

BIENNIAL REPORT

OF THE

Attorney General

of Arizona



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BIENNIAL REPORT
OF THE
Attorney General
of Arizona

WILEY E. JONES, Attorney General



1919-1920

SOUTHWEST PRINTING & BINDING CO.



TUCSON, ARIZONA

Attorneys-General of Arizona

CONFEDERATE STATES OF AMERICA Territory of Arizona

M. H. McWille..... 1861

UNITED STATES OF AMERICA Territory of Arizona

Coles Bashford..... 1866
Office abolished..... 1867-1870
James E. McCaffrey..... 1871-1874
Office abolished..... 1875-1882
Clark Churchill..... 1883-1886
Briggs Goodrich..... 1887-1888
John A. Rush..... 1889
Clark Churchill..... 1889-1890
Wm. Herring..... 1891-1892
F. S. Heney..... 1893-1894
T. D. Satterwhite..... 1895-1896
J. F. Wilson..... 1897
Cassius M. Frazer..... 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 OF ARIZONA

George Purdy Bullard..... 1912-1914
Wiley E. Jones, Dec. 7, 1914..... Incumbent

Attorney General

Wiley E. Jones.

Assistant Attorneys-General

F. J. K. McBride.

Alexander B. Baker.

Louis B. Whitney—(resigned July 22, 1920.)

Louis J. Hart—(appointed July 22, 1920.)

Counsel for the Corporation Commission Assistant to the Attorney General

Clyde M. Gandy.

SYLLABI AND FULL TEXT OF OPINIONS

Rendered by the

DEPARTMENT OF

THE

ATTORNEY GENERAL

From January 1, 1919,
to December 31, 1920.

January 24, 1919.

Hon. A. A. Betts,
Chairman Arizona Corporation Commission.

In re: Authority of the Corporation Commission to refuse to issue a Certificate of Incorporation to Companies which do not file Articles complying with the Statutory requirements.

Answering your inquiry of January 17th, we would advise you that the right of the Commission to exercise discretion to the extent of refusing to file Articles and issue the Certificate under the circumstances above mentioned, might be seriously questioned because of the fact that the law does not confer upon the Commission the power of authority so to act. It is our duty, however, to give full force and effect to Paragraph 2100 of the Civil Code, Revised Statutes of Arizona 1913, in order to carry out its evident intended purpose. We therefore, advise you that the Corporation Commission should refuse to file Articles or issue a Certificate of Incorporation to any proposed Company the name of which does not indicate by its corporate name the character of the business to be by it carried on, or any proposed company the name of which is alike or similar to the name of any other corporation duly organized and authorized under the laws of this State. We make no mention at this time as to what our opinion would be on your duties in case of conflict between the name of a proposed corporation and one organized in another State but licensed to do business in this State.

January 24, 1919.

Hon. C. O. Case,
Superintendent of Public Instruction

Answering your inquiry of recent date regarding the existence and membership of the Commission for the compilation of the school laws of the State, as provided by Chapter 40, (House Bill 194) Regular Session 1917.

I would state that it seemed to be the intent of the Legislature by Section 2 thereof, that such Commission would complete its work and would go out of existence upon filing the report with the Governor of Arizona before the first day of the present session of the Legislature which convened the 13th inst.; and that if any vacancy should arise during the existence of said Commission, by "resignation, disability or death of any member thereof" the Governor would be "empowered to appoint another Commissioner" as provided in Section 5 of that Act.

The above seems to cover the case entirely as called for by your inquiry.

February 6, 1919.

Hon. W. F. Timmons,
County Attorney,
Yuma, Arizona.

I am just in receipt of your letter of the 3rd inst., accompanied by copy of letter addressed by you to the Board of Supervisors of Yuma County, in which letter to the Board you announce that Chapter 61 is null and void, and your further opinion expressed that an emergency clause to an act declaring that such emergency exists, and that it is for the public peace, health and safety, is not conclusive.

Act 61, most certainly is in effect at this time for the payment of salaries during the present term, and salaries are now being paid under it for the present term.

Also, Mr. Bullard, my predecessor, rendered an official opinion as Attorney General, that an emergency measure declaring that an emergency exists on account of the public health, peace and safety was conclusive and in support thereof, cited in re Menafee, State Treasurer, 97 Pac. 1014; Oklahoma City v. Shields, 100 Pac. 559; Norris vs. Cross, 105 Pac. 1000; Brown v. State, 106 Pac. 979.

I have concurred in the opinion expressed by Mr. Bullard in support of the foregoing authorities.

The only question that has been raised as to Chapter 61, Laws of 1917, was whether it could be immediately operative under the emergency clause so as to increase the salary during the term, but no doubt is effective as a law from and after the beginning of the present term of office.

Your letter was received thirty minutes ago and I have answered it thus briefly without delay as I am called to go to the State capitol on matters pending before the Legislature.

February 6, 1919.

Hon. F. M. Gold,
County Attorney,
Flagstaff, Arizona.

In response to your inquiry in reference to playing the game of solo or other similar games merely for pastime where no money or thing of value is at stake, I am inclined to the opinion that it is not forbidden by the anti-gambling or anti-gambling law of Arizona. In reading Paragraph 319 of the Penal Code forbidding gambling, you will note that it must "be played for money, checks, credits or any representative of value." This is also the language of Paragraph 319 as amended by vote at the election last November. Checks may properly include chips but the property in chips does not pass to the winner as the chips are used only as a means of counting and indicating who is the winner in the game thus played without a

wager. Therefore, from my understanding of your question, I don't think the facts as set forth in your inquiry constitute gambling or gaming under the law.

Bobbie Burns of Williams made the same inquiry and you can advise him accordingly.

February 18, 1919.

Hon. H. S. Ross,
State Treasurer.

We are returning herewith your file in regard to the estate of A. B., deceased.

We do not believe that the question submitted by you is a proper one for our determination. Section 5009 of the Civil Code of 1913, gives to the Superior Court the jurisdiction to hear and determine all questions in regard to the inheritance tax, and the mere fact that certain duties are conferred upon the State Treasurer in relation to the collection and enforcement of said tax, does not oust the Superior Court from the jurisdiction so conferred upon it.

It is our opinion that proper application should be made by the estate for ancillary probate in order that the inheritance tax may be paid. The Department of the Attorney General has no duty to perform in connection with the collection of inheritance tax except where an estate is of such a nature or is so disposed that the liability is doubtful or where the value of the estate cannot be ascertained with reasonable certainty, in which event certain duties are assigned the Department. We cannot consistently infringe upon the jurisdiction bestowed by the Legislature on the Superior Courts of the State and would advise that you have the matter properly brought before the Superior Court for adjudication.

February 19, 1919.

Hon. Thomas E. Campbell,
Governor of Arizona.

I am just in receipt of your letter of yesterday wherein you inquire whether Substitute Senate Bill No. 12 which has passed both legislative houses and is now in your hands for executive action "repeals Par. 4839, Revised Statutes of Arizona 1913, Civil Code, or is simply amendatory thereto."

I am sure that it does not repeal any portion of Paragraph 4839, nor can it hardly be said to be amendatory thereto. I think it is a supplemental act covering the subject for an emergency not at all dealt with or comprehended by said Par. 4839. The Bill before you recognizes Par. 4839 and provides for the levy and collection of a tax in excess of the limitations of said Paragraph for the specific purpose mentioned in the Bill, to-wit: To meet the expense of the deplorable epi-

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demie which visited our State. I am sure the general repealing language of Section 3, finds nothing in the bill to conflict with Par. 4839 above mentioned. I am also sure that the bill before you and said Paragraph 4839 are in no way affected by the provisions of Par. 5553, Revised Statutes 1913.

March 5, 1919

Hon. F. A. Jones,
Member, Corporation Commission

In re: Docket 459, Walker et al, vs. Tucson Farms Company, et al.
Replying to inquiries propounded in yours of February 26th:

We would say that in our opinion a strictly mutual water company is not a public service corporation as long as it is not run for profit. If the management and control is in or passess to parties or corporations not wholly at the direction and responsible to the stockholders or members of the mutual company, a different situation would exist, and in such event we think the management would become a public service corporation. Under the facts stated in your letter, the Tucson Farms Company is a public service corporation in its operation of the water system to which you have referred. The only way in which it can divest itself of this status is to surrender to the stockholders the full control of the water.

March 1, 1919.

Hon. Lloyd B. Christy,
Commission of State Institutions

In answer to your oral inquiry regarding the maintenance and improvement of the Arizona State Fair grounds and buildings:

I would state that Paragraph 4538, Revised Statutes of Arizona, 1913, makes an annual appropriation of \$15,000 for said purpose, and Section 15 of Chapter 90, Session Laws of 1913, and known as the General Appropriation Bill, makes an appropriation of \$10,000 for each of the years ending June 30, 1918 and 1919, for said purpose in addition to the annual appropriation of \$15,000 provided for in said Paragraph 4538.

The powers of the State Fair Commission to hold an annual Arizona State Fair and for the maintenance and improvement of the same are fully set forth in said Paragraph 4538 Revised Statutes and said Section 15 and said Chapter 90, Laws of 1917. This, of course, includes the erection of all necessary buildings for the purpose of conducting said annual state fair and housing and displaying all the exhibits mentioned in said Paragraph 4538, and promoting and advancing the agricultural, horticultural, stock raising, mining, mechanical and industrial pursuits of the State, and the care of the State property entrusted to the State Fair Commission under said law.

March 7, 1919

Hon. D. F. Johnson,
Member Arizona Corporation Commission

Replying to your letter of March 4th, we would call your attention to the many opinions and memoranda which this office has submitted to the Commission on the questions propounded in your communication, the most recent of which is our letter of November 14th last, to Mr. Betts. Our investment law is good as far as it goes. There are some transactions, however, which it cannot reach and it is the fact which governs, that is as to whether or not the facts are sufficient in each case to bring it within the law. We may say as a point of beginning that sales of stock by an individual, the same being his own property to which he has acquired full title in a bona fide transaction, or for which he has actually given sufficient value to indicate the bona fides of the transaction is not prohibited by our law and cannot be by any law except the law should bring him within its jurisdiction as a dealer. Such, however, will have to be in clear and definite terms and is something which our law apparently makes no effort to reach.

In your letter you mention the transactions of....., in connection with the sale of stock of theOil Company. According to a more recent advertising of his in last evening's paper, we notice that he says no stock will be sold until a permit is received from the Corporation Commission. This, I take it, will eliminate the necessity of further inquiry as to him.

As to the transactions of....., in the sale of the stock of..... Oil & Gas Company. We can only say what we have already said to the Commission by letter and in person. If & are the actual owners of this stock our law will not govern their sale of the same. If, however, the ownership of the stock can be traced through various brokerage arrangements directly to the company, we think these brokers would be merely selling agents. The advertisement of this concern says they are selling the treasury stock of the company. We do not know whether or not their contract is directly with the Company but we assume that it is from the wording of the advertisement. In any event, the advertisement leads us to believe that the company still has title to the stock regardless of whether or not & be dealing with the company or with some other brokerage company which is itself in direct contact with the company. We state these conclusions of law according to our best investigation and opinion. So far as we know this particular point has not been passed upon. Assuming that we are right, the Commission is confronted with the difficulty of securing the evidence which would show the true relationship of & to the Company, or rather the true status regarding this stock. They, of course, would not need to take the stand in any criminal action and it would be necessary for us to prove that they were acting as brokerage agents. Their advertisement would help us somewhat but might not of itself be sufficient. Doubtless if someone were sent to them as a prospective purchaser they would explain to him their entire connection with the matter or perhaps they have already talked freely about the same which would be competent evidence, and along with other matters which we could prove, would doubtless make out the corpus delicti and give us a prima facie case. This

would be sufficient to put them on their defense and once they took the stand we would have no difficulty in making out our case providing the truth of the matter is with us as I believe it is.

Referring again to the law of the matter, we repeat what we have already said in the letter of November 14th, above referred to:

"The law does not permit to be done by indirection what is forbidden directly. If the Silver Company, referred to by you, is selling stock it should be required to secure a permit as an investment company.

As to whether or not any particular company is selling its stock so as to bring it within the statutes, you will decide from all the facts and circumstances, the methods used, etc.

A make-shift brokerage arrangement or merely designating the stock sold as individual stock of the seller will not suffice to evade the law.

We do not, at this time, give any opinion on the right of an individual to purchase in good faith shares of stock of a corporation, and sell same in small parcels, without the corporation being licensed as an investment company,—or the individual licensed as an agent."

Since you have in your letter of the 4th inst., raised that particular question, we have already in this communication answered the matter which was left unanswered in the last paragraph above quoted. This particular point was raised and decided in line with our opinion in the West Virginia case of Bracey vs. Darst, 218 Fed. 486. In that case we think the court drew a wrong inference from the facts proven. We think the facts did not show a bona fide transaction, and we think the court should have held as a finding of fact that the seller was really acting for the company and not for himself, and that the alleged sale was not a good faith transaction in its entirety, it was only done to avoid the operation of the statutes. The good faith of the transaction, however, seems not to have been questioned.

In the particular matter to which you direct your inquiry, viz: the proposed sale by & Company of the stock of the Transportation Company, you have not given us sufficient facts on which we could come to any definite conclusion as to whether or not & Company propose to sell stock which they have actually purchased and own, or if the stock which they propose to sell really belongs to the Company being merely taken over by them for the purpose of sale on some kind of an optional scheme. Going outside the record, as we may say, as the matter has been presented by you to us, our information is that & Company made an advertising contract with the Transportation Company whereby & Company were to do a certain amount of advertising and promoting at a certain price agreed upon, for which price and in payment of said services and expenditures and assumption of liabilities therefor, the said & Company agreed to receive and accept a certain amount of stock. If this be true, and if on

a hearing before your Honorable Commission it should appear that & Company were bona fide owners of this stock, we think you could in no wise prevent their selling the same, nor would you have any jurisdiction in regard thereto.

Some of the matters which we have touched upon in this letter are quite involved in a legal way and perhaps we have not set them out as clearly as we might have done. We shall be glad, however, at any time to orally explain and amplify our opinion herein if you should feel the need thereof.

March 11, 1919.

Arizona Corporation Commission:

On March 4th you wrote this office propounding certain questions as to our Investment Company law, which questions had to do with the operations in stock selling of R., &, and & Company.

We wrote you on March 7th that in his advertisements Mr. stated that no stock would be sold until the Corporation Commission had issued its permit therefor, for which reason we made no further reply as to his operations.

Regarding &, we stated that the unlicensed sale of stock of the Oil & Gas Company by this concern could not be prevented if they were the actual owners thereof in a bona fide transaction where they had given value therefor. We pointed out what in our opinion would be necessary in order to make out a case showing that the stock was not really the stock of the parties selling the same and the difficulty in securing the evidence necessary to convict. Since writing you, we have again gone over the evidence available and have some information which we did not have in mind at the time of writing you. We are now satisfied that & are not selling their own stock but are selling the stock of the Oil & Gas Company in clear violation of the provisions of Paragraph 2270 of the Civil Code, Revised Statutes of Arizona, 1913. We suggest that these parties be required to cease selling stock until the Oil & Gas Company is licensed as an Investment Company in Arizona, and & are licensed as the agents thereof. If legal proceedings are necessary we shall be ready to institute the same and shall be glad to confer with you in regard thereto upon request.

As to Messrs. & Company, we have since writing to you talked over with Mr. Jones and yourself the facts in this case and find that the information which had come to us and which we embodied in our letter of March 7th was erroneous and did not coincide with the facts which as stated by you to us are that & Company secured control of this stock by giving their promissory note therefor, and putting the stock up with the note as collateral security. The sale of the stock of any Investment Company by one who is not a licensed agent is in violation of the provisions of Paragraph 2270 above referred to. & Company should therefor be informed that they should take out an agent's license. Our recollection

is that the Transportation Company is licensed as an investment company in this State.

While we cannot say what conclusion a court would draw from the facts in this matter our opinion is that assuming the constitutionality of our Investment Company as a whole, the stock of the Transportation Company which & Co., propose to sell is not their personal stock if it was acquired only for the purpose of carrying forward the sales of stock of the transportation company already begun in its own name, which seems to be the case.

The whole difficulty in judging these cases is as to whether or not stock which is being sold is actually the personal stock of the individual; by personal stock we always mean stock acquired in a straightout bona fide transaction. It matters not if stock is called the personal stock of the seller, it is the fact that governs and we do not think stock is personal stock that is acquired for the purpose of brokerage selling, especially where nothing of any particular value is parted with therefor.

We have on our desk the correspondence of about a year ago wherein one, of Los Angeles, proposed to sell \$20,000 worth of stock in some corporation which he called his personal stock. The matter was by Mr., the Chief Clerk of the Department of Corporations, referred to my predecessor Mr. Geary, with this request for a ruling:

"We have never had, to my knowledge, a ruling from your department covering the sale of personal stock and I believe this is an appropriate time to settle the matter definitely.

"Will you please favor us with your opinion on this subject?"

Under date of April 12, 1918, Mr. Geary said:

"A determination of the matter involved in the case will pivot to some considerable extent upon the bona fide nature of the transaction, and we suggest that you obtain from Mr. and submit to this Department the following facts:

1. Name of Company if incorporated; where and when incorporated; amount of capital stock; sub-divisions thereof, if any; and nature of business.
2. Par value of stock owned by; when purchased or acquired by him; for what consideration; and whether treasury, promotion, or other class of stock."

From this we take it that he had arrived at the same conclusion as to this so-called personal stock, as expressed by us in recent communications to yourself and other members of the Commission.

We shall be glad to proceed as rapidly as possible toward getting court decisions on some of these points in our Investment Company law which are not very clearly defined therein.

March 13, 1919.

Arizona Corporation Commission.

Pursuant to your communication to this office of February 26th, in re Burson vs. Johnson, Docket No. 525, we have looked over the files and studied the briefs which have been submitted to the Commission on the question of its jurisdiction to grant a rehearing. Inasmuch as it appears that the rehearing has already been granted, this question does not seem to be very material. We give you our opinion however, for what it may be worth in this or any future similar cases.

Paragraph 3409 of the Civil Code, Revised Statutes of Arizona 1913, as amended by Chapter 58 of the Acts of the Regular Session of the Second Legislature, provides in part as follows:

"When an agent or solicitor of any insurance company doing business in this State accepts an application for insurance from any person not provided with the certificate for a broker or an agent or solicitor as required herein, and in any way compensates or promises to compensate such person for soliciting such application, the Commissioner shall, upon due proof and notice suspend or revoke the certificate of such agent or solicitor."

This matter was instituted by Claude B. Burson, the complainant, filing a complaint against Ira J. Johnson, the defendant, charging him with violation of the above provision and asking that his license as an agent of the New York Life Insurance Company be revoked. After a full hearing thereon including the taking of evidence, the Commission dismissed the complaint. The complainant thereupon filed application for a rehearing which was granted. The defendant now objects to the jurisdiction of the Commission to hold a rehearing because the same is not expressly provided for by statute or by rules of procedure established by the Commission in accordance with some provision of law. Both parties have submitted briefs but we do not get much assistance therefrom because each proceeds upon a wrong assumption.

The procedure in this matter up to this time and especially on the application for a rehearing has apparently followed the provisions of Chapter XI of Title 9 of the Civil Code, Revised Statutes of Arizona 1913, and the rules of procedure adopted by the Corporation Commission, April 15th, 1913, effective June 1st, 1913, but all such provisions and rules relate only to matters affecting public service corporations as is clearly disclosed by the context.

Article XV of the Constitution of the State of Arizona is entitled "The Corporation Commission," and embodies all there is in the Constitution on that subject. No attempt is made therein to define generally the powers and duties of the Corporation Commission, except to give the Commission certain jurisdiction over public service corporations. Section 6 of said Article XV, however, provides as follows:

"The law-making power may enlarge the powers and extend the

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duties of the Corporation Commission, and may prescribe rules and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings."

The Constitution became effective with Statehood, February 14th, 1912, and thereafter the law-making power, i. e., the Legislature, did enlarge the powers and duties of the Corporation Commission by an act of the Legislature effective May 31, 1913, and later embodied in the Civil Code, Revised Statutes of Arizona 1913, as Title XXIV, which gave the Commission certain limited jurisdiction over insurance companies. This was somewhat amended by subsequent acts including Chapter 58 of the Acts of the Regular Session of the Second Legislature, effective March 24, 1915, part of which is quoted above. Parenthetically, we may suggest that the word "commissioner" therein was clearly an error and means "commission."

The law making power having up to that time failed to "prescribe rules and regulations to govern proceedings instituted by and before it," the Commission on April 15th, 1913, adopted Rules of Practice and Procedure which relate only to hearings, etc., on matters connected with the jurisdiction of the Corporation Commission over public service corporations. By no stretch of rhetorical, grammatical or legal construction can these rules be said to apply to matters affecting insurance companies or agents, with this exception viz.:

Rule XXI "All applications relating to matters over which the Commission has jurisdiction and which are not governed by any of the preceding rules, shall be made by petition, setting forth the name and address of the applicant and the matter with reference to which the Commission's order, authorization or permission is desired. Thereupon the procedure shall be such as the Commission may prescribe."

At any rate, the law making power did "prescribe rules and regulations to govern proceedings instituted by and before" the Corporation Commission in Title XXIV, Civil Code Revised Statutes of Arizona 1913, above referred to, effective May 31, 1913, but that also relates only to public service corporations.

It however, went into effect before the rules of the Commission and superceded every part thereof in conflict with the legislative act. Rule XXI remains in effect and probably furnishes some authority for the re-hearing herein granted, especially if we read it in connection with Paragraph 2329, Civil Code, Revised Statutes of Arizona 1913:

"All hearings and investigations before the commission or any commissioner shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission and in conduct thereof neither the commission nor any commissioner shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the commission or any commission shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission."

The suspension or revocation of the agents license shall be on "due proof" but the act is silent as to how this proof shall be adduced. The act and the Statutes not only do not provide for a rehearing but do not in so many words provide for any hearing at all. The manner of receiving the due proof is left to the sound discretion of the Commission. It might have by rule regulated the procedure in such matters even to providing for a rehearing but it has not done so. Does then the granting of a rehearing, without such rule, amount to an abuse of the discretion lodged with the Commission in the premises? We think not.

We cannot accept the authorities quoted by defendant for the reason that they refer to the procedure of courts, a thing which must always be fixed, definite and certain. There is no question but that as long as the body is constituted as an inferior court it cannot grant a rehearing unless expressly authorized so to do by statute. One might reason by analogy from the law governing inferior courts to what law should govern the proceedings of a Commission like your own body, but such reasoning is founded upon the assumption that a commission like the Arizona Corporation Commission is an inferior court or tribunal. Though it acts at times in such capacity yet it cannot be so denominated.

"But the term (court) has been held not to include a master commission, a maser in chancery, a commission appointed by the court, a public service commission, a commission to investigate the claims of subjects of a foreign nation pursuant to a treaty, a board of equalization of taxes, a board of county supervisors or commissioners, a board of revenue, or a board of irrigation, the view being that the word "court" implies a permanent organization for the administration of justice."

It is true that there are some courts which are very similar to commissions and like official bodies and sometimes boards of commissioners are clothed with powers which make them very similar to a court so that it is almost impossible to determine where the dividing line is. Although boards of county commissioners exercise functions judicial in their nature in the allowance and rejection of claims against the county, such boards are not courts in the constitutional sense, nor within the generally recognized acceptance of the term. *Stenberg v. State*, 48 Nebr. 299, 67 N. W. 190.

"It is practically impossible to create an administrative body which does not also possess, in a certain degree, judicial functions. But the fact that such bodies possess to some extent judicial powers does not necessarily make such body a court, within the meaning of constitution." *Crawford Co. vs. Hathaway*, 61 Nebr. 317, 326, 85 NW 303

"By courts, as the word is used in the constitution, we understand permanent organizations for the administration of justice, and not those special tribunals provided for by law, that are occasionally called into existence by particular exigencies, and that cease to exist with such exigencies." *Streeter v. Paton*, 7 Mich. 341, 347.

"A board of equalization is not a court, even though in some cases it may exercise judgment and discretion" *Mohave County v. Stephens*, 17 Ariz. 165, 169, 149 Pac. 670.

The decision most favorable to defendant is *Renaud vs State, Ct, Mediation & Arbitration*, 124 Mich. 648; 83 Mo. 620; 83 Ann. St. Rep 346; 57 L. R. A. 458. *Pingree & Smith*, manufacturers of boots and shoes at Detroit, together with their employees, submitted to the State Court of Mediation and Arbitration, a difference regarding wages. There was a hearing and decision in writing in favor of the employees. *Pingree and Smith* moved for a rehearing. Thereupon relator sued for writ of prohibition, mandamus or other appropriate writ to prevent the rehearing. The court said:

"We now come to the second question: Has the court a right to grant a rehearing after it has once rendered its decision? From what has already been said, it is apparent that the purpose to be served by the establishment of this court is to have a speedy and inexpensive disposition of the differences submitted to it. It was not the purpose of the legislature to create what we ordinarily understand by a court of law. The constitution provides that these courts shall have such powers and duties as shall be prescribed by law. The law which called this court into existence is the limit of its power. The act nowhere authorizes the court to grant a rehearing. When its decision has been rendered and filed, it has exhausted its power in a given case."

While it is true that in the case above mentioned the so-called court was hardly more than a Board or Commission, nevertheless it was constituted as a Court and had all the attributes thereof, and in addition thereto its procedure was fixed by law. We think if the procedure in the matter at bar was fixed by law without any provision for rehearing, then no rehearing could be had. But such has not been done.

