloses a wording that would preclude the court from sustaining such a contention. The statute covers "any vacancy or vacancies appearing in a list of candidates, etc." It is general in its wording, and a construction giving it broad application is not in conflict with the provisions of any other statute. Hence, this office advises you that the office of County Recorder, being one provided by law, and no nomination to said office having been made on the Republican ticket at the primary election, the Republican County Committee may fill said vacancy on the list of the Republican candidates, if the name to fill such vacancy is legally and properly presented by said committee in time to have the name printed on the ballots ten days before the general election.

Very truly yours,

R. WM. KRAMER,
Assistant Attorney General

Prohibition Law Enforcement.

Phoenix, Arizona.

November 14, 1916.

To all County Attorneys of Arizona:
Gentlemen:

In order to have uniformity of official action this letter goes to every County Attorney in the State of Arizona.

You are doubtless aware that the Prohibition Amendment submitted to the people of Arizona was overwhelmingly adopted at the election held on the 7th instant, and only awaits the proclamation of the Governor declaring the result to make it effective. The prohibition amendment adopted two years ago did not become effective until January 1 following, for the reason that Section 3 of that amendment read: "This amendment shall take effect on, and be in force on and after the first day of January, 1915." There is no such provision in the new amendment adopted on the 7th instant, and in the absence of such a provision, it is a well established rule of law that the new amendment will take effect upon the declaration of the result by proclamation of the Governor. Therefore I suggest that you give publicity to that fact so far as possible throughout your county in order that the public may be fully informed of the immediate operation of the amendment, and of your purpose and mine to enforce it thereafter.

Very truly yours,

WILEY E. JONES,
Attorney General of Arizona

Neglected Child Can't Be Sent to Reform School.

Phoenix, Arizona.

February 3, 1916.

Hon. Charles R. Osburn,
Secretary Board of Control,
Phoenix, Arizona.

Dear Sir:

For this department, I desire to acknowledge receipt of your communication of the 25th ult., which inquires if the Board of Control has the authority to refuse a child committed to the State Industrial School from the Superior Court after a determination by that court that the child was "neglected" within the meaning of Title 27, Civil Code, 1913.

In response thereto I desire to inform you that Section 3572, Civil Code, 1913 (Title XXVII) provides that "it shall not be lawful to commit the custody of any neglected or dependent child to the State Industrial School." It is plain, therefore, that there is no authority of law for committing a neglected child to the State Industrial School, and in view of the fact that the copy of the commitment which you enclosed with your communication recites that the child in question was "neglected," it is the opinion of this department that you would be authorized to refuse to accept said child for retention in the State Industrial School.

The State Industrial School is penal in character, and the officials in control thereof are only authorized to retain persons committed thereto under a valid commitment. It follows, therefore, that a child committed to the State Industrial School contrary to the provisions of law, should not be received by the officers in charge of the institution.

Under date of March 28, 1913, this department addressed you a communication to the same effect as the present communication. It happens that the child was there committed from the same court and by the same judge as the child referred to in the communication to which this is an answer. We desire to again reiterate that it is not our policy, nor our purpose, to take issue with the judicial determination of the various Superior Court judges of the State, nor have we done so by this communication. We think, however, that if this matter were presented to the attention of the judge, in view of the present opinion, that he will readily conclude that there is no authority for committing a "neglected" child to the State Industrial School, and that accordingly there would be a revocation of the commitment.

Respectfully,

WILEY E. JONES,
Attorney General

Picketing. Peaceful, Allow.

Phoenix, Arizona.
November 6, 1916.

Frank Woods, Esq.,
City Commissioner,
Phoenix, Arizona.

Dear Sir:

I have before me your inquiry of the 3rd instant asking me my opinion as to whether or not "the City of Phoenix can pass an ordinance prohibiting peaceful picketing in front of business establishments in our town."

Your inquiry might perhaps more properly be addressed to your City Attorney, and for that reason I do not desire this answer to be considered official, yet courtesy to your inquiry impels me to give you a reply.

Paragraph 1464 of the Revised Statutes of 1913, forbids the issuance of a restraining order or injunction to prohibit peaceful picketing as fully described and set forth in said paragraph, and to that extent apparently legalizes peaceful picketing.