We have also in mind *Union Terminal R. R. Co. v. Board of Railroad Commissioners*, 54 Kan 352; 38 Pac 290; which is also somewhat favorable to defendant. In that case the board of railroad commissioners of the State of Kansas had before it an application asking that the Union Terminal Company be given a crossing over the tracks of the Union Pacific and Missouri Pacific Railroad Companies in Wyandotte County. A hearing was had on this application on January 3, 1893, and an order was made by the board granting the right to cross and fixing the terms and conditions thereof, including compensation. On May 8th of the same year the railroad companies filed motions before the board asking for a rehearing. The Terminal Company objected on the ground that the board had no authority to grant a rehearing which objection was by the board overruled and a hearing was ordered for May 25th. On May 18th, the Terminal Company brought an action in the District Court of Shawnee County to enjoin the board from holding a rehearing. On a refusal of the Court to award a temporary injunction the case was taken to the Supreme Court of Kansas, which sustained the court below but based its action on defect of parties. Thereafter,

on January 26, 1894, after the action in the District Court of Shawnee County had been dismissed without prejudice, a similar action was commenced in the District Court of Wyandotte County, which finally resulted in the Court denying the injunction. Thereupon, the Terminal Company again prosecuted an appeal to the Supreme Court which reversed the decision of the Court below for the reason, among others, that no rehearing being provided by statute, the Board of Commissioners was without authority to grant such rehearing. The decision of the Court, however, seems to have been influenced by the fact that the Railroad Commissioners in acting upon the original application before them were exercising their status as condemnation commissioners in proceedings in eminent domain; also by the fact that the time for appeal had expired before the motion for rehearing was made. A careful study of that case fails to reveal wherein the ruling therein furnishes any precedent on the question before us.

The commission is not bound by the ironclad rules of law which govern court procedure. The suspending or revoking of an insurance agent's license is very similar to the suspending or revoking of any other license by any other officer or body, or the doing of any other administrative act which requires an adjudication of some issue of fact.

Supposing the decision of the commission had been the other way and that defendant's license had been suspended or revoked, would it be seriously contended that if on a proper application the commission should determine to grant him a rehearing, it would not be well within its rights? We think this whole matter is something with which no court will concern itself. If the commission desires to procure or receive the due proof on an original hearing or a rehearing, no rights are invaded or jeopardized and no law or rule of law binding the commission is in any way violated or infringed. The commission may grant or withhold the rehearing and not be in error as a matter of law, provided, of course, that the rehearing be granted upon a proper application and a proper showing of sufficient reason therefor.

March 13, 1919.

Governor of Arizona:
Phoenix, Arizona.

I have before me your letter of yesterday calling my attention to Senate Bill No. 19, creating and establishing a Board of Directors of State Institutions and inquiring if it repeals Chapter 6 of Title 42, Revised Statutes of Arizona 1913, which Chapter created the Arizona State Fair and provided for a State Fair Commission. After conference with you yesterday upon this subject, I took the Bill and conferred with Senators Windsor and Campbell upon this very matter, as those two gentlemen had given much time to the preparation and arrangement of the measure and earnestly urged its passage. Both declared the intent to be and that such intent is fully expressed in the Bill, that said Chapter 6 of Title 42, is not repealed and I am inclined to agree with their conclusions.

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I think the Bill gives the Board of Directors full authority to take charge and control of the Arizona State Fair, and in clothing the Board of Directors with such power, the Board has authority in its discretion to conduct the State Fair through the Arizona State Fair Commission and unquestionably would find it expedient to do so. The main intent of Senate Bill No. 19, is to supplant the Commission of State Institutions with the Board of Directors named in the Bill, and I am sure that said Board can proceed with the charge and control of the Arizona State Fair and conduct it with the Fair Commission under the provisions of said Chapter 6, Title 42 above mentioned.

March 21, 1919.

State Treasurer:
Phoenix, Arizona.

I am in receipt of your letter of the 20th, making inquiry about Paragraph 1524, Revised Statutes Arizona 1913, which requires the proceeds of all escheated property to be paid into the State School Fund. The same provision existed in Paragraph 2485, Revised Statutes Arizona 1901, except that said fund was called the "Territorial School Fund," and the Territorial School Fund under the Statutes of 1901, in my judgment, referred to the common school fund of the Territory of Arizona, and under Paragraph 1524, Revised Statutes 1913, the State School Fund therein mentioned, in my judgment, means the same as the fund mentioned in Paragraph 2815 Revised Statutes 1913, where the fund is known as "State Common School Fund." But under Section 95 of the Public Land Code of 1915, the proceeds of all escheated property both real and personal are placed in the permanent common school fund of the State as a perpetual fund the interest of which only "shall be placed in the state common school fund and appropriated as other moneys in the said common school fund are apportioned."

March 28, 1919.

County Attorney,
Nogales, Arizona.

I am in receipt of your letter of the 24th inst., in reference to the new law against gambling in which you refer to your former letter of the 4th inst., wherein you convey the impression that said law prohibits all forms of gambling by means of devices set forth therein, whether such games are conducted either in private residences or hotels or in which there may be no take off.

It has been strongly urged that a gambling game as mentioned in Section 319 of the Penal Code must be conducted by some individual and that the one who conducts such a game and all participants of a game so conducted are punishable but that it is limited to a game professionally conducted. They take the view that it does not apply to a private friendly game conducted in private

residences. Such a holding would encourage the work of clubs organized for the purpose and gambling could be carried on rampant by the members, both ladies and gentlemen meeting every night in the week parceling out their club sittings at the residence of the various members of the organization. Unquestionably such would be the result and I cannot take upon myself the responsibility of expressing an opinion which would lead to such conditions.

Schmidt vs. Territory, 13 Ariz. 77, was a case against the proprietor of a saloon in which the gambling game was conducted and of course the language used in the opinion dealt wholly with those facts. In McCall vs. State, 18 Ariz. 408, the lengthy opinion, the concurring opinion and the dissenting opinion therein all seem to point to the fact that our law is violated when a game is engaged in by two or more persons where property changes hands as a result of the game, or, as expressed in the opinion: "The risking of money or other property between two or more persons on a contest of chance of any kind where one must be the loser and the other the winner." Perhaps it may be well to have the matter thrashed out and adjudicated by a judgment rendered in a test case. I feel that I am taking the only safe course open before me and if my view is erroneous the Court can so declare.

April 3, 1919

Mines Company,
Oatman, Arizona:

We have your letter of March 29th in regard to what constitutes an eight hour shift, or whether the time men can be employed in a mine is "eight hours from the time they leave the collar of the shaft to go down into the mine until they return to the surface," or is eight hours work within the mine. In reply we quote from Section 713 of the Penal Code of Arizona 1913, as follows:

"The said eight hours shall include the time employed, occupied or consumed, in descending to and ascending from the point or place of work in any underground mine or underground workings, or the time employed, occupied or consumed in leaving the surface of any tunnel, open cut, or open pit workings, for the point or place of work therein, and in returning thereto from said point or place of work, and that it is the intent and purpose of this act that the period of time between leaving the surface of underground mines, underground workings, open cut workings, open pit workings, and tunnels for the point, or place of work, shall not exceed eight hours within any twenty-four hours....."

We believe this answers your inquiry fully but should you have any further questions we will be very glad indeed to inform you further.

April 5, 1919.

Superintendent of Public Instruction:
Phoenix, Arizona.

We have your inquiry as to whether or not the traveling expenses of City Superintendents incurred by them in attending educational meetings can be legally charged against the school fund.

We have very carefully gone over the school code and do not find any authority to make such payments from the regular funds raised for the support of the school system. We are therefore, of the opinion that such charges may not be made against the school funds except when incurred in traveling to institutes held within the State of Arizona and called in compliance with our statutes. There is no provision whatever covering travel outside the State. We might suggest, however, that the City Administrations if they saw fit could provide for the payment of these expenses should the City Officers consider it advisable for their superintendents to attend such meetings.

April 8, 1919.

Supt. of Public Instruction:
Phoenix, Arizona.

Your letter of recent date is now before me wherein you call for my opinion upon the question of the State Superintendent of Public Instruction being a member of the Board of Regents of the State University, as now constituted under Senate Bill No. 34 passed with an emergency clause at the recent session of the State Legislature. I might say that it is amazing that such inquiry should come to this Department were it not for the fact that matters have come to my personal knowledge which justify your inquiry. The State Superintendent of Public Instruction in this State under our State Constitution most certainly has large responsibilities and very properly so.

Article 11, (on the subject of education) Section One of the State Constitution, reads as follows:

"The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform *public school system*, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a *university* (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate State institutions of such character.) The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb, and blind."

Thus it will be seen that the Public School system includes the State University at Tucson, Arizona.

Section Two of said Article II of the State Constitution on "education," reads as follows:

"The general conduct and supervision of the public school system shall be vested in a State Board of Education, a State Superintendent of Public Instruction, County School Superintendent, and such governing boards for the State institutions as may be provided by law."

Thus it will be seen that the conduct and supervision of the University as part of the Public School system shall be vested in the State Board of Education, State Superintendent of Public Instruction, etc.

Section Three of said Article II of the State Constitution on "education," designating the members of the State Board of Education includes the Governor along with the Superintendent of Public Instruction mentioned in the preceding sections.

Section Four of said Article on "education" reads as follows:

"The State Superintendent of Public Instruction shall be a member and secretary, of the State Board of Education, and, ex-officio, a member of any other board having control of public instruction in any State institution. His powers and duties shall be prescribed by law."

Such Constitutional powers and duties cannot be curtailed by the Legislature.

Section Five of said Article on "education" provides for a Board of Regents of the University as a governing Board and makes the Governor an ex-officio member thereof. The State Superintendent of Public Instruction has been made a member of said Board of Regents by the preceding sections of said Article II on "education" above mentioned.

"Public School System" is unmistakably defined by Section One, Article II of the State Constitution above mentioned, which enumerates the University and industrial schools as therein set forth.

Section Two of said Article gives general conduct and supervision of said public school system to the State Board of Education, State Superintendent of Public Instruction, County School Superintendent and such governing boards for the State Institutions as may be provided by law. Therefore, I advise you that the State Superintendent of Public Instruction is a member of all Boards having control of public instruction in any State institution whether such board is created by the State Constitution or by legislative enactment.

In the State Constitution creating the office of State Superintendent of Public Instruction, it would be a farce to provide for the creation of any board having control of public instruction in the State to eliminate the State Superintendent

of Public Instruction as a member of such board, nor can he be eliminated by any legislative act.

As a constitutional officer, no legislative act by any affirmative words or by any omission can eliminate him from any "board having control of public instruction in any State institution," no more than the State Superintendent by his decree can eliminate the Legislature and shear it of its constitutional powers.

That the State Board of Education is a board having control of public instruction, and the Board of Regents subject to the State Board of Education has similar control as to the State University, I have only to cite the following provisions of the Revised Statutes of Arizona 1913:

Paragraphs 2695-2697, Subdivisions 3, 6 and 7.

Paragraph 2705, Subdivision 1-6-7.

Chapter 25-26, Title 11, Education.

Paragraphs 4471, 4478, 4479, 4480, 4483, 4494, 4476, 4497, 4504.

Said Senate Bill No. 34, makes the Governor ex-officio a member of the Board of Regents but that provision is entirely unnecessary as Section five of Article 11 State Constitution above mentioned, provides for that just the same as other Sections of said Article 11 of the State Constitution constitute the State Superintendent a member of said Board of Regents. The act of the Legislature can neither add to nor take from the above mentioned sections of the Constitution of the State. Therefore, I advise you and you are hereby authorized to advise all boards having control of public instruction in any State institution that the State Constitution declares, fixes and creates you a member of all such boards including the Board of Regents of the State University about which you inquire.

April 10, 1919.

Arizona Corporation Commission:

In the matter of the proposed organization of the Farmers Mutual Insurance Company for the insuring of livestock, the name proposed apparently does not comply with the statute in that it does not disclose the kind of insurance. In addition to that point, the question is presented as to whether or not a mutual company of this nature can be organized under our law.

Paragraph 3425 of the Civil Code, Revised Statutes of Arizona, provides for the organization of mutual insurance companies. Paragraph 3423 makes a classification of companies and subsection (13) of that Paragraph refers miscellaneous insurance which would include that proposed by this company. The following Paragraph 3424 takes up these various classifications and provides the requirements in the way of assets before each can do business. Subsection (6) mentions classification thirteen and says that no stock insurance company shall

make any insurance in this State under that classification without having a capital stock of at least \$100,000 fully paid. This, of course, does not refer to mutual companies. Subsection (7) of the same Paragraph expressly exempts from the operation of this Paragraph mutual and fraternal life and fire companies. I presume this is on the theory that they have been otherwise provided for.

If we now turn to Paragraph 3399, we find reference to stock companies and also the provision that a mutual company as well must own and have possession in its own exclusive name and right, net assets unimpaired of the kind required by law, fully equal to the minimum amount of capital paid up in cash or assets required by the provisions of the insurance law to entitle any insurance company to be authorized to transact like business. This seems very clearly to say that the provisions above mentioned placing restrictions upon stock companies doing miscellaneous insurance and stipulating the least amount of capital stock with which they will be allowed to do business is made to apply as well to mutual companies.

While this matter has not been put up to this Department as yet for an official opinion, yet the papers having been submitted to us, we return them herewith with the information contained in this letter which is more in the way of a suggestion of our interpretation of the statute. The matter was pending before me when I took sick recently with the Flu. I have since not had the opportunity to study any cases that might have bearing thereon.

April 12, 1919.

Governor of Arizona:

I have before me your letter of this date making inquiry about Substitute Senate Bill No. 19, which was duly passed by the Legislature, approved and filed with the Secretary of State in accordance with the State Constitution.

Section 27 of said Bill reads as follows: "This act shall take effect and be in force from and after July 1, 1919." Said Section in no way violates the State Constitution and is perfectly valid and the Board of Directors named in said Bill will be in legal existence and ready to perform its function on July 1st, next.

Section 26 repeals Chapter 89 of the Session Laws of 1917 which created the Commission of State Institutions and that repealing Section becomes effective the moment said Bill takes effect July 1st next, and each provision of said Bill or I may say the Bill as a whole with all its provisions become operative and effective July 1st, 1919, when the Commission of State Institutions ceases to exist.

Subsection 3 of Section 1, Article 4 of the State Constitution entitled "Legislative Department" simply provides that no Act of the Legislature shall be operative for ninety days after the close of the session and therefore it does not

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forbid the Legislature to declare an Act operative and effective at any period after the expiration of said ninety days.

April 15, 1919.

Arizona Corporation Commission:

In re question as to whether or not Chapter 58 of the Acts of the Regular Session of the Second (1915) Legislature of the State of Arizona gives the Corporation Commission authority to fix or regulate the compensation which insurance companies shall pay to their resident agents.

We agree with your opinion expressed in your letter of April 11th to the effect that no such authority is conferred upon the Commission by said act. We would go further and say that the said act has no bearing or effect on the question of commissions paid to insurance agents with this exception, that if the company was not paying its regular agent the full commission but was dividing part of said commission with someone not a duly licensed agent, that would bring the company within the prohibition of that part of the said act which forbids the insurance company to participate in the act of the agent or solicitor who divides his commission with an unlicensed solicitor. It would appear however, that to render the company liable under such circumstances, the unlawful transaction must be brought by the resident agent accepting an application from an unlicensed solicitor and jointly with the company making the arrangement for the division of the commission.

April 15, 1919.

Arizona Corporation Commission:

In re inquiry as to whether or not the Painters Union of Globe could insure its members under the Employers' Liability Act:

It appears to us that the only way this could be done would be for the Union to bring itself within the provisions of the law relating to fraternal insurance or organize within the Union a separate mutual company. We are afraid though that the regulations placed upon mutual companies in this State would be so prohibitive as to make it impossible for the Union to follow that plan.

April 15, 1919.

State Inspector,
Weights and Measures.

In answer to your inquiry of yesterday regarding the law on the size of loaves of bread in the State of Arizona, I would say that Paragraph 5533, Page

1798, Revised Statutes of Arizona, 1913, requires the weight of a loaf of bread to be written, printed or stamped thereon, or on a label attached thereto with indelible letters and figures in pounds, or pounds and fractions of a pound, or in ounces, and the time when such bread was so marked or labeled. This applies for any bread offered for sale.

By reading said Paragraph 5533 you will see all requirements fully set forth as to bread offered for sale.

The size of the loaves is not fixed by the statute, but the statute simply requires the weight in pounds and ounces or fractions thereof to be marked as above mentioned.

Special License Regulations, Number 13, of the United States Food Administration, provides in Rule 2, that the licensee manufacture bread as follows:

"Weight of loaves:—No licensee shall manufacture bread except in the following weights, which shall be net weights twelve (12) hours after baking:

Three-quarters ($\frac{3}{4}$) lb. Three (3) lbs.

One (1) lb. Four (4) lbs.

One and a half ($1\frac{1}{2}$) lbs. Five (5) lbs.

Two (2) lbs. Or other lb. weights.

Provided, That rye bread, the flour and meal content of which contains forty per cent or less of wheat flour, need not conform to the foregoing weight requirements if such rye bread is sold to the consumer by weight and not by the loaf.

Variations at the rate of one (1) ounce per pound over and one (1) ounce per pound under the above specified unit weights are permitted in individual loaves, but the average weight of not less than twenty-five (25) loaves of any one unit of any one kind shall be not less than the weight prescribed by these regulations for such unit."

Said Rule No. 2, above set forth is still in force and governs the manufacture and sale of bread in the State of Arizona until the above rule is abandoned; and thereafter the said Paragraph 5533, Revised Statutes of Arizona will be the law to be observed in this State as to the manufacture of bread for sale. Both said Rule No. 2, and Paragraph 5533 must be observed in the meantime.

April 15, 1919.

State Treasurer:

Referring to your inquiry of the 1st instant, in regard to the inheritance tax laws as applied to community property, citing a specific case in which a husband

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died intestate, and the surviving widow set up her claim to an undivided one-half interest in the entire estate as community property.

You do not, in your inquiry, give the details of the estate, nor show where decedent was a resident during his lifetime. Neither do you state what court has assumed jurisdiction in the matter of probate. We have assumed for the purpose of this letter, that the decedent was a resident of the State of Arizona during his lifetime, and died within the State intestate, leaving an estate which is subject to the jurisdiction of the State courts. That intestate left a widow surviving, and several children, as heirs of the property in question. On this assumption, we would state, that the Inheritance Tax statutes provide that all property, which shall pass by will or by statutes of inheritance, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, or donor, to any person or persons, or to any body, or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to an inheritance tax. The question presented is therefor one as to the character of the estate vested in the surviving widow and the children of the deceased.

In the "Estate of Wilson," 19 Arizona 205, 168 Pac. 503, the State Supreme Court had under consideration a very similar case, under the Civil Code of 1901, and decided that under the provisions of the 1901 statute, "if the said described lot as alleged in the petition for letters of administration was the common property of the appellee, and his deceased wife,..... upon her death, the title thereto vested absolutely and immediately one-half in her husband, and one-half in her daughter, they being the only relatives entitled, under the law, to share in the community. If this be true, and no community debts appearing, administration would be a useless as well as an expensive proceeding. The property of the appellee, husband, and..... the daughter, should not be required to defray the expenses of administration which could not in any way strengthen their title. It would be a useless and unnecessary burden that the law will not permit."

The statute interpreted by the Supreme Court decision, referred to, is paragraph 2124 of the Revised Statutes of 1901, and reads as follows:

"Upon the dissolution of the marriage relation by death, all the common property belonging to the community estate of the husband and wife shall go to the survivor if the deceased have no child or children; but if the deceased have a child or children, his survivor shall be entitled to one-half of said property and the other half shall pass to the child or children of the deceased."

However, the above statute has since been amended by the State Legislature, and the present law is set out in paragraph 1100 of the Civil Code of 1913, as follows:

“Upon the death of the husband one-half of the community property shall go to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his descendants, equally, if such descendants are of the same degree of kindred to the decedent, otherwise according to the right of representation; and in the absence of both such distribution and descendants, is subject to distribution in the same manner as the separate property of the husband . . . ” (with a similar provision as to the rights of the husband upon the death of the wife).

No change has been made in the law relating to the liability of the community property for the community debts contracted during marriage.

The amended law is taken from Section 1402 of the Civil Code of California, and if the courts of that State were to be looked to for an interpretation of our statute, your contention would probably be correct. However, the Arizona legislature did not adopt the whole of Section 1402 from California, but purposely omitted the part of that section which relates to the administration of such community property. In view of such an omission, and taking into consideration that the legislature had knowledge of the Arizona statute of 1901, together with its effect, we are constrained to the opinion that the legislative intent was to make no further amendment of the then existing law than is shown by the amendment alone without recourse to the California Code or judicial decisions. Beyond question then, in the case you cite, if the said estate as alleged in the petition of the surviving widow, was the common property of the widow and her deceased husband, upon his death the title to one-half of the community property vested absolutely and immediately in the widow and no community debts appearing was not subject to administration so far as her one-half of the property was concerned.

Referring back, then, to the question of inheritance tax on the one-half of the community property which is the property of the widow, would say that upon the death of the husband the wife receives her share of the community property, not by will or by statute of inheritance, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of her husband, she receives it, not as an inheritance, but in her own right, as her half of property which was acquired by herself and her husband during marriage, but freed from all restrictions in its use and enjoyment and with the same title as she has in her separate property. It is therefor, our opinion that upon the death of the husband the wife receives her share of the community property free from any lien prescribed by, and not subject to any of the provisions of the inheritance tax law.

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April 30, 1919.

Arizona Corporation Commission:
Phoenix, Arizona

We have your letter of April 26th inquiring as to whether or not in the incorporation of a railroad company it is necessary to follow the procedure prescribed for the incorporation of corporations in general in Title IX of the Civil Code, Revised Statutes of Arizona, 1913.

The incorporation of railroads is provided for in Chapter IV of this Title and the only prerequisite to such corporations doing business is that its articles, properly executed be filed with the Corporation Commission. It is not necessary for a railroad company organized under this Chapter to publish its articles, record the same in the office of the County Recorder or obtain a certificate of the Corporation Commission. My understanding, however, is that most if not all railroads incorporated in this State record their articles in the office of the County Recorder, the same being necessary in order to complete title to their real estate and to validate other business transactions.

As to whether or not they also publish their articles, we are unable to state; our conclusion, however, is that if railroad companies should desire a certificate of incorporation and should bring itself within the provisions of Paragraph 2101, you should issue such certificate as is there provided for.

As to the appointment of a statutory agent provided for in Paragraph 2117, this clearly does not apply to railroads but refers only to corporations organized under that Chapter, viz., Chapter II.

With these remarks we proceed to answer specifically the questions propounded:

A. Under the laws of Arizona is it necessary for a railroad company to record its articles of incorporation with the County Recorder? Answer—No.

B. It it necessary for a railroad company to appoint a statutory agent? Answer—No.

C. Is it necessary for a railroad company to secure a certificate of incorporation authorizing it to transact business in Arizona. Answer—No.

D. Is it necessary for a railroad company to file its affidavit of publication? Answer—No.

April 29 1919.

State Examiner,
Phoenix, Arizona.

Answering your letter of yesterday wherein you inquire if it is your duty to examine the affairs of various irrigation districts:

I would state that I think it advisable for you to exercise authority in the premises and conduct the examination of the affairs of the various irrigation districts of the State. Such districts are of great importance and the members who are taxed for the purpose mentioned in the Chapter providing the organization of such districts, are entitled as taxpayers for such purposes, to the same protection as is a taxpayer for county purposes.

Also, such investigation and examination by you cannot result in harm to the irrigation taxpayers of the district. Whatever doubt should exist touching this matter I think it proper to resolve in favor of you having such power and authority as a step for the protection of those bearing the burden of the irrigation district.

April 30, 1919.

Sheep Sanitary Commission:
Phoenix, Arizona.

Replying to your letter of the 22nd inst., in which you propound seven questions relative to Senate Bill 46, passed by the last legislature; these questions will be answered seriatim.

(1) It has always been the policy of this office to treat all laws passed by the Legislature as constitutional until they are declared to be otherwise by the courts.

(2) The bill being constitutional, a levy can be made as provided therein.

(3) The State Tax Commission acting as the State Board of Equalization must at the request of the Sheep Sanitary Commission make the levy provided for in Section One of said Senate Bill 46, and certify the same to the several Boards of Supervisors to be collected as other State taxes. There is nothing in the constitution that would prevent the State Tax Commission from making the levy as contemplated by the bill.

(4) The funds secured by this Bill must be used exclusively for the payment of expenses properly incurred by the Sheep Sanitary Commission, which expense must be itemized and set out in a budget showing the manner in which the fund thus collected is to be expended.

(5) Under Paragraph 68, Chapter VIII, Title One, Revised Statutes of Arizona, 1913, Civil Code, it is provided that the State Auditor shall have the final auditing of all accounts and make payments of all claims previously passed upon as provided by law.

Under Senate Bill 46, the State Treasurer, is directed to keep the money raised by said Bill in a separate fund, therefore, the proper procedure in expending this money would be for the Sheep Sanitary Commission to draw and approve

claims on the State of Arizona which must be audited by the State Auditor as provided by law, and in the manner other State claims are audited.

(6) The five thousand dollars provided for in Section 2 of said Senate Bill 46 is available ninety days after the adjournment of the Legislature, to-wit, on June 13, 1919.

(7) Section 2 of said Senate Bill 46 provides that the sum of five thousand dollars or so much thereof as may be necessary, may be used until the funds from the first assessment made under the provisions of Section 1, of the Act are available. Therefore, you will see that the five thousand dollars become available on the 13th of June this year, and that the Sheep Sanitary Commission may draw against this five thousand dollar fund until such time as money comes into the fund from taxes raised as provided in Section one of the Act. As soon, however, as the first taxes are levied and collected, under the provisions of Section one of the Act, the balance left of the five thousand dollars appropriated in Section two of the Act, reverts to the general fund.

May 3, 1919.

President School Board,
Tucson, Arizona.

I have just wired you in response to your telegram to me and your inquiry by phone regarding the qualifications of electors in voting school bonds, and you have especially directed my attention to electors having no taxable property other than community property.

Section 2 of Article VII, State Constitution upon the subject of suffrage and elections says:

"The word citizen shall include persons of male and femal sex, and that the rights of citizens in the United States to vote and hold office shall not be denied or *abridged* by the State or any political division or municipality thereof on account of sex; and the right to register, vote or hold office under any law now in effect or which may hereafter be enacted is hereby extended to and conferred upon males and females alike."

Section 13 of said Article VII, reads:

"Questions upon bond issues or special assessments shall be submitted to the vote of property taxpayers, who shall also in all respects be qualified electors of the State, and of the political division thereof affected by such question."

Paragraph 2736, Subdivision 4, on the subject of education, Revised Statutes 1913, describing the qualifications of electors at school bond elections defines such persons "as have paid in heir own name a county or state tax upon property

situated within such district other than poll, road or school tax during the preceding year and who is in all other respects a qualified elector for the purpose of voting at regular school elections."

Said statute above quoted should not be interpreted in such a way as to conflict with the provisions of the State Constitution above quoted, but should be construed to harmonize therewith. The constitution places males and females on an absolute parity and terms of equality upon the subject of elections. Paragraph 3850, Revised Statutes of Arizona, 1913, regarding community property treats the male and female absolutely alike and on terms of absolute equality as to community real estate, no matter in whose name it may be held, and I think the taxes paid on such property by either the husband or the wife, should be construed as a payment of taxes in the name of the other spouse, thus harmonizing with the provisions of the constitution on elections and suffrage above quoted. Therefore, either husband or wife paying taxes upon separate property and an elector otherwise in the District, can vote for bonds or special assessment in said District, and if community property, or as the statute says, common property, is owned by the husband and wife, no matter in whose name the property may be held by deed, upon the payment of property tax on said community property by either, both husband and wife are entitled to vote at the election for bonds or special assessments in said district if they are otherwise qualified as electors to vote in said District.

May 5, 1919.

State Historian:

Answering your letter of the 28th ult., wherein you call my attention to the recent act of the Legislature touching the office of State Historian, and inquiring if you are compelled by law to keep your office open every day at the capitol building, I would state as follows:

Under Paragraph 221, Subdivision 6, Revised Statutes Arizona 1913, the absence of an officer from the State beyond a period of three consecutive months without permission of the Legislature, creates a vacancy in the office, and I suggest that you avoid coming in contact with that subdivision.

The new law directs you to keep your office in Phoenix but does not state that it shall be in the capitol building, and while the general law requires all state offices to be kept open for the transaction of business every day except holidays, it provides no penalty for non-compliance with said law. I would advise therefore, that you endeavor, if possible, to have someone in charge at your office either at the capitol building or at some designated place in the city if it can be done without too much expense, and permit you and your assistants to conduct the historical research work mentioned in your letter as well as in the law of the State.

I know the necessity of your conducting the historical research work through-

out the State and possibly to points from out the State in order to accomplish the laudable purpose of the law creating and establishing your department, and I feel that such liberal construction of the law should be made as would further the objects and purposes above mentioned.

May 7, 1919.

Secretary, Corporation Commission:

Replying to your inquiry of April 28th in re foreign investment corporations selling stock in Arizona by newspaper and mail without a permit from the Corporation Commission:

We return herewith the part of the opinion of the Attorney General of Ohio, dated August 26, 1914, which you enclosed in your letter. We have not considered this opinion very seriously for the reason that in October of 1916, in the Supreme Court of the United States, the Attorney General of Ohio in *Hall vs. The Geiger Jones Company*, made the following statement:

"It will be observed that any person outside of the State may sell to any person within the State, or any person within the State may buy of any persons outside of the State, or may sell to any persons outside of the State, any stock of domestic or foreign corporations free from the statute."

Other statements made by the Attorney General in his brief, indicate that he had come to the conclusion that in order to be a violation of the law, the party offering the stock must actually be in the State.

Going more directly to the question as it affects Arizona, we would suggest that this department has heretofore ruled that these newspaper advertisements are not of themselves a violation of the law so that they could be prevented by criminal process or injunction. They would become such, however, if they should be merely the overt acts committed pursuant to a conspiracy to violate the law, which would be a matter very difficult, if not impossible to prove.

May 9, 1919.

State Land Commissioner:

Answering further your letter of recent date, and your memorandum inquiry supplied me later concerning the effect upon Paragraph 107, Public Land Code, of the later provisions of Subdivision 65 and 66, of Section 1, Chapter 90, Laws of 1917 (General Appropriation Bill), and Subdivision 63 of Section 1, Chapter 174, Laws of 1919 (General Appropriation Bill), I would state that said Para-

graph 107 of the Public Land Code does not seem to be affected by the Subdivisions above mentioned, that is, as to the use of the receipts of all classifications and appraisement fees to be used solely for the classification, appraisement, investigation and demonstration of lands owned by the State. Such fees are to go regularly into the State Land Classification and Appraisement Fund, and the Subdivisions above mentioned set forth in the Acts of 1917 and 1919 specifically except them from reverting to the credit of the General Fund, but they must be used solely for the purpose specified in Paragraph 107. This includes, of course, the payment and compensation of all employees engaged in such specific work of classification, appraisement, investigation and demonstration of said State lands.

The foregoing interpretation of the law applies, of course, only to said Paragraph 107, Public Land Code as affected by the Subdivisions above mentioned, the two Appropriation Bills, 1917 and 1919.

May 5, 1919.

Superintendent of Public Instruction:

Replying to your inquiry in regard to the renewal of teacher's certificates by the State Board of Examiners at the expiration of the time for which they were granted "for a like period for which they were originally granted," would say, that I do not find any authority conferred on the State Board by which they may take such action. Your inquiry is very evidently based upon Paragraph 2141 of the Civil Code of 1901 which conferred such power upon the Territorial Board of Examiners, and I would call your attention to Paragraph 2701 of the Civil Code of 1913, which designates the powers of the State Board of Examiners. As this later statute is upon the same subject as the statute of 1901 and is in conflict with the terms and provisions of the 1901 statute, it is very apparent that it has repealed all parts of the 1901 statute which were not expressly re-enacted.

As to the right of the teacher to claim a renewal of a certificate issued under the provisions of the 1901 Code, I am of the opinion that such right does not exist. A teacher's certificate does not partake of any of the essentials of a contract, but is a mere license subject to the terms and provisions of the statute under which it is issued and conferring no rights which could survive the revocation of the statute. The State Board of Examiners is therefore governed only by the provisions of the 1913 Code and its amendments, and has no duty to perform under the repealed sections of the 1901 Code.

May 22, 1919.

Miss Harriet Jean Oliver,
Acting Secretary of State.

I have before me your inquiry of yesterday calling for an interpretation in the matter of the law in reference to surety bonds required of brokers in the transac-

tion of business and would state that Subdivision 2, Section 3, Chapter 30, Laws 1917, provides said bond of \$5,000 to be executed "by said applicant together with a surety company or two good and sufficient sureties," etc.

Thus it will be seen that either a surety company's bond may be accepted and approved, or bond by two good and sufficient sureties, that is individuals, may be approved if found to be good and sufficient.

Further, I am inclined to the opinion that the \$5,000 bond given would cover the liability of the principal in the transaction of business within the State, if the provisions of the bond so provide without limiting the business transacted to any locality and would cover the business done within the State through all branch offices. It is necessary, however, to examine the provisions and conditions of the bond that it is broad enough to embrace the entire business transacted by the broker.

May 27, 1919

Mr. A. B. Deaver,
Winkleman, Arizona.

When you called at my office yesterday, and made inquiry about your rights to hold an unsurveyed School Section No. 16 leased to you by the State, I was too busy then to go into the matter, but assured you that the State had a perfect right to lease an unsurveyed section, as it has been doing.

On September 9th, 1915, nearly four years ago, I gave an opinion, in writing, to the Land Department, that it had a right to lease the unsurveyed lands of the State in Arizona. That opinion is published on Page 21, of my Biennial Report, submitted to the Governor and published in December, 1916. Since then the question has been decided by the Supreme Court of New Mexico, a State admitted under the same Act of Congress which admitted Arizona, and donated to New Mexico the same school sections in number as were donated to Arizona. The Supreme Court of New Mexico, in April, 1918, upheld the State Land Commissioner in giving a lease on unsurveyed lands, and decided against the party who applied for the lease of the lands after survey had been completed and approved.

If anybody interferes with your rights under your lease, you may simply bring your action against the party and dispossess him, with a judgment against him for all costs and damages in the case.

May 30, 1919.

Arizona Corporation Commission:

Our files show that on March 31, 1917, we wrote you upon the subject of the

provisions of Paragraph 3421, Revised Statutes of Arizona, 1913, on the subject of insurance, which expressly declares it to be unlawful for any insurance company, its officers or agents, to charge for insurance, any fee or compensation whatsoever, except the premium for said insurance.

Complaint has been made to this Department that insurance companies and their agents doing business in this city are flagrantly violating that law and charging a percentage in excess upon the premium to be added to the premium and collected from the insurance. I am informed that this excess is not paid to the Federal Government, but simply goes into the pockets of the insurance company or its agents. This Department will cheerfully co-operate with your honorable body in the enforcement of this particular provision of the law.

The above, of course, does not apply to any war tax upon the premium and added thereto required by any U. S. law.

June 2, 1919.

State Mine Inspector:

I have before me your letter of the thirty-first ultimo, transmitting to me a letter from the Texas Bunch Company of Globe, Arizona, making inquiry about the eight hour law for underground workmen, and a second letter containing a similar inquiry from the Gila Monster Mining Company at Globe, Arizona.

The letters inquire if the time that a laborer takes for his dinner hour, whether one-half an hour or one hour, should be included within the eight hour limitation of labor.

Paragraph 713 of the Penal Code of 1913 contains a provision of law dealing with this question, and declares that workmen shall not be employed underground in mines for more than "eight hours within any twenty-four hours, and the said eight hours shall include the time employed, occupied or consumed in descending to and ascending from the point or place of work in any underground mine, or underground workings;" also "the period of time between leaving the surface of underground mines, underground workings, open cut workings, open pit workings, and tunnels for the point or place of work, and in returning thereto from said point or place of work, shall not exceed eight hours within any twenty-four hours," and that includes descending from and ascending to the surface. It does not say that the eight hours shall be consecutive or continuous. It nowhere prohibits working four hours and then taking a one-half or an hour or more off for lunch above the surface and then returning for four hours' work after such lunch. The purpose of the law seems to be to protect the health of the miner so not more than eight hours underground work, whether consecutive or not, shall be put in below the surface of the ground in any twenty-four hours.

I think if the men were compelled to lunch below the surface of the ground, the time spent at lunch should be figured as part of the eight hours below the surface. This seems to be a plain, proper and fair interpretation of said Paragraph 713, of the Penal Code, which is quite lengthy and explicit and contains an exception for emergency cases.

I have never given an opinion heretofore upon this Section, and I am now stating briefly what appears to be the manifest intent of the eight hour law for underground workmen.

June 3, 1919

Mr. John D. Parks,
Phoenix, Arizona.

I am writing in answer to your inquiry about the leasing by the State of Arizona of school sections 16 TN 4 S, 15 E, and Section 32 TN 2 S, 15 E. and Section 16 TN 3 S, 15 E, all located in Gila County, Arizona.

All these leases were made under Section 30, of the Public Land Code of Arizona, as they were granted to the State of Arizona by the Enabling Act of Admission passed by Congress. As the lessees are paying rental to the State for the possession and occupancy of said lands they are entitled to protect that possession against any others seeking to occupy said lands or trespass thereon with stock or otherwise.

In September, 1915, I gave the written opinion and filed it with the State Land Department, that the unsurveyed school land of the State could lawfully be leased and rent collected thereon. In April, 1918, the Supreme Court of New Mexico, decided that very question under the same act of Congress, admitting Arizona and New Mexico, and granting to each state the same number of school sections.

Therefore, anyone entering upon the possession of the lessee of such unsurveyed land can be dispossessed and compelled to pay the costs of the court for the unlawful trespass thereon. As stated by the Supreme Court of New Mexico in its opinion, "An examination of the Enabling Act convinces that it was the intention of Congress in enacting the same to make a PRESENT GRANT of the school sections mentioned in the Act.

The conclusion is inevitable that the Enabling Act evinces an intention on the part of Congress to pass an IMMEDIATE TITLE to the State, to the school sections, subject only to identification by survey."

The decision of the New Mexico Supreme Court in this very action is emphatic and directly to the point.

June 4, 1919.

State Auditor:

I desire to answer briefly your inquiry of recent date as to the provisions of Senate Bill No. 90 and its effect upon appropriations for the various departments of State.

The purport of the bill is largely set forth by that portion of Section 1 thereof which reads as follows:

"The total credit to each and every State Fund, available for use for the designated purposes thereof only, shall comprise no more than the amount of general or special revenues by law designated as for the particular purpose, object or use, for which each fund is created, with amount of tax raised funds additional to such other revenues, as will make a total available credit not exceeding the amount specifically appropriated."

From the language used it will be seen that the expenditures are limited to the amount specifically appropriated.

You called my attention to the amount appropriated for the common school fund, and in response to your inquiry will state that House Bill No. 3, which is Chapter 30 in the new law now being published, makes an appropriation of \$750,000 per annum by amending Paragraph 2815, Revised Statutes 1913, and fixing that amount by said amendment to be annually raised by tax levy for said purpose. That Act was approved February 28, 1919. Later in the session House Bill No. 90 was enacted and in order to meet its provisions the Legislature incorporated in the general appropriation bill the present Section 45 as passed which makes an additional appropriation of \$125,000 per annum for the succeeding two years in addition to the above first named sum, making \$875,000 as the annual appropriation for each of the next two years. That aggregate sum to be raised by taxation, will be diminished by the amount which will come in to the common school fund from the rentals of school lands and interest on permanent school funds which will be about \$125,000 annually as estimated when said Section 45 was adopted by the Legislature.

Such interpretation has been placed upon Senate Bill No. 90 by the Legislature in approving the language of Section 1 thereof followed by the adoption of Section 45 of the general appropriation bill as above mentioned and said Section 45 was really an appropriation by Legislative Act of the revenue mentioned in Section 10 of Article 11 on "Education," State Constitution: That construction of the law will apply to all revenues of a similar nature coming to the State Treasury and is in complete harmony with my letter to the State Treasurer of July 7, 1917, to which you refer.

Should you desire any aid from this office in reference to any particular claim presented under any provision of law and in which you are in doubt, under the foregoing expression, this department will be pleased to respond officially to any inquiry that you may make as occasion arises calling for the same.

I may add also, that the views above expressed are re-enforced by the language of Senate Bill No. 135 providing for the tax levy for years ending June 30, 1920, and June 30, 1921, and which in estimating the necessary tax to meet appropriations says in part:

"An annual tax sufficient *with other sources of revenue*, to defray the necessary, ordinary expenses of the State for each of these fiscal years as authorized by law:"

Further, Senate Bill No. 90 does not seem to affect any Statutory, annual appropriations, nor does it affect any other appropriations that expire June 30, 1919.

By the distribution of credits is meant the opening of any account in the State Auditor's and State Treasurer's books, for each separate fund designated by appropriation, which account is to be credited with the amount appropriated. The amounts so credited will continue as credits in such funds subject to such debits as are made from time to time when the fund is applied to the purpose for which it is created.

The State Board of Equalization must necessarily estimate in their best judgment the "sufficient amount necessary" as mentioned in statutory appropriations to carry out the purposes made manifest by such laws.

The word "revenue" is somewhat defined by Section 3, Article 9, State Constitution, which says:

"The Legislature shall provide by law for an annual tax sufficient with other sources of revenue, to defray the necessary, ordinary expenses of the State for the fiscal year."

Therefore, "revenue" as applied to current state expenses, would seem to include all state moneys whether raised by taxation, by fines, by forfeiture of bonds, or by rental of state lands or interest upon state moneys which are not forbidden by any provision of the Constitution to be used for the expenses of State Government. This answers your inquiry, although it does not seem to mean that such moneys may not go in to the permanent funds of the State where directed by the Constitution.

I would state also that the Road Fund designated by law as such is separate from the General Fund and is not a part thereof as it is raised by taxation for the specific purpose as a Road Fund. When the unexpended balance from the Road Fund may revert to the General Fund is a question to be determined later when that arises. That portion of the Road Fund set aside to meet federal aid funds and advanced to counties I suggest as my opinion would not revert to the general fund, but such contingencies would have to be met and passed upon when they confront us.

Will also say that when said Senate Bill No. 90 becomes effective and you are confronted with any perplexities this department will cheerfully answer any inquiry touching same that you may propound.

June 12, 1919.

Board of Supervisors, Cochise County :

We have your inquiry of even date in regard to the construction of approaches and bridges over the dry lake west of Willcox.

As to whether or not such a structure would be a "bridge" which the Supervisors are empowered to construct and the State of Arizona is authorized to advance to Cochise County money for the purpose of constructing is the question raised. The Supervisors of the County are empowered to construct and maintain bridges across any non-navigable stream. "Stream" means simply water and hence authority to construct a bridge over a stream authorizes the construction of a bridge over water which may be a river, creek, pond, lake or stream of water flowing in a channel between banks, more or less defined, although it may be occasionally dry. The term "bridge" is a comprehensive one and embraces every structure in the nature of a bridge over any obstruction to the highway. It means, therefore, any structure by which a highway is carried over a place where water would obstruct the highway, although the place may be at times dry, in order to facilitate the passage over the same. It includes, however, only the structure across a stream, together with the abutments and approaches necessary that travelers and others may safely pass thereon.

It is, therefore, our opinion that the entire structure which may be necessary to make a continuous passage way extending from one side of the lake to the other, may be considered as a bridge within the provisions of the statute governing the advancement by the state to the county of a sum of money for the purpose of constructing bridges in such county.

June 12, 1919.

Governor of Arizona :

Answering your letter of the 12th inst., in reference to the alleged Mexican fugitive now being held by the Chief of Police of Bisbee at the request of Mexican authorities, I would advise that such procedure without a warrant is unauthorized by law, and that the prisoner should not be held unless someone assumes the responsibility of making complaint on oath upon which a lawful warrant can be issued, and that Title 26, governing "Proceedings against fugitives from justice" on pages 267, 268 and 269 of the Penal Code of Arizona, 1913, be followed, and that he be not delivered except upon extradition papers properly issued therefor.

June 13, 1919.

Board of Trustees, Duncan Union High School :

We have your inquiry of the 5th, which was addressed to this Department

because of the absence of the County Attorney, with reference to who would be qualified electors in the school district to vote upon the question of raising an additional tax sufficient to pay for the transportation of pupils living at a greater distance than one mile from the school.

Paragraph 2736 of the Civil Code of 1913 provides that the board of trustees of any school district may, whenever in their judgment it is advisable, and must, upon petition of 15 per cent of the school electors, as shown by the poll list, call an election for the purpose of deciding whether or not children living at a greater distance than one mile from the school to which they have been assigned shall be transported to and from school at the expense of the district. If a majority of the electors voting at such an election vote that such children shall be transported, then the trustees shall estimate the expense of such transportation and certify the same to the county school superintendent. Paragraph 2730 of the Civil Code of 1913 provides that every person, male or female, of the age of 21 years or over, who is a citizen of the United States, and who has been a resident of the State of Arizona for one year, and of the district for thirty days immediately preceding the day of election, and who is the parent or guardian of a minor child residing in the district, or who has paid a state or county tax, exclusive of poll, road or school tax, during the preceding year, is entitled to vote at any school district election, provided that every woman offering to vote at such election, who is otherwise qualified and whose husband or father is or was a citizen of the United States, shall be treated and considered as a citizen of the United States, and provided further, that every woman whose husband is a taxpayer on community property and who is otherwise qualified shall be considered as a qualified elector for the purpose of voting at such election. Paragraph 2736, above referred to, makes a specific exception to the general rule, when an election is held on a bond issue, but makes no exception as to an additional tax levy for the purpose of paying the expense of transportation. We are therefore of the opinion that the general rule only applies, as set out above.

Now in regard to the other question included in your letter, viz: The transportation of the Seventh and Eighth grade school pupils, we would say, that the Board of Trustees of a high school district is not authorized to raise funds in any manner to conduct, maintain, or otherwise contribute to the support and maintenance of a grade school. If your Board has included this tax levy for the purpose of raising funds for the transportation of grade pupils to and from the school, it will be necessary for you to issue a new call which will not include anything but a tax levy for high school purposes. Should the grade school of your district desire to pay for the transportation of the pupils of the Seventh and Eighth grades, the grade school district in which the building is located must hold an election of its own upon that question. It cannot be decided at an election held at the call of the High School District. The two districts are separate entities. The authority of school trustees is limited to the legislative authority conferred, and therefore they can perform only such functions as are prescribed by statute, or are fairly implied therefrom. It follows naturally that a vote upon the question of transportation of the pupils of the grade school district, taken at an election called solely by the trustees of the high school district would be void.

We might suggest, however, that the grade school trustees could call an election to be held upon the question of the transportation of the grade pupils, and if the districts covered by the jurisdiction of the different boards are identical in boundaries, the questions could be submitted at the same time and upon the same ballot, provided they were shown separately and voted upon separately.

June 16, 1919.

State Treasurer :

We have your letter of the 7th in regard to exemptions under the Arizona Inheritance Tax Law, where property passes to State and Charitable Institutions; and also the inquiry in regard to the action to be taken by your office in the case where a will provides that the executors should purchase a monument for the decedent, the cost of which amounts to \$5,000.

As the Inheritance Tax Law makes no mention of exemptions being granted to state and charitable institutions, we presume you refer to the exemption from taxation of certain property named in the State Constitution. The State Constitution, Section 2 of Article IX, provides in part, that "there shall be exempted from taxation all Federal, State, county, and municipal property. Property of educational, charitable, and religious associations or institutions not used or held for profit may be exempted from taxation by law," and, Section 12, of the same Article, provides in part, that "the law-making power shall have authority to provide for the levy and collection of collateral and direct inheritance, legacy, and succession taxes, also graduated collateral and direct inheritance taxes, graduated legacy and succession taxes." The law-making power, that is the Legislature, in the exercise of this authority adopted the Inheritance Tax Law which applies to all property within the jurisdiction of this State and any interest therein which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, or bargainer, or intended to take effect in possession or enjoyment after the death of the grantor, bargainer or donor, to any person or persons, or to any body, or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof.

The language adopted by the Legislature leaves no room for doubt as to the intention to tax all that it has the power to tax, and that the statute is as broad as the jurisdiction of the State. Under such a statute the inheritance tax can only be measured by the property which is within the power of the State to tax, and not by the property which the State policy has selected for the purposes of general taxation. The mere fact that the State policy, as shown by Section 2, quoted above, is to permit the legislature to exempt property belonging to the institutions and bodies named, does not prevent the imposition of an inheritance tax on the transfer of property thereto, for such tax is on the transmission, not on the property. The property of the Federal Government, the State, the county and the municipal

governments does not pass by inheritance, and therefore we do not have to consider the question of the exemption of such property from taxation. The inheritance tax imposed by the Arizona statute is not a tax upon property. It is a tax upon the right to transfer by will or under the intestate laws or by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor or donor, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof. It is an exaction made by the State in the regulation of the right of devolution of property of decedents, which exists and can only be enjoyed subject to such conditions as the State sees fit to impose. The estate passed does not belong to, nor can it be classed as the property of the State, nor is it a part of the property of the educational, charitable, or religious association or institution, except under the regulation governing the transmission. We are, therefore, of the opinion that the tax must be imposed on gifts for public purposes, or to educational, charitable or religious associations or institutions, for the reason that the tax is not levied upon the fund so created but is levied upon its transmission, and the fund does not become a fund devoted to the maintenance of the institutions named until the law relative to its transmission has been complied with.

As to the amount set aside by the will to be expended upon a monument, we do not hesitate to declare, in the absence of fraud or collusion, that on the face of the statute the State is not entitled to recover a tax upon it. The tax applies to the right of transmission to any person or persons, or to any body, or bodies, politic or corporate, in trust or otherwise. The amount, even though it may seem excessive, is reserved in obedience to the will of the decedent and will not pass "to any person."

June 25, 1919.

Arizona State Board of Pharmacy:

I am just in receipt of your letter of today inquiring if a regular, licensed osteopath physician is recognized as a physician under the laws of this state, and in reply thereto would say that the Board of Medical Examiners of the State of Arizona, under the laws consists of five members; one of whom shall be a member of the Osteopathic School of Medicine of the State of Arizona, under Par 4733, Revised Statutes, and an Osteopath in order to be admitted to practice in the State of Arizona must present a diploma from a legally chartered college of Osteopathy and shall submit himself to examination in the following branches: "Anatomy, histology, gynecology, pathology, bacteriology, chemistry, and toxicology, physiology, obstetrics, general diagnosis, hygiene," and must obtain a general average of 75 per cent in the branches upon which the applicant is examined, in order to practice as an osteopath.

Our law recognizes "the osteopathic school of medicine" as stated in said Section 4733. The chapter on Practice of Medicine which contains the law above referred to does not use the term "physician" but merely speaks of a member of the allopathic school of medicine, the homeopathic school of medicine, the eclectic school of medicine and the osteopathic school of medicine. Par. 4738 Revised Statutes says: "Practicing medicine within the meaning of this act is construed to include the practice of osteopathy."

July 2, 1919.

Mr. Jack Angus,
Tucson, Arizona.

Your recent letter, in reference to the matter of letting a contract, by the Board of Supervisors of Gila County, and stipulating the conditions therein to be contained, has been duly received.

I have given the matter considerable attention, as that same question was before the Commission of State Institutions some time ago, and Mr. Louis B. Whitney, my present assistant who had been my former assistant, then being a member of the Commission of State Institutions, gave the matter especial attention.

While Mr. Whitney and myself have always done everything possible to advance and protect the cause of organized Union Labor, we feared the legality of incorporating into the contract the conditions which you mention. The idea is suggested at once to you and me that the contractor may be held by stipulations to perform the work in a proper manner, all leading to good results when the contract is completed and turned over to the State or to the County, as in your case.

The statute not authorizing nor empowering the contracting board to stipulate for the conditions which you mention, I very much doubt the legality of such a contract. I must be perfectly candid with you. The State not having by statute made such a provision as would authorize its officers or agents to make such stipulation in the contract, the question will be raised, "Can such officers or agents, of their volition, make the stipulation and bind the State thereby?" Should such a contract be let with the stipulations you suggest the Call for Bids must recite said stipulation, and even then the legality of a contract let, under such advertisement, is very questionable if fought in the courts, as it no doubt would be.