I do not feel that I should go extensively into this matter as I would were I rendering an official opinion, but in support of peaceful picketing I will cite the following case:

St. Louis vs. Gloner, 109 S. W. 30; 15 L. R. A. (N. S.), 973.

The above was a case of peaceful picketing, wherein an action was brought under the city ordinance for violation of such ordinance by picketing. The court held the ordinance to be unconstitutional and invalid and cited numerous authorities in support of its decision.

The whole question seems to rest upon the matter of the picketing being done in a peaceful manner, and, of course, without obstruction to the public in the free use of the sidewalk and the street.

As Paragraph 1464 permits such picketing in Arizona it adds force, if possible, to the decision of the Missouri court in the case above mentioned, to-wit: St. Louis vs. Gloner, and the authorities therein cited.

Very respectfully,

WILEY E. JONES,
Attorney General

Corporations, Forfeiture, Sale of Shares, Dissolution.

Phoenix, Arizona.
December 1, 1916.

Arizona Corporation Commission,
Phoenix, Arizona.

Gentlemen:

I hand you herewith letter dated October 7, 1916, from Wm. M. Fraser, Post Office Box 1427, Vancouver, B. C., which was this day received in the

Picketing. Peaceful, Allow.

Phoenix, Arizona.
November 6, 1916.

Frank Woods, Esq.,
City Commissioner,
Phoenix, Arizona.

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Very respectfully,

WILEY E. JONES,
Attorney General

Corporations, Forfeiture, Sale of Shares, Dissolution.

Phoenix, Arizona.
December 1, 1916.

Arizona Corporation Commission,
Phoenix, Arizona.

Gentlemen:

I hand you herewith letter dated October 7, 1916, from Wm. M. Fraser, Post Office Box 1427, Vancouver, B. C., which was this day received in the

mails from the Secretary of State. Same is forwarded to you for reply for the reason that, all things considered, we deem it advisable that official cognizance of this communication should emanate from the Corporation Commission.

The queries he propounds at the bottom of page two lack clarity and coherence and, in our opinion, unless he can give further particulars bringing his complaint within the province of the Arizona Corporation Commission his alleged grievances constitute a purely private cause of action which he himself must pursue through the courts.

However, in connection with the issues raised in Mr. Fraser's letter, and for the information of the Commission, I respectfully invite your attention to Paragraph 2116 of the Revised Statutes of Arizona, 1913.

This is a re-enactment of Chapter 38, of the Session Laws of 1907, and said law has been in effect in this State since March 17, 1907. Prior to that time and subsequent to 1901, the provisions of Chapter II, Title 13, Revised Statutes of Arizona, 1901, would govern corporations in general on this particular point. You will note by the statute above quoted that corporations organized in this State may provide in their by-laws for the forfeiture and sale of shares for failure to pay the subscription price of said shares.

The law is well settled in all jurisdictions that before there can be a valid forfeiture of shares four things are necessary:

1. An authority to forfeit derived from statute or charter
2. An express intent to forfeit.
3. This intention carried into effect with due formality.
4. Must be for the benefit of the corporation and not merely to release the shareholder from his obligation of subscription.

So, under provision one above, under a strict construction of the law, I would say that an Arizona corporation may not provide by its by-laws for the making of assessments on fully paid-up and non-assessable shares in the absence of authority in statute or charter.

You will note Mr. Fraser makes reference to the California law of assessment. I do not know just why he makes this reference unless it be that the corporation in question entered California, in which case if said corporation contracted debts in California the stockholders of the corporation are liable for its debts the same as if it were a California domestic corporation. This law was enacted in California for the purpose of putting domestic and foreign corporations on an absolute parity. The California statute with reference to the levying of assessments on the stock of domestic corporations is covered by Section 331 of the California Civil Code, which reads as follows:

"ASSESSMENTS, HOW LEVIED

The directors of any corporation formed or existing under the laws of this State, after one-fourth of its capital stock has been

subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein."