Should such a contract be let by your Board of Supervisors, you may be assured that I would endeavor to support their action in the courts of the State, notwithstanding the foregoing expressions in this letter

July 10, 1919

Dr. Henry J. Chenette,
Superior, Arizona.

Replying to the inquiry propounded in your letter of the 8th inst., let me say that Subdivision E, Section 13, Chapter 12, Laws of 1918, First Special Session, Third Legislature, provides:

“(e) If the assessed valuation of the property of any person in military service, together with the assessed valuation of the property of the wife of such person in military service, if married, at the date of his entering military service shall not exceed Three Thousand Dollars (\$3,000.00), then in that case no tax whatsoever shall be levied against the property of such person in military service or his wife, if married, during the period of military service, *All persons in military service shall be exempt from any poll or school tax during the period of military service.*”

The term “period of military service” as used in Chapter 12, includes the time between the following dates:

“For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act, for persons entering service after the date of this Act, with the date of entering active service. *It shall terminate six months after the date of discharge from active service, or six months after death while in active service.*” Subdivision B, Section 2, Chapter 12, supra.

It will be seen from the foregoing that all persons in military service are exempt from poll or school taxes during the period of military service. The term “period of military service” ends six months after the date of discharge of the soldier or sailor from active service. Any poll or school tax, therefore, cannot be collected from these discharged soldiers until a full period of six months has elapsed after the date of their discharge as above noted.

From a casual reading of the Act I gather the intent of the Legislature to be that the Act should in no way be construed so as to compel discharged soldiers and sailors to pay any poll or school tax accruing and payable within six months after the date of their discharge nor do I believe that the tax can then be collected, that is after the six months elapses, for any period that a soldier or sailor has been in active service or for six months thereafter.

Subdivision A of Section 13 of the Act above referred to provides:

“That the provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling or business purposes by a person in military service, or his dependents at the commencement of his period of military service, and still so occupied by his dependents or employees are not paid.”

This provision not only relates to taxes on real property but provides that the provisions of the entire section (of which Subdivision E is a part) shall apply to any taxes or assessments, whether general or special, *falling due* during said period of military service which has heretofore been defined

The view I take of the matter is that if the poll and school taxes fall due during the *period of military service* the exemption would apply to the entire year for which they were assessed

July 12, 1919.

Superintendent of Public Instruction:

We have received your letter enclosing the inquiry from County Attorney French as to whether or not the Trustees of School District No. 21 of Cochise County, established as a high school district by the State Board of Education, under the provisions of Paragraph 2770 of the Civil Code, as amended by Chapter 5 of the Laws of 1917, should call an election under the provisions of Paragraph 2771 of the Civil Code in order to confirm the designation of such district as a high school district.

Paragraph 2770, as amended, provides for the formation of high school districts, and union high school districts. It prescribes, in part, that the State Board of Education shall have power to establish a high school district in any school district not meeting the requirements of the Act should a majority of the electors residing in such district petition said Board for the establishment of such district.

Paragraph 2771, Civil Code of 1913, provides the manner in which school districts meeting the requirements of Paragraph 2770 may exercise the power to form a high school district. It does not refer to high school districts established by the order of the State Board of Education. They are established by the order of the Board and no further formalities are required in order to complete the formation of the district. The process of formation is complete when the State Board of Education establishes the district. Thereafter the new high school district is governed by the statutes governing all high school districts.

As we understand it, District No. 21 of Cochise County, having an average daily attendance of one hundred and twenty-five pupils, petitioned the State Board of Education to establish such district as a high school district for the purpose of establishing and maintaining a high school, as said district does not meet the requirements of Paragraph 2770 permitting independent action on part of the school district. Whereupon, the jurisdiction of the Board having been invoked, after due investigation made, an order was issued establishing said district as a high school district.

We note that Mr. French, in his letter, refers to the new district as "an united high school district," and again as "such union high school district." We presume

this is an error, as the State Board of Education is not given the power to establish union high school districts, and, if in this instance an attempt has been made to create a new union high school district by the order of the Board, such order would be null and void.

July 14, 1919.

Mr. Claude Decatur Jones,
Phoenix, Arizona.

I have your letter of the 7th, written in behalf of the State Normal and High School Cadet Commission, in regard to the interpretation of Section 20 of Chapter 59, Laws of 1917, as amended by Section 13 of Chapter 94, Laws of 1919. Section 13 of Chapter 94, supra, reads in part, as follows:

"For the purposes of carrying out the provisions of this act * * * there is hereby appropriated the sum of \$10,000.00 per year and an additional amount of \$1,000.00 per year for each school giving military training under the provisions of this act if the number of such schools in the state exceeds twelve. * * *"

At the time of the passage of the Act, we understand, there were in the state twelve schools giving military training under the provisions of the original act. At the present time, we are advised, there are fourteen. The intent of the Legislature seems very plain that, so long as there are not to exceed twelve schools in the state giving military training the Cadet Commission has an appropriation of \$10,000.00 per year, and when the number of such schools exceeds twelve, then the Cadet Commission is to have an additional appropriation of \$1,000.00 per year, according to the number of such schools in excess of the number of twelve. That is, at the time the Act was adopted there were twelve schools and the Legislature appropriated \$10,000.00 for the Cadet Commission to expend in carrying out the provisions of the Act, and the addition, since that time, of two schools in excess of the number of twelve, would add \$2,000.00 per year to the appropriation available for the use of the Cadet Commission, or \$12,000.00 in all while there are fourteen schools. To accept the only other interpretation, namely, that so long as there were only twelve schools, the Cadet Commission was to have \$10,000.00 per year, but when there are fourteen schools the Commission would receive \$10,000.00 plus \$14,000.00 additional, one thousand dollars additional for each of the fourteen schools, or a total of \$24,000.00, would not be logical, and this Department cannot, any more than a court, assume that the Legislature intended an unreasonable thing. Therefore, it is our opinion, that the appropriation at the present time amounts to \$12,000.00, for the fourteen schools, to be expended each year under the direction of the Cadet Commission, and is not \$24,000.00 as suggested.

July 14, 1919.

Board of Directors of State Institutions:

We have your letter of the 7th with regard to the requests made by the Maricopa County Highway Commission for the approval of the Commission of State Institutions of six requests regarding Federal aid on the construction of several proposed highways, and asking what are the powers of the Board of Directors in regard to these requests or similar requests under Chapter 64, Laws of 1919, which created the Board

The powers of the Board of Directors of State Institutions in so far as highways are concerned do not differ in any way from those possessed by the Commission of State Institutions. Section 16 of Chapter 64, reads as follows:

“The Board of Directors shall have and exercise all the powers and perform the duties of control, management and government of State institutions which have heretofore been vested in and exercised by the Board of Control and the Commission of State Institutions, except as otherwise provided herein”

Upon any theory, a public highway is a public institution. This has been held so often by the courts as to almost be beyond question. Therefore, if the proposed highways are state highways, the Board has full power to sign such requests.

July 14, 1919.

County Attorney, Maricopa County:

I write in reference to your letter, written me recently in reference to the purchase of the cement plant, by Maricopa County or its Highway Commission, appointed by its Board of Supervisors, the said cement plant to be used for the beneficial purpose of manufacturing and producing cement to be used upon the public highways of this county.

You have not been dealt fairly with, it appears to this department, by an unnecessary inquiry made by said Highway Commission to private law firms of this city, especially when you are the legal advisor of the County Highway Commission and the County Board of Supervisors.

This department does not agree with the published opinion given by said law firms to the Maricopa County Highway Commission, nor will those opinions influence this department. We believe that Maricopa County and each of the fourteen counties of this state have the authority, under the law and the state constitution to shield people from the cement trust and manufacture the product of the cement mill by purchase and operation of the same.

I do not think that the mere technical definition of the terms “municipal corporation” or “body politic and corporate” can be successfully used to stand in

the way of the expressed will of the people, and as set forth in Article 2, Section 34 of our State Constitution, under the head of the Declaration of Rights.

I expressed these views by telephone over two weeks ago to your County Highway Commission and advised that body through the Board of Supervisors to continue immediate negotiations to acquire the cement plant in question for such purpose, assuring them that my written opinion would follow at the earliest opportunity. The Highway Board evidently is not in sympathy with the purport or views expressed by this department by phone some three weeks ago.

We believe the County of Maricopa should purchase the cement plant in question if it has an option permitting it to do so at a reasonable price and thus save the immense amount of money which is manifest.

I cannot withhold expressing my opinion to you that where the people of the state have spoken upon such important question as a matter of industrial pursuits that we should construe the law and all provisions of the constitution in such manner as to carry out the wishes of the people thus expressed. The people of Maricopa County will experience a loss approximating \$1,000,000.00 following our war burdens if we hold that the cement plant cannot be purchased and operated. This department will not take a position against the financial interest of the tax payers of this county and against what we believe to be the plain purport and intent of the Constitution and the Statutes of the State.

July 18, 1919.

County Attorney,
Pinal County.

Your letter of the 17th inst, with reference to whether or not an honor-man can be tried for "escape" under Sec. 100 of the Penal Code.

I have examined the two S. W. citations quoted by you, but as I have not the S. E. at hand did not read that case.

I am strongly of the opinion that this man can be legally tried for the crime of "escape" and that his sentence for such crime, should he be convicted, would start to run when his sentence expires for the crime for which he is now incarcerated.

In ex parte Irwin, 25 Pac. 1118, it was held that a man under two sentences, one for nine years for grand larceny and one for five years for burglary, who escaped during the time he was serving the above sentence, could be tried for the crime of "escape." In his case he prisoner was sentenced to nine years in the penitentiary for escape, "said term of imprisonment to commence from the time he would have otherwise been discharged from said prison." The court held that under Sec. 105 of the California Penal Code, that his term for "escape" began at the expiration of the two prior sentences.

See also *Riley vs. State*, 16 Conn 47-51.

I do not doubt but that this man mentioned in your letter can be tried and sentenced for "escape." Sentence for such escape to commence at the expiration of the sentence he is now serving.

July 19, 1919.

Governor of Arizona:

Answering the inquiry contained in your letter of the 9th inst., and the facts stated in your letter of July 16th, with reference to one W. D. Tevote, a mining engineer, assassinated in Mexico by a band of Yaquis, permit me to submit the following:

Under the Workmen's Compensation Law there can be no election to receive compensation before the injury. In *Behringer vs. Inspiration Consolidated Copper Company*, 17 Ariz. 232, it was held that the theory upon which the compensation law was to operate was that of contract, by and with the employee's *personal* consent, and the Legislature was thereby limited to provide compensation to a workman, in case he, personally, should elect to accept it; and hence where a workman had not in his lifetime made election to settle for the compensation provided under the Act, his rights thereunder died with him, and his personal representative could not maintain an action thereunder, but was relegated to an action for damages sustained by his estate by reason of his death, under Civil Code of 1913 (Title XXIII), or to an action under the Employer's Liability Act, (Title XIV, Chap. 6).

From the foregoing it will be seen that Mrs. Tevote, or a personal representative, would have no right of action against the company for Mr. Tevote's death, under the circumstances and facts detailed in your letter of the 16th, to-wit, under the Workman's Compensation Law. This, of course, does not take up the question of whether or not Tevote's death in *Mexico*, or his employment as a mining engineer, would come under the Workman's Compensation Law of *Arizona*.

In the first place it is doubtful whether the Workman's Compensation Law would have extra-territorial effect under the facts presented. Secondly, if Mr. Tevote's profession did not require him to work at a hazardous occupation, in a mine for instance, he would probably not come under the law, because of his occupation being non-hazardous.

From the facts and circumstances of this case, as I understand them, I am inclined to the opinion that there is no right of action under any of the Arizona Laws relating to personal injuries, to recover for Mr. Tevote's death. As to the Workman's Compensation Law, (Chap. 7 Title XIV, 1913, Civil Code), I do not believe that it would apply to this case in any event.

There is some kind of a compensation law in the State of Sonora, Mexico, but I am not familiar with the provisions of same, so I can give you no light thereon.

It seems to me that the American Smelting and Refining Company should, out of common decency, compensate Mrs. Tevoto to some extent for her loss. It may be that if the matter were taken up with them, some settlement could be arranged.

July 26th, 1919.

Superintendent of Public Instruction :

I have your inquiry presented by the committee representing the State Board of Education in regard to the appropriations made for vocational education, which question is as follows: "Will you kindly advise us, under the provisions of Sec. 5, H. B. 57 (Chapter 134), Session Laws 1919, whether or not when any school district shall have established and maintained a department in vocational education, in compliance with the requirements of Sections 1 and 2 of House Bill 57, and shall have been fully reimbursed for work done in said vocational department, the school is still entitled to reimbursement for work done in other industrial departments of the school not meeting the requirements of H. B. 57, but complying with the provisions of Chap. 13, Secs. 2791 to 2797, R. S. of A., Civil Code 1913"?

The original vocational educational enactment in the State was Chapter 45, Laws of 1912, which was carried forward as paragraphs 2791, et seq., of the Civil Code of 1913, and applied to high schools and normal schools, which for the purposes of the act were declared to be high schools. A sum of money sufficient to carry out the provisions of the act is appropriated annually by the State to aid the high school districts in an amount equal to the amount raised by the district, provided, however, that in no case will the state allow the district an amount in excess of \$2,500.00 a year. The amount given by the State is to be applied to the expenses for maintenance and supplies.

An Act of Congress, effective February 23rd, 1917, offered federal aid to states in paying salaries of teachers, supervisors, or directors of agricultural subjects; of teachers of trade, home economic and industrial subjects, and for the purpose of preparing teachers, supervisors and directors of agricultural subjects and teachers of trade and industrial and home economic subjects, provided the state appropriated an equal amount of money for the same purposes. To take advantage of this act the Legislature adopted Chapter 44, Laws of 1917, appropriating a sufficient amount to equal the sum set aside by the federal government as aid to Arizona, providing that the amount should not be less than \$15,000.00 a year. This amount appropriated by the federal and state governments was for the salaries of teachers, etc., and for the purpose of preparing teachers, supervisors and directors, as required by the terms of the federal act. It does not provide for the maintenance and supplies of the schools, but is for

salaries and preparation. It does not conflict with, and is therefore supplemental to the existing state law.

In 1919, the Legislature adopted Chapter 134, Laws of 1919, which you refer to as House Bill No. 57, extending the privilege of state and federal aid in the payment of salaries to any school giving instruction in trade or industrial subjects, home economic subjects, or agricultural subjects in accordance with the provisions of the federal enactment, and providing that the federal and state funds should be used to reimburse such school district to an amount not less than three-fourths of the expenditure by the district for the salaries of teachers of the subjects named in the federal law. This is a modification of Chapter 44, Laws of 1917, in so far as the amount to be given to the district is concerned. The state and federal aid is limited to three-fourths of the salary paid to the teacher by the district. The amount appropriated is not changed but is still left dependent upon the sum received from the federal government, although the state appropriation cannot be less than \$15,000.00 per year. It is also a modification inasmuch as it applies to any school district which may establish a vocational school or classes in conformity with the terms of the federal enactment. In addition it extends further aid from the State to any school district which establishes such school or classes in accordance with the enactment, for maintenance and supplies, dependent upon the amount expended by the district for maintenance and supplies, but not to exceed \$2,500.00 a year for each district.

To express the effect of these laws in other words, which may make the meaning more plain: Chapter 45, Laws of 1912, or rather Sections 2791 to 2797 of the Civil Code of 1913, remains unchanged so far as it relates to high and normal schools establishing the schools or classes provided for. It is, however, extended in its scope, and enables the State to assist any school which establishes schools or classes in vocational education in conformity with the federal enactment, this assistance to be applied to expenses for maintenance and supplies and to be equal to the amount so expended by the school district, but not to exceed \$2,500.00 per year. Chapter 134, Laws of 1919, limits the power of the State Board of Education in regard to the payment of salaries of teachers, as it provides that they shall reimburse school districts to an amount not less than three-fourths of the expenditure made by the district for the salaries of teachers of the subjects provided by the federal enactment. High schools which do not meet the requirements of the federal enactment, but do comply with the requirements of the original state enactment are not affected by Chapter 134, Laws of 1919. Schools other than high schools which do not meet the requirements of the federal act are not entitled to any benefit from any of these appropriations.

July 26th, 1919.

Governor of Arizona:

Your inquiry of July 21st in regard to Ti Ilgloth, a Navajo Indian boy fifteen

years of age, now confined in the State Prison for the crime of manslaughter, has been referred to me in the absence of Attorney General Jones.

The inquiry is one directed at the legality of the imprisonment of one under the age of eighteen years in the State Prison, rather than in the Industrial School.

Paragraph 24 of the Penal Code, 1913, says in part, that all persons are capable of committing crimes except children under the age of fourteen in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. Paragraph 25 of the Penal Code, 1913, says in part, that the following persons are liable to punishment under the laws of this state: "All persons who commit, in whole or in part, any crime within this state."

Section 6 of Article VI of the Constitution provides that the Superior Court shall have original jurisdiction in all criminal cases amounting to felony. Following this mandate the Legislature adopted Title XXVII of the Civil Code of 1913, entitled "Juvenile Courts" in which provision was made that the superior court should have and possess exclusive original jurisdiction in all proceedings and matters affecting children accused of crime under the age of eighteen years. The judge of the superior court must hold examinations in chambers of all such children concerning whom proceedings are brought, in advance of any criminal prosecution of such children, and shall have the power, in his discretion, to suspend criminal prosecution for any offenses that may have been committed by such children. The Juvenile Court law referred to enables the judge, sitting as a juvenile court, to commit to the Industrial school, without the intervention of a jury, after an inquiry into the facts, the child brought before him, or, in his discretion, to order the prosecution of such child, in which case the juvenile offender must be proceeded against in accordance with the statutes governing criminal prosecutions. There is no provision which would permit the superior court as such, not acting as a juvenile court, to commit any one to the Industrial School. The superior court is bound by Paragraph 176 of the Penal Code, which says: "Manslaughter is punishable by imprisonment in the state prison not exceeding ten years."

This contention is further borne out by reference to the Constitution. Article XXII, Section 16, says: "It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors."

The Industrial School is not, perhaps, a jail or prison. It is a school, not a prison, and its character is reformatory, not penal. The proceedings of the juvenile court are purely statutory, and the commitment is not designed as a punishment for crime, but to place minors of the description and for the causes specified in the statute under the guardianship of the public authorities named for proper care and discipline, until they are reformed or arrive at the age of majority.

I am, therefore, of the opinion that the boy is legally imprisoned in the State Prison.

Mr McCrary, the patrol clerk, in his letter to your office, calls attention to the alleged circumstances of the case, the evidence adduced at the examination of the boy, the youth of the offender, and other reasons why he believes that Tillgoth should be transferred to the Industrial School, but as these are matters which should be addressed to the Board of Pardons and Paroles, or your own executive clemency, I cannot consistently, while acting for the Attorney General, take them into consideration in answering your question.

July 30, 1919.

County Attorney:

Your favor of the 28th inst., addressed to the Attorney General, came to me this morning and as Mr. Jones is out of the city on business I will take the liberty of answering your inquiry.

With reference to whether the Board of Supervisors can issue bonds without holding an election as provided in Chap. 2, Title 52, Revised Statutes of Arizona, 1913, Civil Code, where the total indebtedness of the county does not exceed four per cent of the assessed valuation, let me say that before I would care to answer this query or attempt to construe Paragraph 5285 of the Civil Code, I should like to know more about the facts in connection with what purpose the Board of Supervisors intends to issue the bonds.

I take it that Par 5285 *supra*, permits the county to create an *indebtedness* not exceeding four per centum of the value of the taxable property in such county, without an election

It appears to me that bonds may be issued without holding an election as required by Chap. 2, Title 52, *supra*, provided that said bonds are to fund an indebtedness. Reading paragraph 5285 and the construction placed thereon by the Supreme Court of Arizona in Board of Supervisors of Yavapai County vs. Hawkins, 140 Pac. 821, it would seem that if a county desires to incur an indebtedness (not in excess of four per centum of the value of taxable property) for the construction and reconstruction of roads, bridges, highways and public buildings and for any other lawful and necessary purpose, then such bonds shall be issued in all respects with the provisions of Chap. 2, Title 52, *supra*.

I respectfully call your attention to the Yavapai case above cited, which I believe, will answer the question propounded in your recent letter. It would be assuming too much for this office to answer your query without knowing what the bonds proposed to be issued are to be used for. If you will give this office the facts we would be pleased to render an opinion covering the matter.

In conclusion permit me to say that I have been unable to find your former correspondence or telegrams, but understand there was an oral understanding with this office that the bonds were to be used to fund an existing indebtedness. If so,

OPINIONS OF THE ATTORNEY GENERAL

I verily believe that no election is required if the indebtedness does not exceed the statutory four per centum of the value of the taxable property.

August 4, 1919.

Board of Directors of State Institutions :

Replying to your favor of the 29th ult., with reference to the state's liability for the loss of a suit of clothes belonging to a paroled prisoner which was either stolen or misplaced while such prisoner was working at the Clifton road camp, let me say that if these clothes were checked in at the time the prisoner was incarcerated in the Prison and the Prison authorities continued to keep control of same that the state would in all probability be liable to the prisoner for the value of the clothes. On the other hand, I believe, that if the prisoner had these clothes in his possession and the Prison authorities exercised no control over same there would be no liability.

I have been so busy I have not been able to give this matter the closest attention, so you might say that this opinion is given with only a cursory examination of the law.

August 4th, 1919.

Federal Labor Administrator :

I have received your inquiry with reference to the amount of wages to be paid and the number of hours to be worked by laborers, workmen, mechanics or other persons doing manual or mechanical labor for the State or any of its political subdivisions, and in reply will quote the sections of the Civil Code, Revised Statutes of Arizona, 1913, which govern.

Paragraph 3103 :

"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 or Arizona or by or on behalf of any political subdivision of the state, except in cases of extraordinary emergency which may arise in time of war, or in cases where it may be necessary to work more than eight hours each calendar day for the protection of property or human life; provided, that in all such cases the laborers, workmen, mechanics or other persons doing manual or mechanical labor so employed and working to exceed eight hours each calendar day shall be paid on the basis of eight hours constitut-

ing a day's work; provided, further, 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 doing manual or mechanical labor so employed by or on behalf of the State of Arizona, or of any political subdivisions of the state; and laborers, workmen, mechanics and other persons doing manual or mechanical labor employed by contractors or sub-contractors in the execution of any contract or contracts with the State of Arizona, or with any political subdivision of the state, shall be deemed to be employed by or in behalf of the State of Arizona, or of such county, city, township, or other municipality thereof."

Paragraph 3104:

"That all contracts hereafter made by or on behalf of the State of Arizona, or by or on behalf of any political subdivision of the state, with any corporation, person or persons, for the performance of any work or the furnishing of any material manufactured within the State of Arizona, shall be deemed and considered as made upon the basis of eight hours constituting a day's work; and it shall be unlawful for any such corporation, person or persons to require or permit any laborer, workman, mechanic or other person doing manual or mechanical labor to work more than eight hours per calendar day in doing such work or in furnishing or manufacturing such material, except in the cases and upon the conditions provided in the preceding section."

Paragraph 3105:

"No person not a citizen or ward of the United States, or who has not declared his intentions 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 county or municipality thereof, on street or road work, or other work."

Paragraph 106, provides the penalties for the violation of any of the provisions of the foregoing sections, but as that part of the statute would not be of interest to your department, I will not quote.

The statute is very explicit in its terms. The hours of labor are limited to eight for each calendar day. The wage paid for the eight hours of labor is to be not less than the current rate of per diem wages in the locality where the work is performed, regardless of the number of hours of labor performed for the current rate in that locality. It may be the custom in a certain locality for work to be performed for nine or ten hours, and the prevailing wage in that locality may be paid on that basis, but the State requires of its agents and subdivisions that this prevailing rate must be paid to its employees for eight hours of labor. The statute leaves it optional with the state or its political subdivision as to the amount of wages actually to be paid, provided that it shall not be less than the

prevailing wage in the locality where the work is performed. In doing this the Legislature has endeavored to fix a scale of compensation commensurate with the work performed.

The provision that such scale of wages must be paid, and that the number of hours of labor shall be so limited, is also applied to contractors or sub-contractors in the execution of any contract or contracts with the State or with any political subdivision of the State. The reason for this is obvious. The work done is none the less public work performed by the state, though it may be done by a private contractor. It is the nature of the work, and not the character of the agent, that determines, and it belongs to the state "to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities."

August 7th, 1919.

Hon. Joseph H. Lines,
Pima, Arizona.

I note what you say in regard to the bridge over the Gila River near Pima, and that its safety is endangered by the high waters. However, the appropriation which you mention as having been made by the Legislature for the completion of the bridge and its approaches, is no longer available. The appropriation was contained in Chapter 72, Laws of 1917, and was "to complete the construction, and approaches thereto, of a bridge across the Gila River, in Graham County, Arizona, near the town of Pima." Necessarily when the purpose for which the appropriation was made had been carried into effect, the amount left unexpended, reverted to the General Fund, and is no longer at the disposal of the Board of Supervisors.

In such an emergency as you describe, however, the Board of Supervisors, of your county, has ample power to do whatever is necessary for the purpose of protecting the bridge, and also the county road leading from Pima to Hubbard, which you state is in danger of being washed away. Occasions of this kind are of too frequent an occurrence in Arizona for the Legislature to have overlooked at least a partial remedy. Chapter 44 of the Laws of 1905, which has been carried forward as Paragraphs 2492, 2493 and 2494 of the Civil Code of 1913, provides that "Whenever flood waters of any river, creek, channel or canyon injure or damage or *threaten to injure or damage* any public road or highway, or any public property, or whenever any such flood waters become a menace to human life and habitation, the boards of supervisors of counties where such conditions exist, may, in their discretion, build dikes, levees or other structures or aid in the construction of such works to control such flood waters or lessen their destructive effects * * *" and further provides that if there is not sufficient money in the general fund to meet the necessities of such appropriation, the board may issue certificates of indebtedness.

August 9, 1919

Board of Supervisors, Maricopa County:

Your letter of the 8th inst. addressed to the Attorney General, seeking information with reference to the expenditure of the 75 per cent State Road Tax Fund, has been received. In reply thereto permit me to submit the following:

Paragraph 5123, Revised Statutes of Arizona, 1913, as amended by Chapter 69, Laws of 1917, provides for the expenditure of the 75 per cent Road Tax Fund therein provided for "upon the authority and under the direction of the County Board of Supervisors * * * and the State Engineer."

Paragraph 5118, *supra*, provides in effect that all highways and bridges constructed, improved or maintained under this act (Chapter 66, Laws of 1912, First Special Session) shall be constructed, improved and maintained according to the plans and specifications made for such purpose by the State Engineer, *subject to the limitations of said act.*

Paragraph 5121, *supra*, provides that the duties of the State Engineer shall be to *aid* the Board of Control (now the Board of Directors of State Institutions) and the Board of Supervisors of the several counties of the state in the selection and designation of said highways and bridges.

Paragraph 5122, *supra*, provides in effect that the State Engineer shall, on the request of any Board of Supervisors of any County, to be required to select, map, plat and furnish estimates of the cost of construction of state highways and bridges proposed to be constructed under the provisions of the act.

Paragraph 5123, *supra*, you will note, states explicitly how the 75 per cent fund shall be expended, to-wit: Under the joint supervision of the Board of Supervisors and the State Engineer, "who are hereby charged with such responsibility."

Paragraph 5127, *supra*, provides:

"It shall be the duty of the State Engineer, upon the request of the Board of Supervisors of any county where work is being done, under the provisions of this act, to furnish said Board of Supervisors with a duplicate copy of the plans and specifications for such work."

It is my opinion, under the law, that any contract made by the State Engineer with reference to the expenditure of the 75 per cent State Road Tax Fund that is not approved by the Board of Supervisors is void. It seems to me under the law that this money must be expended *jointly* by the Board of Supervisors and the State Engineer and the legislature evidently intended that the State and County authorities were to act as one board in expending this particular fund, and it appears to me that if either is to have paramount authority to make the contract in the first instance, under this act, that paramount authority would be vested in the Board of Supervisors of the respective counties in which the work is being done and in which the apportionment of the 75 per cent fund is being expended.

A similar question arose once before in Cochise County and this office rendered an opinion to the Commission of State Institutions, under date of March 15, 1918, and in that opinion it was stated:

"This Department, under the plain provisions of the law, cannot recognize these claims as legal unless they are incurred by the joint action of the Board of Supervisors of Cochise County working in co-operation with the State Engineer of Arizona."

August 11, 1919,

Predatory Animal Inspector:

Your letter of the 6th inst., addressed to the Attorney General, requesting an opinion as to whether money derived from the sale of furs of animals taken by state hunters and trappers can be used over and above the amount appropriated by the state, has been received. In reply thereto permit me to submit the following:

Section 2, Chapter 41, Session Laws of 1919, provides:

"That all money derived from the sale of furs of animals taken by the State hunters and trappers shall revert to the fund *to be used in the same manner as shown in Section 1 of this act.* * * *"

You will see from the foregoing that it must have been the intention of the Legislature that all money derived from the sale of furs of animals taken by state hunters and trappers should revert to the fund mentioned in Section 1 of the act, and that the money so derived and reverted to the fund as provided in Section 2 supra was to be available for expenditure under the co-operative agreement by the State Live Stock Sanitary Board for destruction of predatory animals, the Extension Service, University of Arizona for the destruction of rodents, and by the Bureau of Biological Survey of the United States Department of Agriculture.

If the foregoing was the intention of the Legislature, and from reading the act I have no doubt but that it was, it is my opinion that money derived from the sale of furs as provided in Section 2, supra, can be used for the purpose mentioned in Section 1 of this act; this notwithstanding the fact that it will be above the amount appropriated by the State to meet the federal funds spent in this state for the destruction of predatory animals by the Bureau of Biological Survey of the United States Department of Agriculture.

I do not believe that the above construction given Section 2 of the act will in any way conflict with the provisions of Chapter 152, Session Laws of 1919, familiarly known as Senate Bill 90.

With reference to whether the unexpended balance left over from last year's appropriation (Section 11, Chapter 7, First Special Session of the Third Legis-

lature) can be used this fiscal year, permit me to say that Chapter 9, Session Laws of 1919, approved February 24, of this year, repealed Chapter 7, supra, in its entirety. Chapter 41, Session Laws of 1919, was approved March 6, 1919, and in Section 4 of that act the Legislature provided that the unexpended balance of the fund appropriated for the destruction of predatory animals in Section 11, Chapter 7, supra, should be available for the purpose for which appropriated upon the presentation of claims upon the State Auditor duly approved by the Biological Assistant or Predatory Animal Inspector of the Biological Survey and said Section 4 authorized the State Auditor and State Treasurer, respectively, to draw warrants and pay properly drawn claims against such unexpended balance upon presentation of such claims duly approved in accordance with Chapter 41, Laws of 1919, supra.

The Attorney General, on May 24th of this year, rendered an opinion to the Secretary of the Livestock Sanitary Board with Reference to the unexpended balance of the money appropriated under Section 11, Chapter 7, First Special Session of the Third Legislature, copy of which opinion is attached hereto, for your perusal. *When this opinion was written the fiscal year had not expired.* The appropriation in Section 11, supra, expired on June 30th, 1919. The Legislature if it intended this unexpended balance to be available after June 30th certainly did not so word Section 4 of Chapter 41, Laws, 1919. Section 4, supra, provides in part:

"* * * and any unexpended balance of the fund appropriated for said purpose by the said Section 11, Chapter 7, shall be available for the purpose for which appropriated upon the presentation of claims upon the State Auditor duly approved by the Biological Assistant or Predatory Animal Inspector of the United States Biological Survey. Upon the presentation of such claims the State Auditor is hereby authorized to draw his warrants in payment thereof, and the State Treasurer is authorized and directed to pay the same."

It is, therefore, my opinion that this unexpended balance was not available after June 30th and is not available now.

August 12, 1919.

Arizona Corporation Commission:

Replying to your favor of the 9th inst., in which you inquire whether under the provisions of the insurance code of this state a reinsurance fire company can be authorized by your Commission to transact business of reinsurance in the State of Arizona.

In this connection, permit me to submit the following: Paragraph 3437, Revised Statutes of Arizona, Civil Code, provides in effect that no insurance company, authorized to transact business in this state, shall reinsure, transfer or cede in any manner whatsoever the whole or any part of its liability under a policy

covering property in this state. This section, however, makes an exception as to marine risks.

It is my opinion that this section forbids any insurance company authorized to transact business in this state to reinsure property situated in this state upon which it has issued a policy.

Nothing herein should be construed to mean that a reinsurance company cannot be incorporated under the laws of this state nor to prevent such reinsurance company from doing business in the State of Arizona. Such reinsurance company, of course, could not issue a policy of reinsurance upon property within this state.

August 14, 1919

State Dairy Commissioner:

Replying to your letter of recent date, in which you state that the city health officers are finding it difficult to enforce their city milk ordinance owing to the fact that their ordinances and the state dairy law do not conform closely and stating that a large dairy at Bisbee, which is complying with the provisions of the state dairy law has been warned that they would be prosecuted if the total solids in milk sold by them was below 12 per cent in contra-distinction to the 11.88 per cent solids prescribed by the State law, and asking whether the Bisbee city ordinance can be enforced where the milk producer has complied with all the requirements of the state dairy law, permit me to state that the writer, while city attorney of Bisbee, drew the ordinance in question and that Miss Jane Rider, State Bacteriologist from the University at Tucson, Dr. Durfee, city bacteriologist of Bisbee, and Dr. Herendeen, city health officer of Bisbee, furnished the technical data upon which the ordinance was based and at that time they stated to me that the butter fat requirement of 3.26 per cent and the 13 per cent total solids requirement were reasonable and necessary in order that pure milk might be furnished to the residents of Bisbee.

As to whether a city ordinance can be enforced, which conflicts with our state dairy law, let me say that where the power to pass such an ordinance is granted the city by charter or by general law, such an ordinance can be enforced notwithstanding the fact that it fixes a different standard for milk than the state law.

Double regulations (state and municipal) have been sustained in a majority of the states in the Union and this doctrine is supported by the weight of judicial authority that, an act may be made a penal offense under the statutes of the state and that further penalties may be imposed for its commission or omission by municipal ordinances. But to authorize such an ordinance the city or municipality passing must possess sufficient power under the statutes to do so and such power must be exercised in the manner conferred and consistent with

the constitution and laws of the state

It is my opinion that the city of Bisbee had the power to pass an ordinance regulating the standards of milk sold or offered for sale in that city, and that such an ordinance can be enforced despite the fact that the standard required exceeds that prescribed by state law.

August 12, 1919

Arizona Corporation Commission:

With reference to whether Chapter 61, Laws of 1919, require your department to file a monthly report or an annual report, permit me to state that in my opinion Chapter 61, only requires the commission, receiving or asking appropriations from state funds, to file annual reports.

Of course, it would be necessary for such report to be made showing the different expenditures under separate heads for each and every month, in accordance with the forms prepared and furnished by the person appointed by the Governor to prepare same, for that purpose. This would require that the Commission keep its books in such a manner as to be able to make the annual report show the expenditure of the Commission month by month, with separate headings as required by Chapter 61, *supra*.

August 16, 1919

To All County Assessors of Arizona:

At the Tax Conference at the Grand Canyon during the present year, a request was made of this Department for an opinion in reference to any exemptions that soldiers or persons previously engaged in military service may have from taxation.

After careful examination of the question, I am of the opinion that there are no exemptions from taxation existing in favor of any person now engaged in or previously engaged in military service, except under the provisions of Paragraph 5044, Revised Statutes of Arizona, 1913, Civil Code, and under the provisions of Chapter 13, Session Laws of Arizona, First Special Session, Third Legislature, 1918, commonly called "Arizona Civil Rights Emergency Act for Members of the Military and Naval Establishments of the United States."

Under the provisions of Paragraph 5044, Revised Statutes of Arizona, 1913, Civil Code, a member of the National Guard of Arizona is exempted from the payment of the *annual school tax*, as provided in Chapter 14, Title 49, of said revised statutes, during the time that he is a member of such National Guard.

Section 13, Chapter 12, Session Laws of Arizona, First Special Session, Third Legislature, 1918, defines soldiers rights in reference to taxes, and provides as follows:

“(a) That the provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling or business purposes by a person in military service, or his dependents at the commencement of his period of military service, and still so occupied by his dependents or employees, are not paid.

“(b) When any person in military service, or any person in his behalf, shall file with the County Treasurer, or other officers whose duty it is to enforce the collection of taxes, of assessments, an affidavit showing (1) that a tax or assessment has been assessed upon the property which is the subject of this section; (2) that such tax or assessment is unpaid; (3) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to force the collection of such tax or assessment, or any proceeding or action for such purpose commenced except upon leave of court granted upon an application made therefor by such County Treasurer or other officer. The court thereupon may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the war. (c) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem such property at any time not later than six months after the termination of such period of military service, as hereinbefore defined, but in no case later than six months after the termination of the war; provided, however, that this shall not be taken to shorten any period now or hereafter established by the laws of this State for such redemption.

“(d) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum, on and after the period of military service, and no other penalty or interest shall be incurred by reason of such non-payment. Any lien for such unpaid taxes or assessments shall also include such interest thereon.

“(e) If the assessed valuation of the property of any person in military service, together with the assessed valuation of the property of the wife of such person in military service, if married, at the date of his entering military service shall not exceed Three Thousand Dollars (\$3,000.00), then in that case no tax whatsoever shall be levied against the property of such person in military service or his wife, if married, during the period of military service. All persons

in military service shall be exempt from any poll or school tax during the period of military service."

Subdivisions (a) and (b) of Section 2 of said last mentioned Act provide as follows:

"(a) That the terms 'persons in military service,' as used in this Act, shall include the following persons and no others: All officers and enlisted men of the Regular Army, the Regular Army Reserve, the Officers' Reserve Corps, and the enlisted Reserve Corps; all officers and enlisted men of the National Guard and National Guard Reserve recognized by the Militia Bureau of the War Department; all forces raised under the Act entitled 'An Act to Authorize the President to Increase Temporarily the Military Establishment of the United States,' approved May eighteenth Nineteen Hundred and Seventeen; all officers and enlisted men of the Navy, the Marine Corps, and the Coast Guard; all officers, and enlisted men of the Naval Militia, Naval Reserve force, Marine Corps Reserve, and National Naval Volunteers recognized by the Navy Department; all officers of the Public Health Service detailed by the Secretary of the Treasury for duty either with the Army or the Navy; any of the personnel of the Lighthouse Service and of the Coast and Geodetic Survey transferred by the President to the service and jurisdiction of the War Department or of the Navy Department; members of the Nurse Corps; field clerks who have taken the oath as members of the military forces of the United States; and members of any other body who have heretofore or may hereafter become a part of the military or naval forces of the United States. The term 'Military Service,' as used in this definition, shall signify active service in any branch of service heretofore mentioned or referred to, but reserves and persons on the retired list shall not be included in the term 'persons in military service' until ordered to active service. The term 'active service' shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

"(b) The term 'period of military service,' as used in this Act, shall include the time between the following dates: For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act, for persons entering service after the date of this Act, with the date of entering active service. It shall terminate six months after the date of discharge from active service or six months after death while in active service, but in no case later than the date when this Act ceases to be in force."

Another portion of this last mentioned act provides that the Act shall cease to be in force six months after the termination of the present war. So from a reading of this last mentioned Act, it clearly appears that the only persons entitled to the benefits of the same are persons who were engaged in military

service during the time of the present war with Germany; and it also clearly appears that the period of military service referred to in the Act ends six months after the discharge of the soldier, and in any event not later than six months after the termination of the present war; that is, six months after the declaration of peace.

From these two statutes it appears that the only exemptions from taxations granted to military persons are as follows: (1) When the assessed valuation of the property of a person in military service, within the meaning of Chapter 12, Session Laws of 1918, added to the assessed valuation of the property of the wife of such person, if married, at the date of his entering military service, shall not exceed Three Thousand Dollars (\$3,000), then no taxes shall be levied against the property of such person or his wife, if married, during the *period of his military service*, as defined by said Chapter 12; but if such assessed valuation does exceed the sum of Three Thousand Dollars (\$3,000), then the property is subject to taxation.

(2) All persons in military service, within the meaning of said Chapter 12, Session Laws of 1918, are exempted from poll or school taxes during the *period of military service*, as defined by said Chapter 12; and all members of the National Guard of Arizona are exempt from paying the *school tax* provided for by Chapter 14, Title 49, Revised Statutes of Arizona, 1913, Civil Code, as long as they remain members of such National Guard.

Persons claiming exemptions should furnish satisfactory evidence of their military service, within the meaning of these Acts, showing the date of the commencement and the date of the expiration of the same.

Other portions of said Chapter 12, Session Laws, 1918, quoted above grant certain relief from forced sales of property under the tax laws, relief from interest, and certain extension of time of redemption, upon proper showing being made, but grant no exemption from taxation other than those above expressly stated.

Furthermore, the question was asked of us as to whether or not veterans of the Spanish-American war are entitled to exemption from poll and school taxes.

After investigation, I find that there is no exemption granted to these worthy veterans from either school or poll taxes in this State.

I understand that there was claim made for such exemption under some supposed Federal Statute but I do not find any Federal or State statute to that effect. The misapprehension probably arose from the fact that in many states, California for instance, such exemptions are granted, but not so in this state; although I believe all veterans to be worthy of such exemption.

August 16th, 1919.

State Treasurer:

Your inquiry in regard to the assessment against and the collection of the

inheritance tax from estate listing stock and bonds in the Atchison, Topeka and Santa Fe Railway, Southern Pacific Company, the Western Union and various telephone companies that have property in the State has been received, but the answer to your question would depend largely upon the circumstances of the estate, and of the law which would govern its descent and distribution. If my information is correct, all of the corporations mentioned are corporations organized under the statutes of other states, that is, they are foreign corporations.

All property must have a situs which governs the jurisdiction of courts over it, and when the statute refers to "all property within the jurisdiction of this State, and any interest thereon" it has reference to the jurisdiction of the state courts. The question then presented is: Are the stocks and bonds referred to within the jurisdiction of the courts of Arizona?

The situs of the different kinds of property has been determined by the courts of this state; that of real property being always fixed, that of tangible chattels being the place where they happen to be, and that of ordinary choses in action being the owner's domicile.

A "share of stock" is an intangible thing, being the interest or right which the owner has in the management of the corporation, in its surplus profits, and in its assets after dissolution. A "certificate of stock" being tangible and movable property, is presumed to accompany the holder of the legal title thereto, and such certificate may so far represent the shares themselves as to give the latter the situs of the certificate for certain purposes. For the purpose of suits concerning rights to its title, for taxation, and for a few other purposes, the share of stock may be said to follow the domicile of the stockholder. Therefore, stock in a foreign corporation, held by a resident of this state at the time of his death, is subject to the inheritance tax. It follows that stock in a foreign corporation held by a nonresident at the time of his death would not be subject to the inheritance tax.

A "bond" may be briefly defined to be an obligation to pay money. Securities issued by a corporation, which are denominated "bonds" contain a promise to pay a certain sum at a fixed time, with a stated rate of interest. They are, therefore, essentially an evidence of a debt, although not the debt itself. A debt, although a species of intangible property, may, for the purposes of taxation, if not for all purposes, be regarded as situated at the domicile of the creditor. A bondholder is simply a creditor, whose concern with the corporation is limited to the fulfillment of its particular obligation. Bonds only represent a property in the debt, and that follows the person of the creditor. The right to proceed against a debtor and to enforce the payment of a debt has no locality independent of the party in whom it resides. It may, undoubtedly, be taxed by the state when held by a resident therein. The domicile of the bondholder therefore governs, and should the bonds be held by a nonresident they cannot be taxed by the state ordinarily. The true rule, perhaps, is that the property in the evidence of the debt is not taxable, and hence whether the debt due is or is not subject to taxation at the time cannot be determined alone by the situs of the evidence. The debt due of which the bonds are the evidenc, is property vested in the owner wherever he may reside. This property which he has in the right, the chose in action, is as absolute

a property therein, and he is as well entitled to it, as he is to tangible property in possession, and this species of property, debts due, must, in the nature of things, follow and be with the owner, except perhaps where he has conferred authority upon someone else as his agent within the state to loan, manage, receive, and collect the same for him. This Department has always regarded the inheritance tax imposed by the state as a tax upon the transmission of property, and not upon the property. Therefore the liability to inheritance tax does not depend upon the situs of this species of property, alone, but upon whether it is transmitted by the decedent to the beneficiary through the exercise of a privilege conferred by the state.

August 18th, 1919.

Superintendent of Public Instruction:

Your inquiry in regard to the issuance of a teacher's certificate to an applicant born in the United States but married to a Canadian, who has taken out his first papers renouncing his allegiance to Great Britain.

I would call your attention to an opinion of the Attorney General under date of April 29, 1915, in which it was said:

"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."

This opinion was based on the Act of Congress, of March 2, 1907, Chapter 2534, Section 3, 34 Statutes at Large, 1228, being Section 3960 of the United States Compiled Statutes, which reads as follows:

"Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States or by returning to reside in the United States, or if residing in the United States at the termination of the marital relation, by continuing to reside therein."

Our own constitution and laws are too emphatic in their terms to permit any deviation from their provisions, and Congress having the right to define American citizenship, as it has, it will be the duty of the Board of Education to reject the application in question.

August, 18, 1919

Hon. R. A. Jarrott,
Deputy County Attorney,
Phoenix, Arizona.

Referring to your favor of August 16th, with reference to whether or not Mariopa County could legally assume the bonded indebtedness of Special Road Districts Nos. 1 and 2, by the \$4,000,000.00 Road Bond Election held May 17th, this year, permit me to submit the following:

Assuming that all the provisions of Chapter 6, Title 50, were complied with when Special Road Districts Nos. 1 and 2 issued bonds totaling \$100,000.00, the county at that time had not exceeded the 4 per cent limit as provided by the constitution. Hence it would seem that the proposition that the county would be in debt over 4 per cent of its assessed valuation in violation of the constitutional provisions after the \$4,000,000 bond issue was voted would be without foundation, for the reason that the election on the \$4,000,000.00 bond issue was legal and held for the purpose of allowing Maricopa County to exceed its limitation of 4 per cent.

The serious question seems to be: Is the attempted assumption on the part of the county of the outstanding bonds of Special Road Districts 1 and 2 legal? In other words, could the county assume the unpaid portions of any and all bonds of each of said Special Districts by the election held on May 17th without specifying the amount of such bonds in the call for the election and on the ballot, a copy of which I have before me?

I am inclined to the opinion that this was the intent of the Board of Supervisors and that everyone voting on this \$4,000,000.00 bond issue knew at the time that the county was attempting to assume the issued bonds of the two Special Road Districts in question. This also seemed to be the intent of the Legislature when it passed Chapter 121, Laws 1919. I am constrained to believe that this proceeding was legal and did not conflict with Section 8, Article 9, Arizona Constitution, with reference to the 4 per cent debt limitation without an election, but was in complete harmony therewith.

If I am correct in this assumption, I should say: *First*, that the parties who have agreed to purchase the bonds could be compelled to accept same without the passing of the resolution by the Board of Supervisors, setting aside \$110,000.00 of the \$4,000,000.00, for the purpose of liquidating the bonds of the two Special Road Districts before mentioned, or be held liable in damages for breach of contract; *second*, I do not think that it was necessary that the voters should have voted separately for the county to assume the bonds of the said Special Road Districts, in view of Section 3, Chapter 121, Laws 1919; *third*, I do not think that the Board of Supervisors could redeem the outstanding Special Road Districts' bonds at this time, and in view of Chapter 31, Session Laws of Arizona, 1917, I do not believe that any part of this \$4,000,000.00 can be legally spent for the purpose of redeeming bonds of a prior issue that have been issued under special laws. Section 6, Chapter 31, *supra*, in part provides:

"The proceeds of such bonds shall be placed in a special fund to

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be denominated the "Highway Improvement Fund," and shall be used only for the purpose for which they were authorized at such election and such other purposes as are authorized by this Act; provided, that any surplus remaining in said fund after the completion of the work of the improvement of the highway for which such bonds were voted, shall be passed into the general road fund of the county."

Section 7 of that Act provides:

"All money derived from the sale of such bonds, together with any money received by said Commission from other sources, shall be paid out by the Treasurer of the county upon the order of such Highway Commission."

You can readily see that there is no provision in Chapter 31 for any of the money raised by the election of May 17th, 1919, to be expended in any other manner, nor for any other purpose than that specified in the Act, nor is there any provision in Section 3, Chapter 121, Laws 1919, authorizing any of the money derived from the bonds voted at the May election to be used for the purpose of redeeming bonds issued by the Special Road Districts.

The question submitted to the voters of Maricopa County on the ballot May 17th, 1919, was:

"Shall the bonds of Maricopa County, Arizona, in the sum of Four Million Dollars (\$4,000,000.00) be issued and sold, pursuant to the provisions of Chapter 31 of the Session Laws of Arizona, 1917, Regular Session, and acts amendatory thereof and supplementary thereto, for the purpose of constructing, and improving, and making hard surface highways of, those certain highways of said Maricopa County designated as 'Roads to be improved,' upon that certain map marked 'Exhibit A,' and set forth on this ballot; said roads proposed to be improved to include among others those certain roads designated on said map which lie in Special Road District No. 1, Special Road District No. 2, and Special Road District No. 3, and the county to assume all the unpaid portions of any and all bonds of each of said Special Road Districts."

I see nothing in the preliminary notice calling the election nor in the report of the Highway Commission to the Board of Supervisors that says that these Road District Bonds were to be redeemed out of the \$4,000,000.00. Certainly it must be contemplated that this money was to be used for the purposes set out in the above proposition submitted to the electorate of the county and for no other purpose except as might be specified in Chapter 31, Laws of 1917, supra, and acts amendatory thereto. The money obtained from the sale of this \$4,000,000.00 bond issue was in part for the improvement of "Those certain roads designated on said map which lie in Special Road District No. 1, Special Road District No. 2 and Special Road District No. 3." The proposition on the ballot that the county assume all unpaid portions of any and all bonds of each of said Special

Road Districts did not, in my mind, contemplate that the bonds theretofore issued by such Road Districts were to be redeemed out of the \$4,000,000 00 issue. The wording of the proposition on the ballot, when taken in connection with Chapter 31, supra, and Section 3, Chapter 121, Laws 1919, leads me to believe that it would be illegal for the Board of Supervisors or the Highway Commission to attempt to redeem these Special Road District bonds out of the \$4,000,000.00 issue.

I fully realize that the county may have trouble with the bonding company in view of the opinion of their attorney, dated August 4th, 1919, for the very plain reason that it will be hard to find buyers for the bonds on the market unless such bonds are approved by this attorney.

It might be well to suggest to the Board of Supervisors if you deem advisable, to have this matter tested out in a friendly suit. If the facts in such a suit are stipulated it would not take long to secure an opinion of the court.

August 19, 1919.

J. C. Mayer & Co.,
Investment Bonds,
Cincinnati, Ohio.

Supplementing my telegram, under date of August 10th, 1919, from Los Angeles, California, re the above entitled matter, permit me to submit the following:

When this matter was called to my attention I had understood that the bonds that Mohave County intended to issue were for the purpose of taking care of indebtedness already incurred in the county and I, therefore, came to the conclusion that an election was not necessary, under the provisions of Chapter 2, Title 52, Revised Statutes of Arizona, 1913, and acts amendatory thereof.

After returning to my office in Phoenix and learning the facts, to-wit, that these bonds were to be issued for the purpose of building roads, highways and bridges within said county, thereby creating an indebtedness in contra-distinction to funding an existing indebtedness, I immediately saw that my telegram to you was broader in its scope than the facts that have since been submitted to me warranted.