The questions of law raised in Mr. Fraser's letter cover a wide field and would require a voluminous and lengthy discussion to give exhaustive consideration to the statutes and decisions involved. If the Commission desires this office to go into the matter further we will be glad to do so. However, the foregoing covers all salient points, and merely by way of suggestion we believe that in writing Mr. Fraser all the Commission could consistently do is to advise him that if he has a complaint, it is a private one and must be pursued by him personally; that if, as he states, the by-laws make reference only to unpaid calls on the purchase price of shares there is obviously no authority therein nor under any Arizona statute for the levying of assessments on shares which are fully paid up and non-assessable; that under the Arizona law a corporation may provide in its by-laws for the forfeiture of the sale of its shares for the failure to pay the subscription price of such shares or any part of such price according to the terms of the subscription or when called by the Board of Directors; and that the dissolution of the corporation by jurisdictional proceedings is covered by Section 2107 of the Revised Statutes of Arizona, 1913, from which he will note that he as a stockholder, is empowered to bring proceedings for dissolution of disincorporation if he has the necessary statutory grounds therefor.

Yours very truly,

R. WM. KRAMER,

Assistant Attorney General

P. S.—Parenthetical to the above, I will state that the statute fully describes the steps and proceedings proper to be taken by stockholders in order to effect a dissolution or disincorporation of corporations and this office in some cases will allow the use of the Attorney General's name by parties interested in having a corporation dissolved upon the condition that such parties employ competent counsel to conduct the proceedings and bear all of the expenses connected therewith. Of course, occasional and isolated cases may arise wherein it may become necessary in dissolution proceedings for the Attorney General himself to proceed by information in the nature of a bill in chancery to dissolve certain corporations, and we do not desire to announce an ironclad rule on this proposition. However, in the vast majority of dissolution cases the complaining stockholders themselves may maintain the suit. The text of this postscript embodies a rule that is being followed by practically all of the Attorneys General throughout the United States.

R. W. K.

Assessment of Mines. Appeal.

Phoenix, Arizona.

November 17, 1915.

Airzona Tax Commission,
Phoenix, Arizona.

Gentlemen:

For this department, I desire to acknowledge receipt of your communications of the 3d and 10th inst., relating to an appeal from the assessment of the productive mines of the Shannon Copper Company for the year 1915. In view of the fact that the appeal was taken under Section 4993, Civil Code, Revised Statutes of Arizona, 1913, you desire to be informed whether the Shannon Copper Company has pursued the correct method of appeal, and if not, whether you should transmit the proceedings of your Commission to the Clerk of the Superior Court of Greenlee County, as provided by law.

After an examination of this matter, it is the opinion of the department that the appeal has been correctly taken. By Subdivision 13 of Section 4829, Civil Code, Revised Statutes of Arizona, 1913, patented and unpatented producing mines are assessable by the State Tax Commission, but no method of appeal from this assessment has been provided, as in the case of railroad, telegraph and telephone companies, and such other utilities as are enumerated in Subdivision 13 of said Section 4829. The appeal could not be taken from the assessment of the Board of Supervisors, for the reason that the assessment is not made by that Board, but on the other hand it is made by the State Tax Commission, and thereafter transmitted to the Board of Supervisors. However, Chapter 12 of Title 49, Civil Code, in toto, after mines and mining claims had been assessed for the fiscal years ending June 30, 1914, and June 30, 1915, but only expired by limitation insofar as the method therein provided was used for the basis of reckoning the valuations for assessable purposes—that is to say, the method of adding together an amount equal to four times the value of the net proceeds and an amount equal to twelve and one-half per cent of the total value of the gross proceeds of such mining claims or group of such.

The procedure provided by Chapter 12 of Title 49, supra, still prevails insofar as the facilities therein provided for making assessments are usable. To this extent the method of an appeal from an assessment made by the State Tax Commission upon patented or unpatented producing mines is still available, and accordingly the Shannon Copper Company has perfected its appeal thereunder, and it is accordingly the opinion of this department that the correct procedure has been pursued.

Very truly yours,

LESLIE C. HARDY,

Assistant Attorney General

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ATTORNEY GENERAL

January 1, 1915 to December 31, 1916

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