On July 30th, this year, Mr. Louis B. Whitney, my assistant, directed an opinion to the county attorney's office to the effect that under Paragraph 5285 it is not necessary to hold an election to issue bonds where the indebtedness of the county is within the 4 per cent limit, as provided by our constitution, provided said bonds are issued to fund an indebtedness. Mr. Whitney's view of the matter is that where the county issues bonds which create an indebtedness not already existing, that an election must be held, despite the fact that the county is within the limitation prescribed by our constitution and statutes. I am attaching hereto a copy of that opinion for your perusal. You will note that Mr. Whitney did not have all the facts before him when same was written.

I am of the opinion, after examining Chapter 2, Title 52, supra, in connection

with the construction placed thereon, and particularly upon Paragraph 5285 of our Civil Code, by the Supreme Court of Arizona, in the case of Board of Supervisors of Yavapai County vs. Hawkins, 140 Pac. 821, that these bonds cannot be issued for the purpose mentioned in the Notice of Bond Sale and Order for Sale of Road Bonds passed by the Board of Supervisors on June 3rd, 1919, without an election first being held to determine whether or not the county shall issue these bonds.

August 20, 1919.

Hon. J. C. Goodwin,
Tempe, Arizona.

I am in receipt of your letter of yesterday, asking for my construction of the constitutional provision adopted by vote of the people of Arizona, in 1918, amending Article 4 of the state constitution, fixing the representation of the counties in each House of the State Legislature, and beg to inform you that a misapprehension is abroad as to the membership of the House of Representatives of Arizona under the said amendment, which contains the following: "Provided that no county shall have a smaller number of representatives than that to which it is now entitled"

The argument in favor of the amendment, printed on page 41 of the Publicity Pamphlet of 1918, and signed by A. S. Mills and James A. Jones, calls special attention to the provision above cited by the following language in said argument:

"In this proposed amendment the apportionment is so made and it is definitely stated, that no county shall have less representation in the state legislature than it has at present, but it provides for an increase in the representation when the population of the county justifies it"

Therefore, while Maricopa County will have its membership increased from six to nine members in the House of Representatives, the representation of Cochise County, Graham County, Greenlee County and Yuma County remains the same and the total membership of the House of Representatives will be increased from 35 members to 38 members, if the compilation of the vote has been correctly announced by the press.

August 21, 1919.

Mr. M. Johnstone, Adv. Mgr.,
World Merchandise Corp.,
New York, N. Y.

Answering your letter of August 12th, would say that punch boards are

decidedly forbidden by the law of Arizona to be used in this state and the law is being pretty generally enforced.

The punch board mentioned in your letter and set forth in the enclosure accompanying it simply lives or has its existence and is maintained wholly through the gambling instinct and inclination. There is no division of opinion upon that point.

August 21, 1919.

Hon. W. F. Timmons,
County Attorney,
Yuma, Arizona.

I have before me your letter of the 17th inst., inquiring if in my opinion county attorneys have the power to employ necessary assistance, such as their judgment may dictate, for investigation of those who may be violating the law by increasing and maintaining the high cost of living within the state.

In answer thereto I would state that assistance in all such cases would seem to be necessary if a determined campaign is to be entered upon to abate the cause of this prevalent complaint, which I certainly recommend.

Among the "County Charges" specified under paragraph 2391, Revised Statutes of Arizona, 1913, we find enumerated:

"(2) The compensation of the County Attorney, his deputy and stenographer, and all *expenses necessarily incurred* by him in criminal cases arising within the county."

"(3) The compensation of the sheriff and his deputies and constables and all necessary expenses incurred by them in criminal cases arising in the county."

Subdivision 2, first above quoted, has been construed by the Supreme Court of Arizona in the case of Pinal County vs. Nicholas, 179 Pac. 650, and where the County Attorney employed an expert witness on forgery in a criminal case bringing said witness from Los Angeles the court held said expense to be a legal county charge and I refer you to said opinion and the authorities therein cited. I would suggest, however, that all friction may be avoided, that you confer with the Board of Supervisors in the matter of incurring the expenses referred to in your letter as the opinion holds that the question involved is whether the county charge is for *necessary* expense and not an unreasonable expense or rather an unreasonable *charge*.

Copy of this letter will go today to all county attorneys of the state, as I think it proper to call this interpretation of the law to the attention of all county attorneys in our official efforts to find a remedy for reducing the present exorbitant high cost of living.

The present conditions as to over charges touching the high cost of living

call for prompt action in this emergency and I invite you to be in constant communication with this department to further the active prosecution of the violators of the law. Promptly advise me in any case where the Board of Supervisors fail to aid you in your efforts by consenting to the employment of the necessary assistants. I may add that this assistance may be employed for secret work as the necessities of the case call for. In other words, the violators of the law who are outraging the consumers of the community must not be apprised of our efforts to obtain convicting evidence.

This department is working in conjunction with the United States Attorney of Arizona and other federal authorities.

August 29, 1919.

Mr. Harry E. Scott,
Johnson, Arizona.

Your letter of August 23rd in regard to the qualifications of a principal of a common school:

Paragraph 2733 of the Civil Code of 1913, prescribing the powers and duties of the board of trustees of a school district, provides that in districts having an average daily attendance of five hundred or more, or two or more contiguous districts having an average daily attendance of five hundred or more may employ a principal. Such principal must hold a first grade state or life certificate.

There is no provision for a principal of a common school in a district having less than an average daily attendance of five hundred. However, this would not prevent the board of trustees of such a district, from designating one of the teachers employed in such district, to have superior authority and control over the other teachers in such district. In doing this, such teacher so designated would not have to be the holder of a first grade state or life certificate, but would be fully qualified if a holder of a second grade certificate which entitles the holder to teach in the common schools.

September 3, 1919.

Hon. C. O. Case,
Supt. Public Instruction.

Your request as to whether a student entering normal or high school and presenting satisfactory evidence of having completed a military course in the United States Army may be accredited with military training and exempted from the military course, required of male students, in such normal or high school.

Chap 59, Laws of 1917, says that the male students of any State Normal or

High School shall be organized into a cadet company or companies. No exception is made. It is true that at the time the law was adopted, it was not considered probable that High School students would be taken into military service, and hence no provision was made to cover cases of the kind in question, but in 1919 the Legislature adopted Chapter 94 of the Session Laws, amending the original bill without making any change in regard to those who had received military training in the army. It is therefore apparent that there was no intent on the part of the Legislature to exempt any male students fourteen years of age or over, however, the Normal and High School Cadet Commission under Section 18 of Chapter 94 shall prescribe the character and amount of military training and instruction to be given and shall fix the minimum amount of time to be devoted to said work. They also have the right to allow credits for the work assigned. The commission therefore would give credit to such student for the work already done and could fix the minimum amount of work for such student, which would be different from that assigned to students who had not received such training.

I would take the liberty to suggest that in the appointment of officers of the cadet companies, the students who had received such military training in actual service in the United States Army, should be given preference above those students who have not had military training.

September 5, 1919.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission.

I have your communication of September 4th, enclosing, for our opinion, an inquiry by the Corporation Manual Co., as to whether or not Chapter 112 of the Session Laws of the last legislature repeals paragraph 2271 of the Civil Code, Revised Statutes of Arizona, 1913. The title to this act reads:

"To Amend Section 2263 of Chapter IX, Title IX, Revised Statutes of Arizona, 1913, Civil Code, Entitled Investment Companies; and Repealing Section 2271."

This is the first time that my attention has been called to the fact that there is no repealing clause or section and that there is no reference whatever in the body of the Act to paragraph 2271. Those parts of said paragraph, however, which are in conflict with paragraph 2263, as amended, must be considered repealed by implication. This rule is stated as follows in paragraph 247, Volume 1 of Lewis' Sutherland on Statutory Construction:

"Subsequent legislation repeals previous inconsistent legislation whether it expressly declares such repeal or not. * * * The intention to repeal, however, will not be presumed nor the effect of repeal admitted unless the inconsistency is unavoidable and only to the extent of the repugnance."

We emphasize that part of the rule which would leave in effect any part of paragraph 2271 which is not inconsistent with and can be reconciled with paragraph 2263 as amended, because this is further qualified by paragraph 5553 of the Civil Code, Revised Statutes of Arizona, 1913, which reads as follows:

"When a statute has been enacted by the legislative power of the state, and has become a law, no other statute, law or rule, is continued in force because it is consistent with the provisions of such statute, passed subsequently thereto, but in all cases provided for by such subsequent statute, all statutes, laws and rules, theretofore in force in this state, whether consistent or not with the provisions of such subsequent statutes, unless expressly continued in force by it, shall be repealed and abrogated."

The test of repeal then in this state is whether or not there is any "case" in the prior law not "provided for by such subsequent statute." By "case" we understand the legislature to mean "instance" rather than "subject." Paragraph 2271 reads as follows:

"All fees for services rendered herein shall be collected by the Corporation Commission as provided by law, and by it shall be turned into the State Treasury, and the Corporation Commission is hereby authorized to appoint such clerks and deputies as are actually and absolutely necessary, to carry this Chapter into full force and effect. All moneys actually and necessarily paid out by the Corporation Commission to any clerk, deputy or agent, appointed under this Chapter, as salaries, or any money actually and necessarily paid out by the Corporation Commission, or by any clerk, agent or deputy, appointed under this Chapter, for traveling or incidental expenses shall be paid by the State Treasurer upon the State Auditor's warrants, to be issued upon sworn vouchers containing an itemized account of such salaries and expenses, and approved by the Corporation Commission."

The last sentence of paragraph 2263 originally read as follows:

"All fees collected by the Corporation Commission under the provisions of this Chapter shall be paid into the State Treasury in the same manner as is provided by the general laws for the payment into the State Treasury of all fees collected by the Corporation Commission"

The act above referred to after designating certain fees to be collected by the Corporation Commission, provides as follows:

"All fees collected by the Corporation Commission under the provisions of this Chapter shall be paid into the State Treasury and credited to the 'Corporation Commission Investment Company Fund' and such part thereof as may be necessary to be used by the Commission in carrying out the provision of this Act, shall be paid by

the State Treasurer upon warrant drawn by the State Auditor on such fund from time to time in favor of the Commission for the amounts expended under its direction."

It will be readily discerned from the foregoing quotations, and we so hold, that the legislative act provides for every instance, as well as subject, embraced in paragraph 2271, excepting the authority to appoint clerks and deputies. Said authorization not being among the "cases provided for by such subsequent statute" is not repealed and is continued in effect.

September 6, 1919.

Hon. Andrew J. Baumert, Jr., Secy.,
Board of Directors of State Institutions.

Referring to your inquiry in regard to the married woman committed to the Industrial School at Fort Grant, as to the legality of her detention there, she being a minor, under 18 years of age:

Our Juvenile Court law states that the Judges of the Superior Courts shall have jurisdiction in all proceedings and matters affecting dependent, neglected, incorrigible or delinquent children, or children accused of crime under the age of 18 years. The words dependent, neglected children are construed to mean any child under such age who is destitute, homeless, abandoned or dependent upon the public for support or who has not *proper parental care or guardianship*. Incorrigible children means children who are charged by their *parent or guardian* with being unmanageable or who shall refuse to obey their *parent or guardian* in matters in which such disobedience is a violation of law.

You say in your letter that the girl is under the age of 18 years, but the evidence submitted would indicate that the marriage was such a legal marriage in the State of Texas as would be valid in Arizona. The juvenile court jurisdiction is based upon the State's right to act in loco parentis, and the children referred to by the juvenile court law seem to be those subject to guardianship or parental control. In this state a married female infant has the same legal status in regard to property rights as a man of twenty-one years of age, and has the same liabilities. It is apparent that the intent of the legislative branch of the government was to regard a married woman, under the age of 21 as fully emancipated from the legal disabilities imposed by her infancy. Under the common law to which these statutes are supplementary, infants under the age of 21 became emancipated from the control of a guardian or parent upon entering into a married state. Taking this into consideration, in the absence of a specific enactment upon the subject, we cannot say that the State, acting in loco parentis, may exercise a greater measure of control than the natural parent or guardian.

The question is one primarily for a court's decision as it is a matter of defense to be raised by the married infant brought before a juvenile court, but

failing such decision we are inclined to the opinion that a married infant under the age of 18, is not such a child as was intended to come within the provisions of the juvenile court laws relating to children under the age of 18 years.

September 6, 1919.

Hon. F. M. Gold,
County Attorney,
Flagstaff, Arizona.

Answering your letter of September 3rd in reference to placing upon the tax roll property omitted therefrom for two years preceding, would call your attention to paragraphs 4867 and 4901, Revised Statutes of Arizona, 1913.

Under the former paragraph an escaped or omitted assessment, which is discovered while the assessment for the current year is in progress, being then on the books, would go through the usual course of equalization. After the period of equalization has passed the board of supervisors in their capacity as such or as the board of equalization would have no further authority or right to change the valuation.

Paragraph 4901 refers to an entirely different condition and gives the county treasurer the right to add an omitted or escaped assessment after the tax rolls have been turned over to him for collection and gives him the right only to add such assessment for the current year.

It can readily be seen that this provision of law is not complete in itself in that it does not provide for placing on the tax roll omitted assessment for previous years after the rolls have been closed by the board of equalization. Neither does it provide for any equalization of the assessment made by the county treasurer.

I presume the circumstances which prompted the board of supervisors to make the assessment referred to by you, bring it under paragraph 4867 and not under this latter paragraph.

In reference to your inquiry about the transient license tax of 50c per head on cattle and 25c on sheep, under Chapter 115, Laws of 1919, I would state the board of supervisors can authorize the expenses incurred by the sheriff in the enforcement of said law and would refer you to Section 5, Chapter 61, Laws 1917, which section has been re-enacted in Chapter 162, Laws of 1919, carrying it forward unchanged. As said Chapter 162 carries the emergency clause and was unsigned by the Governor its validity is in question, but even if lawful it does not change the situation as to Coconino County, it not being a first-class county and the limitation of \$500 00 expense monies mentioned in sub-division a, Section 7 of each Chapter above mentioned as to first-class counties would not apply.

September 8, 1919.

Mr. Robt. B. Reid,
Lowell, Arizona.

Answering your letter of September 3rd, I would state that the law does not contemplate that a county officer in the performance of his duty, should be required to use his salary to pay a necessary expense incurred while in the performance of service to the county. Such has been the opinion heretofore expressed by this department in response to a similar inquiry; but where a limit to the expenditures is fixed the statute must be followed as to the limit fixed.

Section 7, Subdivision a, Chapter 61, Laws of 1917, referred to by you, provides for (County Charges) and reads:

"Also actual and necessary traveling expenses not to exceed \$500.00 per annum."

Referring to first-class counties, Section 5 of that Act provides:

"That necessary expenses in addition to the salaries herein provided, not otherwise expressly provided for in this Act may be audited and allowed by the Board of Supervisors of respective counties when said expenses are necessarily incurred in discharging of their duties."

In the case of Pinal County vs. Nicholas, 179 Pac. 650, decided March 31, 1919, our Supreme Court held that subdivision 2 of paragraph 2391, Revised Statutes, 1913, was sufficiently broad to authorize the County Attorney to employ an expert witness on forgery and bring him from Los Angeles, California, at an expense of \$1,084.90 in the prosecution of a criminal case. Said paragraph 2391, in enumerating county charges says, in subdivision 4:

"The salaries of all other county officers and their deputies and the necessary expenses incurred by them in the conduct of their several offices."

Even eliminating Chapter 61, 1917, referred to by you, is not said subdivision 4 of paragraph 2391 broad enough to include the expense of a supervisor incurred by leaving his home and traveling to the county seat to attend to the necessary county business, considering the fact that our Supreme Court has held in the above mentioned case that subdivision 2 of said paragraph is broad enough to authorize, as a necessary expense, that incurred by county attorney in bringing the expert witness from Los Angeles at \$50 per day making the amount in the aggregate as above stated.

Under a new law of 1919 the sheriff must collect a transient grazing tax upon stock that come into this state from other states to range temporarily for weeks or months. The sheriff of Coconino County and Mohave County must leave the county seat at Flagstaff and Kingman and, by laborious travel and considerable expense, cross the Grand Canyon and proceed to the Utah line in order to effectually enforce that law; the expense is incurred in the performance of an

official duty. Would it not be crippling the public service to construe that these necessary expenses should be borne by the officer and taken from his official salary? I incline to the opinion that I should not so hold in the face of the decision of the Supreme Court above mentioned.

However, I may add, that where a supervisor, residing at the county seat, thought himself entitled to compensation for meals and lodging at home, during a board session, it was hardly within the law.

In response to a letter from County Attorney Gold of Flagstaff, I have heretofore expressed an opinion to him along the lines above set forth.

"Necessary expense" does not mean mileage, but does mean actual, necessary expense incurred. The official time and service belongs to the county and the necessary expense in the performance of such service is to be met by the county.

September 8, 1919.

Dr. Geo. E. Goodrich,
Supt. of Public Health.

Your letter of August 2nd, making inquiry about the provisions of Chapter 165, Laws of 1919, as to its application to the oil flotation plants of copper companies, came during my absence upon the coast and being called to my attention this afternoon I unhesitatingly answer that said Chapter 165 certainly does apply to all oil flotation plants for the reduction or refinement of ores and metals in requiring the establishment, equipment and maintenance of the change rooms for the employees therein referred to.

September 16, 1919.

Hon. J. C. Goodwin,
Tempe, Arizona.

Your letter of recent date was duly received wherein you asked if a member of the present State Legislature is eligible to serve by appointment, after adjournment of the Legislature, to a position on the County Highway Commission under the new law, as adopted at the last Legislative Session, 1919. You propound your inquiry as a tax payer.

This very question was brought to my attention by Governor Hunt some time ago when he had in view the appointment of a member of the Legislature to a position on the State Fair Commission. The Senator from Graham County, who Governor Hunt then had in view for appointment was a warm personal friend of mine, but under the constitution and the law I promptly informed the Governor that such appointment as contemplated by him would not be valid.

At the last session of the legislature, 1919, an amendment to the law was then adopted which, by such amendment to the law provided for a salary of \$10 per day for such county highway commissioners, thus providing an emolument for a county highway commissioner which did not exist theretofore.

Sub-section 5 of Sub-division 2, Article 4, of the Legislative Department, reads as follows:

"No member of the Legislature, during the term for which he shall have been elected, shall be appointed or elected to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during said term."

The above constitutional provision is conclusive upon the subject as I announced in my opinion expressed to Governor Hunt in reference to Senator Claridge as a proposed member to the Fair Commission. The same provision is conclusive as against the appointment of a member of the present Legislature to any place upon the County Highway Commission.

September 19, 1919.

Hon. Thomas E. Campbell,
Governor of Arizona.

Your letter of the 12th inst., accompanied by a inquiry from Rev. Chas. W. Ronk of Glendale, Arizona, upon the subject of military training in high schools as provided by our Arizona law, was received during my absence on official business in Northern Arizona.

In answer thereto I would state that the matter of combatants or non-combatants is not involved in the matter under consideration, or the question raised by the copy of letter you have sent me.

It is universally urged and quite generally conceded that "Military Training" as set forth in our law and made a part of high school instruction, in accordance with drill regulations, prescribed under the United States law, is highly beneficial in the physical development of the youth of this state and all other states of the Union prescribing similar regulations.

There should be no objection to the full physical development of the best that can be brought out of any boy in this state. The splendid results from such training is daily manifest, when we see the robust physical appearance of so many of our boys now returning to peaceful pursuits, who have never been overseas and have never raised an arm in actual military combat.

In my boyhood days I came in close personal contact with members of the Dunkard Church organization in the community where I lived, and I know of their splendid work as law-abiding citizens and their devotion to industrial

and moral development, and enterprises for the general good. Therefore, I desire to emphasize the statement that Service in Combat is not involved in this inquiry and is not imposed upon high school students by their compliance with our state law as to drill regulations.

Many of our best women for years have enjoyed target practice and by such practice have become the best marksmen in the community, in many instances, with no thought of Service in Combat.

The observance of this law, as to drill regulation, will not impose upon any individual, any service or act obnoxious to his principles, as a member of any church or organization. Viewing it thus, both in fact and in law, would it not be a mistake to make an exception in any case and thus invite want of respect for the law among others to whom such exception does not apply, especially when this law does not impose Military Combat Service upon any pupil in this State.

I can only take the law as I find it set forth in the statutes of our state, and I am sending a copy of this letter to the Rev. Ronk by this mail with the assurance that I will be pleased to confer with him at any time upon this matter.

September 20, 1919.

Hon. Andrew P. Martin,
State Commander,

American Legion, Arizona Branch

Your letter of the 17th inst. has been received wherein you again make inquiry about the right of non-registered soldiers voting and in this letter you refer to the special bond election to take place in Pima County on the 23rd inst.

You also inquire if a non-registered soldier is eligible to hold public office. Section 2 of Article VII, State Constitution on Suffrage and Elections, advises the qualification of a voter, and that a person cannot vote "unless such person be a citizen of the United States, of the age of 21 years or over and shall have resided in the state one year immediately preceding such election. The word citizen shall include persons of the male and female sex"

Section 15 of said article says:

"Every person elected or appointed to any office of trust or profit under the authority of the state or any political division or any municipality thereof shall be a qualified elector of the political division or municipality in which said person shall be elected or appointed."

I do not regard that the want of registration shall render a person ineligible to hold office who is qualified as an elector under the provisions of said Sec. 2 above mentioned.

By the passage of Chapter 11, Laws of 1918, the Legislature in special session provided that absent soldiers should vote without the necessity of being registered in the year 1918 relieving our soldiers of that requirement. Having done so by that enactment I think such soldiers now returned to their homes cannot be denied to vote at any election by reason of not having been registered in 1918. To hold otherwise would appear to be grossly against the spirit of the law which was intended to preserve the right of the elective franchise to all soldiers who were denied the opportunity of registration by their war service for the state and country.

September 20, 1919.

Mr. Joe V. Prochaski,
State Game Warden.

Your inquiry in regard to the use of dogs in trailing deer:

It is our opinion that Section 657 of the Penal Code very clearly makes it illegal to use dogs in the pursuit of game other than birds.

We are, therefore, of the opinion that you may prosecute anyone who violates this provision.

September 20, 1919.

Mr. E. W. Stephens, Secy.,
Live Stock Sanitary Board.

Replying to your letter of September 10th, in regard to the jurisdiction which you have over slaughter houses on Indian Reservations, referring particularly to the new town of Cooley, would say that the state has full jurisdiction over all persons on Indian Reservations other than the Indians maintaining tribal relations, who have been assigned to that particular reservation.

Therefore, it is our opinion that you may exercise your full powers over the town of Cooley and any similar place within the Reservation.

September 30, 1919.

Hon. Neil C. Clark,
County Attorney,
Prescott, Arizona.

At the request of Judge Hicks of Prescott we have examined Chapter 161, of the Session Laws of 1919, and since the statute does not carry an emergency

clause, it became effective ninety days after the close of the Legislature.

The statement of the Secretary of State, as shown in the printed volume, is worded, inaccurately. Subdivision 3 of Section 1, Article IV, of the Constitution, provides that no act passed by the Legislature shall be operative for ninety days after the close of the session, except for emergency measures, and this provision would govern. In 1917 the legislature adopted Chapter 63, Laws of 1917, which was the proposed amendment to the initiative measure, and the then Secretary of State attached his certificate stating that the law became effective the 21st day of March, 1917, although it was obvious that it could not become operative until passed upon by the people at the next general election, heretofore no attention has been paid to the wording of the certificates, but we have called the Secretary of State's attention to the error in the wording of his certificate, and do not believe that any similar question will arise.

October 30, 1919.

Hon. Kirk Moore,
County Attorney,
Tucson, Arizona

Your letter of the 1st inst. is just at hand, together with the enclosures showing diagram of the slot machine which you inquire about

I have heretofore answered similar inquiries to the effect that such device appeals to the gambling spirit which so many members of humanity possess.

Out of 1200 balls, which the machine contains, about 100 bring a prize to the lucky one, ranging from 15 cents to \$2.00. After the machine is placed in operation on its second filling there is a net profit of \$28 taken in by the operator through the gambling weakness of the patrons.

Par. 319 of the Penal Code of Arizona, 1913, which sets forth the Gambling Law on this subject was amended by vote of the people in our state election 1918 and forbids the operation of "every slot machine, punch board or machine of like character," evidently for the express purpose of covering and forbidding the operation of this slot machine which is advertised as E-Z Ball Gum Machine and which receives the coin of the patron as advertised "in the iron coin pocket of the machine.

The element of skill does not enter into the matter, but it is wholly a matter or game of chance upon which the expectant patron must depend for his winning.

October 1, 1919.

Mr. Marion P. Hodges,
Flagstaff, Arizona

We are in receipt of your favor of the 28th ultimo, in which you state that

you are a veteran of the American Expeditionary Forces; that you were discharged from the service on July 26th of this year; that you have property assessed at the value of \$1,000, and you inquire if that property is subject to taxation for the year 1919.

The Tax Assessor of your county has on file in his office an opinion from the Attorney General in reference to taxation and exemption of soldiers who served in the present war, and if you will call upon him, stating the facts of your case, he can probably give you full satisfaction and information in the matter, however, for your information, we have in this state a statute called: "Arizona Civil Rights Emergency Act for Members of the Military and Naval Establishments of the United States," passed by the Legislature in 1918, which provides among other things as follows:

"If the assessed valuation of the property of any person in the military service, together with the assessed valuation of the wife of such person in military service, if married, at the date of his entering military service shall not exceed \$3,000, then in that case, no tax whatsoever shall be levied against the property of such person in military service or his wife, if married, during the period of military service. All persons in military service shall be exempt from any poll or school tax during the period of military service."

It is further provided in that statute that the period of military service does not end until six months after the discharge of the soldier, but in any event, not later than six months after the termination of the war, that is, after the declaration of peace.

From the facts you have stated to me it appears that the period of your military service will not expire until after the first of January, 1920. So, if you have been engaged in military service within the meaning of the statute, and if the assessed valuation of your property, added together with the assessed valuation of your wife's property, if you are married, at the date of your entering military, does not exceed the sum of \$3,000, then such property will be exempted from taxation for the year 1919. However, you should take up this question with your County Assessor and furnish him with satisfactory evidence of the facts entitling you to such exemption, and I am sure that he will grant you any relief to which you are entitled.

October 6, 1919.

Mr. R. E. Merritt,
State Inspector of Weights & Measures,

Your favor of the 25th ult., addressed to the Attorney General, inquiring as to whether or not you could make a charge for condemning scales, has been referred to me for answer.

I do not believe that you can make an additional charge for condemning weights or measures, separate and distinct from the fee authorized for inspecting and testing weights and measures.

However, I am of the opinion that upon inspecting and testing the weight or measure you are entitled to collect the fee prescribed in Paragraph 5511, Revised Statute of Arizona, 1913, whether or not such inspection and testing results in a condemnation.

You will note that the third sub-division of Paragraph 5511 provides that you may collect a fee for only one inspection a year, but that in the event of a second inspection during the same year you find such weight or measure to be false or incorrect you may collect the prescribed fee for such second inspection.

From a reading of this entire statute I am inclined to think the intent to be that a fee should be collected for the inspection and testing whether such inspection results in a condemnation or not, qualified, however, by right to collect for only one inspection a year.

October 10, 1919.

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

We have your request as to the right of a person over eighteen years of age, but under twenty-one years of age to purchase State land, and the manner in which such purchase could be made.

Section 45 of Chapter 5, Laws of the Second Special Session of 1915, says in part:

“Any person over eighteen years of age, who is a citizen of the United States, or has declared his intention to become such, is entitled to purchase any of the lands of the State.”

The effect of this language, in our opinion, is to remove the disability which the applicant would otherwise labor under because of his minority.

The statute confers upon the person over eighteen years of age, under twenty-one, the power to purchase the land and would necessarily imply that he could make a binding contract for such purchase.

We would suggest, however, that in making the purchase his parent or guardian, if he has one, should join with him in signing the necessary papers, but in case the minor has neither parent or guardian, he should not be denied the right to make the purchase of any of the State lands, which may be subject to sale.

October 10, 1919.

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

In regard to the application for the purchase of State lands which you have received from a former Russian subject, who has declared his intention of becoming an American citizen, would say that we refer to Section 45 of Chap. 5, Laws of the Second Special Session of 1915, which said in part:

“Any person over eighteen years of age who is a citizen of the United States, or who has declared his intention to become such, is entitled to purchase any of the lands of the State.

It is our opinion, therefore, that if the applicant submit proof satisfactory to yourself that he has declared his intention to become a citizen he is entitled to purchase any of the lands of the State which are subject to sale.

We do not, however, pass upon the effect of his failure to acquire full citizenship.

October 9, 1919.

Hon. Jesse L. Boyce,
State Auditor.

We have received inquiries from the Board of Directors of State Institutions and the State Land Department in regard to a number of claims which were presented after the close of the fiscal year, June 30, 1919, but covering items of expense incurred prior to that date.

The Land Department and the Board seem to be of the opinion that a failure to present the claim prior to the end of the fiscal year makes it illegal for the State Auditor to issue his warrant against the appropriations of the fiscal year ending June 30, 1919. Paragraph 73 of the Civil Code is still in effect except as modified by Chapter 80 of the Session Laws of 1917. This paragraph provides that such claims as are not named in the amendment shall be audited, settled and allowed, if presented within one year after the claim shall accrue, and not afterwards.

We do not, of course, know the condition of the funds of the fiscal year ending June 30, 1919, upon which those claims were drawn, but if the amounts do not exceed the appropriations made for the various purposes for the fiscal year, confined to the purposes of that year, as distinct from any other year, it is the duty of the State Auditor to issue his warrant in payment thereof or his certificate of indebtedness, as the case may be.

While we are inclined to help you in securing these claims at as early a date as possible, we could not, consistently, advise you to refuse to issue such warrants,

as were the matter presented to a court for its determination, the ruling would be that the warrant issue, and we can see no necessity for placing upon the State the needless expense of a futile court action. We are sure your usual good judgment will enable you to find some way of taking care of these claims with as little confusion in your accounts as is possible under the circumstances.

Copies of this letter are given to the Governor, the Board of Directors of State Institutions and the State Land Department, as they seem to be holding a number of such claims pending our decision.

October 11, 1919.

Hon. R. E. Merritt,
Inspector of Weights & Measures.

We are in receipt of your favor of the 11th inst., stating that owing to a large number of heavy scales in use in the Salt River Valley your Department finds itself in a position where it is impossible to test these scales properly with the equipment which you now have on hand, and inquiring whether or not you are authorized to purchase the necessary equipment at an expense not exceeding \$600.00.

Paragraph 5512, Revised Statutes of Arizona, 1913, provides in part, that the Inspector of Weights and Measures "Shall procure, at the expense of the state, a portable set of weights and measures, balances and other necessary testing appliances, to be used in the inspection of all weights and measures, weighing or measuring devices, owned by the state, or by any person, firm, or corporation, or by any agent, lessee, or employee thereof in all precincts, towns or cities with a population of not more than five thousand nor less than nine hundred inhabitants according to the latest official State or United States census."

I am of the opinion that if you have not already purchased or procured at the expense of the state, the appliances necessary to testing the weights and measures and devices mentioned in said quoted portion of Paragraph 5512, then you are authorized by said paragraph to purchase the same and the expense and cost should be paid out of the General Fund.

October 11, 1919.

Hon. Thomas E. Campbell,
Governor of Arizona.

In regard to your inquiry as to the manner in which the counter signature of the Governor must be attached to warrants issued against the State Treasurer, as required by law:

Par. 72 of the C. C. of 1913, requires that all warrants used by the State Auditor must be countersigned by the Governor and in case of the absence of the Governor from the State, the said warrants shall be countersigned by the Secretary of State.

Exactly what constitutes a signing has never been accurately defined, but it has usually been regarded that whatever is intended as a signature is valid signing, therefore, if you would use a rubber stamp facsimile of your proper hand writing, accompanied by a mark, or, as you suggested your initials, affixed by yourself, as a token of acknowledgement or approval, it would constitute such a signature as is required by the terms of the statute; if you will authorize such a method and adopt it as your signature for a stated purpose.

We would suggest that your initials be signed by you before the warrants are delivered to the person having charge of the rubber stamp in order to authorize such person to affix the stamp signature to the warrant.

In the course of our conversation the manner in which the official signature of the President of the United States is affixed to the various documents, required to be signed by him, was referred to. The official signature of the President is written for him by a person duly authorized by an Act of Congress to so write the President's name. This manner of signing would perhaps obviate the danger of forgery to a large extent, and we would suggest that should you call the legislature in special session, there could be included in the subjects for legislation, a bill to authorize you to designate some person to sign your name upon the warrants which signature would therefore become your official signature for that purpose.

In the meantime the banks should be notified as to the manner of affixing the rubber stamp and your initials which you may adopt as your own signature and this will be sufficient.

October 16, 1919.

Board of Supervisors:

The law of Arizona which authorizes you to let "State Highway Contracts" for the "construction of any State Highway or bridge or extension thereof" or direct such work to be done by the day's wage system, at your option, is found in paragraph 5124, Revised Statutes of Arizona, 1913, and reads as follows:

"5124. Upon the adoption by the board of control or the board of supervisors, under whose direction the work is to be done, of the plans and specifications for the construction of any state highway or bridge, or extension thereof, it shall be optional with the board of control or board of supervisors, as the case may be, to have any and all work provided for by this act done either by contract or under a wage system. In case the work is to be done by contract, it shall be the duty of the said board of control, or board of super-

visors, to advertise in a newspaper published in such county, where the proposed work is located, for sealed proposals for the doing of such work. Such notice shall be given for at least thirty days prior to the opening of such sealed proposals, which shall be directed to the said board of control, or the board of supervisors as the case may be, and marked "State Highway Contract." Upon the opening of such proposals, the contract for the work shall be let to the lowest responsible bidder; provided, however, that the said board of control, or board of supervisors shall have the right to reject any and all bids and may proceed to construct said work under their own supervision, without contract. In case the contract is awarded, as herein provided, the successful bidder shall enter into such a contract with the State of Arizona, or the county in which the work is to be done, as may be prescribed by the said board of control or the board of supervisors, a copy of which contract shall accompany the plans and specifications. The successful bidder shall also file with the said board of control, or the board of supervisors, a good and sufficient bond, payable to the State of Arizona, or to the county, in a sum not less than twenty-five per cent of the contract price of said work, conditioned upon the faithful performance of said contract."

Vast responsibilities devolve upon the Boards of Supervisors in protecting the enormous fund of state moneys to be expended in state highway construction. You cannot be too vigilant. You must guard against graft and padded payrolls and scan every item of expenditure and approve no item until you are absolutely sure it is correct and that it is an honest expenditure. You are chosen by the people of your county and charged with a financial responsibility which you cannot evade and I am sure I voice your sentiments in calling your attention to the gravity of your duty. The people of Arizona demand prompt construction of our state highways and in pushing this important work with all possible dispatch, do not allow the work of any grafter to get past your vigilant eyes.

This letter refers to the expenditure of seventy-five per cent of "The State Road Tax Fund" mentioned in our statutes. You should be equally vigilant in the expenditure of your county road tax fund.

A copy of this letter goes to the Board of Directors of State Institutions who have like responsibilities in the expenditure of twenty-five per cent of the "State Road Tax Fund" under said paragraph 5124 above set forth.

October 16, 1919.

Hon. Thomas E. Campbell,
Governor of Arizona.

I write you in answer to your inquiry regarding the appropriation made by Senate Bill 89 for topographic surveys within the state in aid of the reclamation service and the feasibility of irrigation projects.

From the information that has been laid before me today, I am of the opinion that the appropriation in said Senate Bill 89 can be used for co-operative topographic surveys mentioned by George O. Smith, Director of U. S. Geological Survey, in his wire to you.

October 20, 1919.

Arizona State Tax Commission,
State House.

I am in receipt of your favor inquiring whether land held by a person under an enforceable certificate of purchase from the State of Arizona, but which has not been deeded or patented by the State to him is assessable and taxable to the person holding such certificate. I believe that it is.

Our statutes provide that all property of every kind and nature within this state shall be subject to taxation, unless expressly exempted. Paragraph 4847, Revised Statutes of Arizona, 1913, provides that the term "real estate" wherever used in the taxation statutes shall be taken to mean and include not only the ownership of, *but also the possession of or right to possession of any land within the state.* Paragraph 4860 of said Revised Statutes provides that the County Assessor shall ascertain all property in his county, real or personal, subject to taxation, and shall list and assess the same to the person owning, claiming or *having the possession, charge or control thereof*; and that property under mortgage, contract or lease shall be listed by and taxed to the mortgagor or lessor, *unless it be listed by and taxed to the mortgagee or lessee.*

Under these statutes, property can be listed and taxed to either the actual owner or to the person in possession of the same, under contract of sale.

Section 63, Public Land Code of Arizona, (Laws of 1915), provides that a certificate of purchase of state land issued pursuant to the provisions of law, shall entitle the purchaser to the possession of the land therein described. Section 70, Public Land Code provides: "All lands sold under the provisions of this Act shall be subject to taxation the same as other lands and the taxes assessed thereon collected and enforced in like manner as against other lands." Other sections of said Land Code provide for the payment by the State of taxes becoming delinquent on property sold under certificate of purchase, and charging the same against the land; for the furnishing of reports by the Land Commissioner to the various County Assessors and Tax Collectors of lands sold under certificate of purchase; for the cancellation of assessments upon lands reverting to the State.

It is the plain intent of these statutes to provide for the taxation of lands held by purchasers under enforceable certificates of purchase from the state. While the Constitution provides that State property shall be exempt from taxation, yet, when the State contracts to sell land and delivers possession to the purchaser under such contract, the purchaser has such possessory right and equitable title, as long

as the contract is not forfeited, that, under the statutes, renders the property taxable to him while in his possession.

October 21, 1919.

Mr. W. S. Norviel,
State Water Commissioner.

In reply to your inquiry would say, that the State Water Commissioner has no power, or duties, in connection with existing court decrees, determining the rights of claimants, prior to the passage of the Water Act, except as set out in Section 45 of the Act, where a water district has been created from necessity, or because the claims of that district have been determined; then the Water Superintendent, appointed by the Commissioner, may, under the orders of the Superior Court, enforce the decrees of the court relative to water rights pending a determination of all the water rights of the water shed in that district and may continue to do so until the rights have been determined, by the Commissioner.

October 23, 1919.

Hon. Andrew Baumert, Jr.,
Secy. Board of Directors of State Institutions

We have received your letter in which you state that the Commissioner of Indian Affairs is willing to pay for the maintenance and transportation to the Institution of Indians at the Industrial School, but believes that the State cannot receive such money. We would call your attention to Par. 4531, of the Civil Code of 1913, in which it is said:

“When any infant is committed to said Institution at the instance of his or her parent or guardian or other protector, the cost of keeping such infant, including the cost of transportation to and from the institution, shall be wholly paid by such parent or guardian.”

Also Section 3566 of the same code which said that it shall be within the power of the court to make an order directing the parent or parents of any such child to contribute to the support of the child such sum as the court may determine. Indians maintaining tribal relations are properly wards of the Federal Government and are supposed to remain under the care and direction of the Bureau of Indian Affairs.

Should the Commissioner permit these Indian infants to wander at will outside of their reservation, they are clearly subject to the State law and the Federal Government may be regarded as their parent or guardian within the meaning of these statutes.

The attention of the Juvenile courts should be called to this by your Board so that the proper orders may be entered. In the meantime we see no reason why the Industrial School should not be reimbursed, for the maintenance and transportation to the Institution, for the Indians at the Industrial School, provided these Indians are Indians maintaining tribal relations with any nation or tribe under the control of Congress

October 23, 1919.

Hon. F. H. Bernard,
City Attorney,
Tucson, Arizona.

Your inquiry of October 22nd has been referred to me for answer. Paragraph 3029 of the Civil Code of 1913, prescribes the essential requirements which must be complied with by any person asking to have his name placed upon the ballot as a candidate for election to office.

One of these requirements is that he must file the nomination petition provided for, together with the name of each and every individual, by or through whom, such candidate has expended or purposes to expend money in defraying the expense of this campaign. Or if he does not authorize or appoint any such individual he shall instead of filing such name or names, file a statement showing that he has not authorized and will not authorize any person to so act for him, and that he will in person account for the expenditures in the interest of his campaign. These requirements are essential and should any of them fail, the person is not entitled to have his name placed in nomination on the ballot.

The matter of time is essential as to the filing, as the papers must be filed not more than sixty nor less than twenty days before the date fixed by law for the primary, or in a special primary election, not less than ten days before the date fixed by proclamation for such primary election. The actual filing of the papers is not specified, other than above, that is, it does not make any difference which of the papers is filed first or if they are filed together, so long as all of the papers specified are filed with the proper officer within the time prescribed by statute.

October 24, 1919.

Hon. Andrew Baumert, Jr.,
Secy. Board of Directors of State Institutions.

I have before me your letter of the 15th inst., relative to sub-division 4, paragraph 3586, Revised Statutes of Arizona, 1913, and inquiring if the State Fair

Commission has exclusive right to conduct theatrical exhibitions, etc., mentioned in said paragraph within a radius of five miles from the State Fair Grounds during Fair Week.

Said Sub-division 4, paragraph 3586, under the title of Licenses Taxes is purely a license statute and "When no quarterly license has been paid in any precinct, town or city * * * within a radius of five miles from the State Fair Grounds, the State Fair Commission shall issue and collect all licenses upon all public exhibitions given for pay * * * during the period commencing two days prior to the opening of the annual State Fair and ending two days after the closing thereof."

As stated above Sub-division 4 is embodied in a chapter which deals wholly with the matter of licenses and the license taxes charged therefor.

As your inquiry includes the question of boxing or sparring matches given as "a public exhibition for pay," the ones conducting such exhibition are not only required to comply with the license law above mentioned, but must comply also with the requirements of Chapter 167, Laws of 1919, entitled, "An Act to Encourage and Promote Athletic Exhibitions and to Authorize and Regulate the holding of Boxing and Sparring Matches within the State of Arizona."

The promoters or conductors of such an exhibition whether holding a quarterly license under the license law or merely licensed "for each show or performance" must comply with the requirements of said Chapter 167, governing "such boxing or sparring match or exhibition." As such Chapter 167 appears to be chiefly a police regulation containing precautionary features, to prevent such contest going beyond the limits of the law.

October 27, 1919.

Mr. J. S. Fitts, Attorney,
Nogales, Arizona.

Your letter of October 18th, addressed to the Attorney General, has been handed to me for reply.

I answer specifically the question therein contained as follows:

1. Should a Mexican Corporation, doing business in this State, file a copy of its articles of incorporation in the original Spanish, or a TRANSLATION IN ENGLISH?

A. The statute provides for an authentic copy. This authentication may be by any proper officials in a foreign country, although for use in the United States it is preferable that the official signatures be certified by some consular or diplomatic representative of the United States with a seal. If the articles are in a foreign language a true translation thereof must accompany the same, which translation must be certified if done by an officer with a seal, or sworn to if done

by a private individual, as being a true and correct translation, which certificate or oath must mention the qualifications or official status of the translator.

2. Should the copy give in full the details of the certification and stamping and recording of the articles, or is a notation that the original contains these sufficient?

A. An authenticated copy must contain every detail of the original articles, together with the recording and filing marks. The translation must likewise not omit anything.

Trusting that we have sufficiently answered your inquiry, we are.

October 30, 1919.

Gus Williams, Esq.,
Globe, Arizona.

I received, some two days ago, your letter of the 22nd inst. inquiring about the law as to free text books for high school pupils. Several months ago I was compelled to rule upon our state constitution which somewhat involves the question propounded by you. Article 11 of the State Constitution on education, reads in part as follows:

“Section 1. The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, *common schools*, high schools, normal schools, industrial schools, and a university.”

Section 6 of said article reads in part as follows:

“The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.”

Section 8 of said article also says:

“A permanent school fund for the use of the common schools shall be derived from the sale of public school lands or other lands specified in the enabling act.”

From the foregoing provisions of the Constitution it will be seen that the common schools in the state are distinct from the other schools named in the constitution.

OPINIONS OF THE ATTORNEY GENERAL

Paragraph 2825 of the Revised Statutes of Arizona, 1913, reads as follows:

"There is hereby appropriated out of the state school fund sufficient moneys to furnish free text-books for the common schools of the state of Arizona, and for all contingent expenses necessary in carrying out the provisions of the of the provisions of this chapter." (Chapter XIX, entitled "Text Books").

I know of no other provision of law providing free text-books for any schools of the state other than "common schools" mentioned in said paragraph.

I will say, that while I have never given to the State Board of Education any opinion upon this matter they have viewed the law as allowing free text-books only for the common schools of the state.

October 30, 1919.

Mr. C. P. Lee,
Secy. Arizona State Board of Accountancy.

Answering your letter of the 18th inst., in reference to Chapter 57, Laws 1919, regulating practice of certified accountants, and inquiring about the fees paid by the applicants for a certificate would state that Sub-division E of Section 2, in reference to said fees, contains the following:

"Provided, however, that in the event any candidate fails to pass the required examination, he shall be entitled to take a second examination within one year after the date of the examination at which he fails to pass without paying a second fee."

Sub-division F provides:

"That all moneys received in excess of fees and expenses shall be held by the treasurer of said board as a special fund for other like expenses of said board in carrying out the provisions of this act."

The above provisions of law seem to be plain that no fee is to be returned to the applicant. Whether such provision is wise or not is not for this department to pass upon, but simply to give you the law as enacted by the Legislature.

In cases where an application is made for the recommendation of a waiver and such recommendation declined I think your board has power to return to the applicant the fee which he has advanced.

November 5, 1919.

Hon. Thos. E. Campbell,
Governor of Arizona.

Answering your letter of inquiry to which is attached a letter from the State

Agricultural and Horticultural Commission in reference to the boll weevil danger threatened by the therberia plant "so called wild cotton," I would state that I know of no funds aside from that appropriated for said commission, unless some relief can be found under Section 5, Chapter 152, creating an emergency fund out of balances therein mentioned to be expended under your direction.

If no relief can be had from said Section 5, it would seem that the vast interests of the cotton industry in this valley might recognize the threatened danger and meet it by voluntary contributions through concerted action by the Arizona Cotton Growers' Association.

The copy of the letter, which you enclose from said commission, states that last year over \$14,000,000 was brought into the state through the cotton industry of the state and showing this year the acreage to be 24,000 greater than last year.

On account of this threatened danger this department will cheerfully co-operate with your office and the Agricultural Commission in order to ascertain what lawful means may be adopted to meet it and in so doing ascertain if any state funds exist that may be available in the furtherance of a plan to overcome the danger.

November 10, 1919.

Mr. Geo. F. Senner,
Attorney at Law,
Miami, Arizona.

Answering your inquiry of the 5th inst., in the matter of the payment of school and road taxes by ex-soldiers and sailors, would state that your question refers to persons not in military or naval service.

For your information, however, I will state that on page 47, Laws of Arizona, First Special Session, Legislature 1918, you will find Sub-division (e) of Article IV of Chapter 12 entitled "An Act to Extend Protection to the Civil Rights of Members of the Military and Naval Establishments of the United States Engaged in the Present War," with an Emergency Clause which contains the following provision:

"All persons in military service shall be exempt from any poll or school tax during the period of military service."

Section 2 of Article I of said act provides for the term military service "shall include those in the marine and naval service" and that the term "period of military service" shall terminate six months after the date of discharge from active service.

I think I have given you the necessary information, but an examination of said Chapter 12 will give you all further information you desire.

November 25th, 1919.

Hon. H. S. Ross,
State Treasurer.

Replying to your inquiry of October 2nd in re Estate of _____,
Paragraph 4997, Civil Code of 1913, says:

"All taxes imposed by this chapter shall take effect at and accrue upon the death of the decedent, or donor, and shall be due and payable at the expiration of twelve months from such death, except," etc.

Paragraph 5001, id., says:

"If such a tax is paid within twelve months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such a tax is not paid within twelve months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per centum per annum from the time the tax is due and payable, unless by reason of claims upon the estate, necessary litigation, or other unavoidable delay such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the time from the accruing thereof until the cause of such delay is removed, after which eight per centum shall be charged," etc.

The intent is clear, if such a tax is paid within twelve months from the death of the decedent, or donor, a discount of five per centum shall be allowed and deducted therefrom. If such a tax is not paid within twelve months from the death of the decedent, or donor, interest shall be charged and collected thereon at the rate of eight per centum per annum from the time the tax is due and payable, which is at the expiration of twelve months from such death. We do not at this time go into the matter of the exceptions made by the statute, as they are questions primarily for a court's determination in the process of settling such estates.

As to the matter of exemption, the statute deals with property within the jurisdiction of the State, and nowhere else. It quite necessarily follows that in determining exemptions the Treasurer and Superior Courts have no right to take into account the amount received by the devisees from property situated in another state or country. The exemption must apply to property within the jurisdiction of Arizona, as the statute has reference only to the privilege of passing title to property on the death of its owner, and the tax may be levied only where the State has the power to confer that privilege.

November 26, 1919.

Hon. Thomas E. Campbell,
Governor of Arizona.

Your inquiry of the 22nd in regard to the annual allowance for uniforming and equipping officers of the National Guard.

Our former opinion of April 9, 1918, was given under paragraph 3947 of the Civil Code, prior to an amendment adopted by the War Session of the Legislature, June 8, 1918.

This amendment provided that all officers and enlisted men of the National Guard, who were drafted into service should be allowed credit for such service as continuance service in the National Guard during the time such officers and men were in service in the National Army of the United States.

We find that the then military officers of the State interpreted the statute to mean that the officers were entitled to their annual allowance for uniforms and equipment during their service in the National Army and that up to this time claims as presented were paid.

This is in effect an executive interpretation of the law to mean that the annual allowance is not a part of the compensation received by the officers of the National Guard for their services.

We are also informed that since statehood it has been the custom to regard this allowance as no part of such compensation. While this is not binding upon the department the word "compensation" is of such an elastic nature as not to preclude such an interpretation being placed upon the statute.

We are, therefore, of the opinion that inasmuch as nearly all of the officers have heretofore received the allowance, the few officers remaining in service in the National Army should not be denied their allowance and that in view of the custom already established no question can be raised as to the legality of such payments.

November 28, 1919.

Hon. Andrew Baumert, Jr.,
Secy. Board of Directors of State Institutions.

Replying to your inquiry in regard to the disposition to be made of the funds received by the State Hospital for the Insane from relatives and others for the maintenance of the inmates, would say that while Chapter 64, Laws 1919, makes it necessary to deposit these funds in the State Treasury, their disposition after such receipt is governed by Paragraph 4463, Civil Code, 1913, that is, they become a part of the Asylum fund.

As to your other question in regard to the funds received from the sale of grain and other products raised on the farm of the Insane Asylum, would say that the statute authorizing the purchase of the farm, says it is to be used for the Insane Asylum. The right conferred by this statute was the right to use or employ the farm and its products for purposes germane to the object for which the institution was created. It is therefore our opinion that these funds should be paid into the State Treasury in accordance with Chapter 64 supra, and after

such deposit is made are subject to be disposed of in accordance with paragraph 4468 above referred to.

Nov. 26, 1919.

Col. Walter S. Ingalls,
Adjutant General.

Replying to numerous inquiries we have received from various portions of the state, as to the funds available for the purpose of erecting armories, drill rooms or other buildings, to be used for military purposes, would say that in examining the appropriation bills of 1915 and 1917 we find that while the appropriation made in each of those years was to be available during the fiscal years named, no limitation was placed upon the time in which the amounts were to be expended.

The sections referred to are worded very differently from the other sections of the appropriation bills and the evident intent was to raise the money during those years, leaving it to be expended as necessity may require.

We are, therefore, of the opinion that the armory and arsenal funds provided in 1915 and 1917 are still available to be expended as provided by law for the erection of such buildings for military purposes.

December 9, 1919.

Mary W. Wilkins,
County Recorder,
St. Johns, Arizona.

Your letter of the 2nd inst. in reference to location of mining claims and indexing the same, in cases where the claim is located by a number of persons, was duly received.

I have made inquiry of County Recorder Edith Jacobs, of this city, and their present practice is to index the names of all claimants or parties to the location, and I am sure that such is the law.

By observing Sub-division 18 of Paragraph 2589, on page 885, Revised Statutes, 1913, you will see that it reads as follows:

“On index of location notices, each page divided into five columns, headed respectively: ‘Claimants,’ ‘Notices,’ ‘When Received,’ ‘Date of Notices,’ ‘When and Where Recorded.’”

Possibly the reason for the requirement that claimants shall be indexed is that a judgment may be obtained against an individual owning an interest in mining property which could not be found unless the owner's name is indexed.

I concur with County Attorney Greer and yourself, that it entails much more

labor, and in many instances the claims are probably worthless, being located merely through a period of speculative excitement, but the law seems to require the indexing of all names of persons having an interest in location.

Of course, the institution of a friendly suit will determine the matter, providing the pleadings fairly and squarely present the issue and the legal question involved.

December 13, 1919.

Mr. W. P. Howle,
Superior, Arizona.

Your inquiries therein contained, will be answered separately:

1. Q. If a mining company is organized under the laws of the State of Arizona and owns its property free and clear, having it deeded by the incorporators, can such incorporators after having obtained their charter from the Corporation Commission, market and sell their treasury stock in states outside of Arizona, without having obtained the usual investment company permit from the corporation Commission, by placing such stock on sale with brokers in New York—or other eastern cities?

A. Yes. The fact, however, that the property is deeded to the company by the incorporators, who in payment, therefor, take corporate stock, has nothing to do with the answer. Our investment company law, as stated in paragraph 2259, of the Civil Code, Revised Statutes of Arizona, 1913, refers only to selling or negotiating for the sale of stocks, bonds or other securities to any person or persons in the State of Arizona.

2. Q. Or conducting a mail-sales campaign from Arizona, but into other states and to people living outside of Arizona?

A. The answer will be the same to this as to question No. 1, with the suggestion that it is quite probable that under the provisions of Chapter 30, of the acts of the regular session of the third legislature (1917) it would be necessary to procure from the Secretary of State a broker's license.

3. Q. Under above conditions, must advertising matter used by these brokers first be approved by the commission, if not used in the State of Arizona, or mailed to people outside the State of Arizona?

A. I am compelled to answer yes to this question, because the amendment to paragraph 2265 of the Civil Code, Revised Statutes of Arizona, 1913, passed by the last legislature, is all inclusive and makes no exceptions.

It would seem in reason, however, that if the corporation commission is not

concerned with stock selling outside the state it would also not be concerned with the advertisements used to effect such sales. I must take the law as I find it, however, and leave to the courts the question as to whether or not its operation should be limited to the State of Arizona.

In passing, I might say, that I do not believe the commission is prepared to handle advertisements to be used outside the state and is not paying any particular attention thereto, for which reason any company employing and using such advertisements would probably not need to submit them to the commission and would not get into any difficulty by so doing. Perhaps I should qualify this by limiting it to corporations, not domestic investment companies, within the meaning of paragraph 2259 above referred to. Such investment companies are subject to the complete regulation and control of the corporation commission and the commission should at all times, be advised of their various stock selling campaigns and the methods used. For this reason, we would say that regardless of whether or not advertisements used by domestic corporations in stock selling campaigns in other states should generally be submitted to the corporation commission, any such corporation which is also selling its stock in the State of Arizona should be held to a strict compliance with the law.

December 19, 1919.

Mr. W. P. Howle,
Superior, Arizona.

Supplementing my letter to you of December 13th, in the matter of the application of our investment company law to certain hypothetical corporate operations as outlined in your letter of December 7th, I would say that it should be kept in mind that a company which would not otherwise be an investment company under our law, because of the fact that its selling campaign was outside the state, yet nevertheless such company brings itself under the operation of our investment company law if it, or any of its agents, within or without the state sell to any person in the State of Arizona; the investment company test is as to whether or not the sale is made to a person in this state. I will give you an example for illustration:

Suppose an Arizona corporation has an agency in El Paso, which said agency is selling stock over the United States, through newspaper advertising, as long as the sales made were to persons who were not in the State of Arizona, the company would not be an investment company under our law, but if the El Paso agent should receive an order from a person in Arizona and should fill that order by selling stock to such person, then the corporation would immediately become an investment company under our law and would be liable to all the penalties and regulations.

December 13, 1919.

Mr. S. W. Johnson,
Oatman, Arizona.

Your letter of December 7th, addressed to the Attorney General, has been handed to me for reply.

You ask in your letter whether or not, if a party and his partner secure an option on a certain block of stock and said stock sent to a bank, draft attached, for one of the partners to take up on his selling the stock to other parties, a brokerage license would be required.

You do not say definitely, but I assume from your letter that the stock is sold promiscuously to various persons who will invest in the same and that difference between the selling price and the option price constitutes the agent's or broker's commission or profit.

One transaction where stock was all sold to one person would probably not require a brokerage license, neither would it come within the purview of our investment company law unless the arrangement was promoted and engineered by the company issuing the stock.

Under a state of facts, however, as I understand them from your letter, as above mentioned, the seller is acting in the capacity of both agent and broker regardless of the form or method used to place the stock before the public and in order to satisfy our law both brokerage and investment company licenses are required.

December 23rd, 1919.

Lucy Nash, County Superintendent of Schools,
Gila County,
Globe Arizona.

Replying to your inquiry in regard to the emergency measures passed by the legislature in its session in 1919, and the effect which the amended classification statute would have upon the salaries of county superintendents of schools, and their deputies, would say, that Chapter 162 of the Session Laws of 1919 determines the classification of counties for the purpose of fixing the salaries of county officers and their deputies. This statute contained an emergency clause, and having remained with the Governor ten days, Sundays excluded, after the final adjournment of the legislature, was filed with the Secretary of State, without objection from the Governor, on March 26th, 1919. The emergency clause and the action of the Governor, on this statute, are identical with the emergency clause and the action of the Governor on Chapter 160, Session Laws of 1919. The Supreme Court in a recent opinion dealing with the status of Chapter 160, supra, declared that the action of the Governor in withholding his signature, but filing the statute with the Secretary of State without objection, was in fact an

approval of the statute and the emergency clause. Basing our opinion upon this decision of the Supreme Court, we believe that Chapter 162 became effective on March 26th, 1919, and that the county officers are entitled to the salaries fixed by that statute, according to the classification of their counties as determined by that act.

December 23rd, 1919.

Lucy Nash, Superintendent of Schools,
Gila County,
Globe, Arizona.

Replying to your inquiry of December 6th in regard to the term of office of a trustee of a school district who was appointed to fill a vacancy, would say, that Subdivision 7 of Paragraph 2708, Civil Code of Arizona, 1913, governs in such cases, and the trustee appointed will hold office for the full period of the vacant term. School districts are political subdivisions of the State created entirely by the Legislature and their officers are subject to the acts of the legislature. The constitution being silent as to the officers of school districts, there is no conflict between the provisions of Paragraph 2708, supra, and the constitution, so far as they relate to the length of the term of office of an appointed trustee.

December 23rd, 1919.

Hon. R. W. Smith,
County Attorney,
Safford, Arizona.

Replying to letter of S. C. Heywood, County School Superintendent, which you referred to this office on your recent trip to Phoenix, would say:

1. The salary of the county superintendent of schools is paid the same as the salary of any other county officer, out of the county funds. Paragraph 2420, Civil Code, 1913, provides that the expense of maintaining the government of the county includes the official salaries. Paragraph 2502, id., makes the school superintendent a county officer. The routine method provided for the approval of claims for the payment of salaries of county officers would govern the issuing of warrants in payment of the salary of a county school superintendent.

2. Warrants drawn against the general school fund are made by the county school superintendent on the county treasurer, except where the statutes specifically provide otherwise.

3. It is the duty of the board of supervisors to provide books and stationery

for county offices, and this would include the office of the county school superintendent, except where otherwise provided by the laws relating to education.

4. The traveling expenses of the county school superintendent are audited and allowed by the board of supervisors as other claims are audited and allowed, and are paid out of the county school fund, except where otherwise specifically provided. Also whenever the county superintendent exercises the authority given him under Paragraph 2711, Civil Code, 1913, the warrants so drawn must be countersigned by the chairman of the board of supervisors.

These answers are perforce general in their nature and may not cover all cases which arise, but whenever the county superintendent is in doubt as to the nature of a claim presented to his office, he should bring the matter to your attention for advice.

December 29, 1919.

Hon. Jesse L. Boyce,
State Auditor and Bank Comptroller.

The inquiry referred to is as to what the status of the above mentioned company, a California corporation, would be in this state in the event that it made loans on real and personal property situated within this state. While it is not so stated, we assume that the whole transaction is to be concluded in the domicile of the company, viz, the State of California. That would make a state of facts very similar to that involved in *Martin vs. Bankers' Trust Company*, 18 Ariz. 55, 156 Pac. 87, wherein it was held that a foreign trust company in accepting a trust and executing in New York as the trustee therein named, a trust deed on land in Arizona, is not violating any law of this state and need not, under such circumstances, be licensed in this state as a foreign corporation doing business here. This case also holds that the prosecution of a suit in this state to foreclose a mortgage or trust deed is not carrying on business for which a foreign corporation would need a license.

We see no way in which the proposed transactions of this company are in any manner restricted or regulated by the laws of this state.

December 30, 1919.

Mr. C. O. Case,
State Superintendent of Public Instruction.

Your inquiry as to whether or not the State Board of Education can legally

insure the free text-books for the common schools:

Paragraph 2834 says that all books purchased under the provisions of Chapter 19 of the Civil Code are the property of the State of Arizona and the Board has full authority under paragraph 2826 to insure the text-books should they determine that such action is advisable. This would be considered a part of the cost of furnishing the books and should be certified to the auditor as such.

December 31, 1919.

Mr. C. O. Case,
State Superintendent of Public Instruction.

Your inquiry in regard to the proper interpretation of paragraph 2813 of the Civil Code as amended by Chapter 45, Session Laws of 1917, has been received.

This chapter provides for a county fund for the maintenance of common schools. The Board of Trustees of each school district must on or before the first day of July of each year file with the county school superintendent an itemized statement of the amount of money needed for the expenses of their district for the ensuing year.

The county school superintendent on or before the first day of August of each year must furnish the Board of Supervisors the amount of school funds needed for the entire county during the ensuing year. In making up this estimate the county superintendent takes into consideration the amounts asked for by the Boards of Trustees. He must make his calculations as provided in the amended paragraph 2818 and must make provision so that no district employing but one teacher shall receive less than \$850.00.

In making his estimate the county superintendent must ascertain whether or not his estimate will produce the amount of money asked for by the Board of Trustees, of the school district, and if not he must make a separate estimate of the additional amount needed for such school district. The Board of Supervisors must levy a county school tax of a rate not less than a rate sufficient to raise the said \$850.00 for each school employing but one teacher less the amount received by the county from state and other sources for school purposes.

In addition to this levy the Board of Supervisors will levy a school tax on the property of any district in which the estimate is in excess of \$850.00 and said additional tax shall be paid into the county treasury to the credit of the particular district in which it is levied.

In other words, the Board of Supervisors may not levy a tax upon the entire county for any excess which may be asked for by any particular district.

January 15, 1920.

Hon. John W. Murphy,
County Attorney,
Globe, Arizona.

I have before me copy of letter of the 12th inst., from the Board of Supervisors to you making inquiry about the provisions of Chapter 163 (Senate Bill No. 45), Laws of 1919, and I agree with the construction placed upon the said law by the Board of Supervisors. It appears that Subdivision (e) on page 275, Section 7 of said Act empowers the Board to fix the salaries of all deputies, stenographers, clerks and assistants of county officers, as therein provided: this applies, of course, to salaries or compensations that are not fixed by the act itself.

There seems to be no perplexities arising as to the Act and I fully agree in the view expressed or intimated by the letter received by you from your Board of Supervisors.

January 15, 1920.

Mr. J. M. Russell,
Chloride, Arizona.

Your inquiry as to a license required for a retail dealer, vendor or agent, for the distribution and sale of Nucoa butter, has been received.

There is no state license required, but the Federal Government has a statute under which Nucoa butter, although manufactured of vegetable products, would be classed as oleomargarine.

This being true, a license from the Federal Government would be required, which would cost \$6.00 a year to cover the sale of uncolored oleomargarine or Nucoa, or \$48.00 a year to cover the sale of the colored article.

You should send your application to Judge Alfred Franklin, Collector of Internal Revenue, at Phoenix, Arizona.

January 15, 1920.

Mr. C. C. Grover, A. M.,
Supt. Winslow City Schools,
Winslow, Arizona.

We have your inquiry in regard to uniforms to be worn by high school cadets during military drill.

The original law providing for high school cadet companies was Chapter

59, Session Laws of 1917, and it provided in Section 6 that said cadets could wear a uniform or a distinguishing garb or insignia which might be prescribed by the commission.

There was no uniformity in the insignia or distinguishing clothing used in the schools so that at the 1919 session the Legislature adopted Chapter 93, Session Laws of that year, amending said Section 6 to read that all formations for drill, said cadets *shall wear* a uniform and insignia prescribed by the commission.

The Adjutant General, therefore, was correct in stating that no discretion is allowed, but that the uniforms and insignia prescribed must be worn by the cadets during the drill. There is no option in the matter.

Should you have any difficulty in obtaining compliance with the statute it will become your duty to report such matters to your county attorney in order that the law may be enforced.

There are, of course, many arguments for and against the wearing of a uniform in the public schools, but neither your office nor mine may concern themselves with that subject as our official duties compel us to comply strictly with the statutes adopted by the Legislature, which body is the sole judge as to the fitness of such enactments.

I am replying to you direct, at the request of the Adjutant General, who desires an official ruling from this office on this question of wearing uniforms.

January 15, 1920.

State Tax Commission,
Phoenix, Arizona.

I am in receipt of your favor requesting an opinion as to whether the property of railroad companies is subject to the levy of a tax for the purpose of supporting volunteer fire companies.

Chapter 10, Title 49, Revised Statutes of Arizona, 1913, entitled "Taxation of Railroad Property" provides the method of assessing the valuation of railroad property for taxation purposes in the various counties and under said chapter such railroad property, upon the valuation fixed by the State Tax Commission, is subject to the same tax levies as all other property in the county. The last sentence of Paragraph 4968, Revised Statutes of Arizona, 1913, Civil Code, reads as follows:

"All such property of railroad companies and corporations shall be taxable upon said assessment by the same officers *and for the same purposes* as the property of individuals within such counties."

Chapter 96, Session Laws of 1919, provides for the levy and assessment of a

tax by the Board of Supervisors of each county against all real and personal property situated within the boundaries of any unincorporated town, towns or settlements constituting a volunteer fire company district, for the purpose of paying for the equipment and maintenance of said volunteer fire company for the ensuing year, as prescribed in said statute.

Under these statutes, in my opinion, all of the property of a railroad company, situated within the boundaries of such volunteer fire company district, is subject to the payment of said tax prescribed for the maintenance and equipment of such fire company, the same as the property of any other individual would be.

January 16, 1920.

Mr. L. F. Kuchenbecker, Clerk,
Board of Supervisors,
Cochise County, Tombstone, Arizona.

Your favor propounding the following question: "Did Mr. Guy C. Welch, as Treasurer and Ex-officio Tax Collector of Cochise County, lawfully assess and collect from the Shattuck Arizona Mining Company collectors fees, interest and delinquency?" is at hand.

This letter was answered some time, but by my error was sent to the wrong address.

Chapter 9, Session Laws of 1915, Second Special Session, provides that the first half of the taxes for the year are due and payable on the first Monday in September and are delinquent on the first Monday in November, next, at 5:00 P. M., and that unless such first half of the taxes are paid prior to the time of said delinquency, 4 percent will be added as a penalty, and interest at the rate of 10 per cent per annum shall be added from the time of said delinquency.

Paragraph 4898, Revised Statutes of 1913, Civil Code, provides that no demand for taxes shall be necessary, but it shall be the duty of every person, subject to taxation, to attend in person, or by agent or attorney, at the office of the Treasurer and pay his taxes before the same become delinquent.

Under these statutes, in my opinion, if the first half of the taxes of the Shattuck Arizona Mining Company for the 1919, had not been paid at the office of the County Treasurer, on or before 5:00 P. M. of the first Monday in November of said year, the taxes became delinquent and were subject to the penalties and interest prescribed by law.

The statute requires the payment of the taxes at the *office of the Treasurer*, on or before the time of delinquency and I believe the fact that the amount of the taxes was placed in the mails addressed to the Treasurer on the first Monday in November, to be immaterial.

It seems to me the question as to whether prejudice was shown and as to whether your Treasurer should have also collected penalties and interest from the Denn Arizona Copper Company, is a matter for your Board to decide, upon the facts you have before you.

January 24, 1920.

Hon. A. A. Betts, Chairman,
Arizona Corporation Commission.

Under date of the 23rd inst, you inquire if the statute of limitations prevents the commission from collecting delinquent annual fees from the corporations for more than the last five years. The statute of limitations does not destroy the debt; it only, for reasons of public policy, enacts that after a certain time no action can be brought to collect. The debt remain valid and substituting for all other purposes.

We have proposed to bring suit to dissolve those corporations which have violated the law in not filing their annual report and paying the annual fee. They can only avoid dissolution by making good their delinquency, and the statute of limitations is not applicable to such a proceeding.

February 7, 1920.

Dr. R. H. H. Blome,
Director of Vocational Education.

Replying to your letter in which you state that firms and persons employing children over fourteen years of age and under sixteen years of age seem unwilling to release them so that they may attend such part-time schools and classes, threatening rather to discharge them, would say: that Section 8 of Chapter 113, Session Laws of 1919, provides as follows:

"Any person, firm or corporation employing a child between the ages of fourteen and sixteen years shall permit the attendance of such child upon a part-time school or class whenever any such part-time school or class shall have been established in the district where the child resides or many be employed, and any employer, firm or corporation employing any child over fourteen and less than sixteen years of age contrary to provisions of this act shall be subject to a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each separate offense."

There is no statute in Arizona compelling an employer of labor to engage the

services of any child between the ages of fourteen and sixteen years, but whenever such an employer does so engage such a child it has been made his duty to permit the child employee to attend these schools, and there is a penalty attached to his failure to do so. Should any employer refuse to permit his child employees to so attend such schools, his violation of the law should be called to the attention of the county attorney so that whatever action is necessary may be taken to carry out the intent of the law.

February 9, 1920.

Hon. C. O. Case,
Superintendent of Public Instruction.

Your inquiry, as Secretary of the State Board of Education, as to whether it is within the authority of the State Board to prescribe a form of written contract which could be made the basis of contracts between the boards of trustees of school districts and teachers engaged by them.

Paragraphs 2694 to 2697, inclusive, of the Civil Code of 1913, prescribe the powers and duties of the State Board of Education, and with the possible exception of contracts dealing with the education of the deaf, dumb and blind, no authority is conferred upon the Board to prescribe the form or contents of contracts between boards of trustees of school districts and teachers engaged by them. However, I have no doubt, that any suggestions that the Board may care to make to those charged with the duty of preparing these forms would prove of great assistance in securing the necessary co-operation from the boards of trustees in order to make the form of contract uniform throughout the State.

February 16, 1920.

Board of Supervisors,
Cochise County,
Tombstone, Arizona.

I have before me your inquiry as to any law authorizing the employment or appointment by county authority of any attorney as deputy or assistant to conduct, or aid in conducting, a criminal prosecution in cases where the County Attorney is laboring under disability by sickness, and in reply thereto would say that such authority is found in Sub-Division E., Sec. 7, Chap 162, page 275, Session Laws Arizona, 1919, which reads as follows:

“(E) All of the county officers hereinbefore named, may, by and with the consent of, and the salaries to be fixed by the Board of Supervisors, appoint such deputies, clerks, stenographers, and assistants as

may be necessary to properly conduct the affairs of their respective offices."

The provision of law above cited unquestionably would cover such an emergency as would arise on account of the illness of a County Attorney, thereby rendering it necessary for the proper dispatch of public business that proper legal assistants be appointed by and for the County Attorney, with the consent of the Board of Supervisors, said Board fixing the compensation and duration of employment.

Said Sub-Division E, would meet just such contingency as has arisen under the facts which you submit, and is simply a recital of Sub-Division F, Sec. 7, Chap. 61, Laws 1917.

I suggest that the County Attorney designate to you in writing a deputy or assistant as an aid in this special work, and if agreeable to you, that you duly approve the same and evidence it by an order to that effect entered upon your minutes.

I may also refer you to the case of Pinal County vs, Nichols, 179 Pacific, page 650.

February 18, 1920.

Mr. F. A. Wright,
New York City, N. Y.

Replying to your inquiry of the 11th instant, addressed to the Attorney General, I would advise you that a foreign corporation which holds title to property in Arizona is not regarded as doing business in this State merely because outside the State it conveys said property or executes a lease thereof.

I base this opinion on the authority of *Martin v. Banker's Trust Company*, 15 Ariz. 58, 156 Pacific, 87, wherein it was held by the Supreme Court of this State that a foreign trust company, in accepting a trust and executing in New York as the trustee a trust deed on land in Arizona, is not doing business in this State and need not be licensed as a foreign corporation.

March 6, 1920

Hon. Thomas R. Greer,
County Attorney, Navajo County,
Holbrook, Arizona.

I am just in receipt of your letter of the 3rd inst., inquiring as to the legal

status of a County officer appointed to fill a vacancy occasioned by the resignation of the former incumbent. The point being raised as to whether the increase of salary provided by the County Salary Bill, to-wit, Chapter 162, Session Laws of 1919, which became effective March 26, 1919, affects the compensation of the present incumbent.

In answer thereto I would say that I think the salary fixed for the elected official, during his term of office, cannot be changed during that term by the death or resignation of the incumbent and the appointment of his successor.

I incline to the view that the salary fixed goes to the term of office no matter who may be the incumbent and such is my official opinion at this time.

March 9, 1920.

Hon. R. J. Coleman,
County Assessor, Greenlee County,
Clifton, Arizona.

I am in receipt of your favor of the 2nd inst, inquiring if men of the Reserve are exempt from School Tax.

In reply thereto have to say that our statute, Chapter 12, Laws of 1918, provides as follows: "All persons in military service shall be exempt from any poll or school tax *during the period of military service.*" The statute further provides that the term of military service means the time from the date of his entering active service in the army until six months after the date of his discharge from such active service, but in no case later than the date when the peace treaty is signed and peace is declared.

The statute further provides that persons on the Reserve or retired list shall not be considered as being in active service, so the persons in question are exempt from school taxes up until six months after their discharge from active service. After the expiration of such six months they are subject to such school tax, although, they may still be on the Reserve, but not in active service.

March 9, 1920.

Hon. Thomas R. Greer,
County Attorney,
Navajo County,
Holbrook, Arizona.

I am just in receipt of your letter of the 6th inst, inquiring about the qualifications of voters at bond elections, held under the provisions of Paragraph 2736,

Revised Statutes of Arizona, 1913, and in response thereto would say:

That on May 3, 1919, upon this subject I wrote to Mr. John E. White, President of the School Board, at Tucson, Arizona, to the effect that a husband and wife who are otherwise qualified as electors to vote in a school district, and who have paid taxes upon community property within that district, are each qualified to vote at such election, no matter whose name the property may be held in. I think, that the property being community property, both the husband and wife have an interest therein, and the assessment of the tax creates a lien on the interest of each in said property, which can only be satisfied by the payment of the entire tax. In a conveyance, both must sign the deed to convey title in fee.

For these reasons I can arrive at no other conclusion, but that both the husband and wife are tax-payers on such property, which entitles them to vote at such election.

March 12, 1920.

Hon. Thomas E. Campbell,
Governor of Arizona.

Replying to your letter of February 26th in regard to the necessary legal steps to be taken in order to avail yourself of the use of emergency funds provided under Section 5, Chapter 152, Laws of 1919, would advise that no method of procedure is outlined by the statute. However, Section 5, provides that the emergency funds shall be and become available "to the extent of use which may be necessary to meet contingencies and emergencies." The emergencies are defined by the same Section as follows: "In the event of invasion, riots, or insurrections, epidemics of disease, acts of God, which result in unforeseen damage or disaster to the works, buildings or property of the State, or which menace the health, lives or property of any considerable number of the persons in any community of the State, and confined to contingencies as to which no other funds are appropriated, or in event appropriations have been made for similar purposes or emergency then confined to amounts which may be necessary in addition to such appropriations to meet the real emergency in each case." Should any of these emergencies arise, it is then provided that "the Governor of the State may authorize the incurring of liabilities and expenses to be paid from emergency fund, or when the fund is not sufficient for the purpose, the Governor may authorize the contracting of debts against the State to the extent of the actual necessity therefor, in excess of the amount of the emergency fund, but not to exceed the sum of three hundred and fifty thousand dollars of any such excess.

An "act of God" is a term which has received a variety of definitions, of which perhaps the following is the most comprehensive:

"It is said to be that which is occasioned exclusively by the violence of nature; by that kind of force of the elements which human ability

could not have foreseen or prevented, such as lightning, tornado, sudden squall of wind, and the like. Again, it is said to be, at least, an act of nature which implies entire exclusion of all human agency. It is called a disaster with which the agency of man has nothing to do. It is defined to be a natural necessity, which could not have been occasioned by the interference of man, but proceeds from physical causes alone"

Under the statute in question, responsibility for the use of the emergency fund rests entirely upon the discretion of the Governor, as it is only by his authorization that it may become available. The Governor must first decide if the emergency is one as defined by the statute. He must then authorize the use of the funds in amounts confined to such sums as may be necessary, in addition to other appropriations, if any such exist, to meet the real emergency in each case. Or in case the emergency fund is not sufficient, the Governor may authorize contracting of debts against the State to the extent of the actual necessity, in excess of the emergency fund, within the limitation fixed by the statute.

Because of the general law which requires that all official acts of the Governor, his approval of the laws excepted, shall be authenticated by the Great Seal of the State, we would suggest that the findings of the Governor as to the emergency, be issued in the form of a proclamation, which would perforce set forth in the emergency, the lack or insufficiency of appropriations, the amount necessary, in addition to any appropriations already made, to meet the real emergency, or in case the emergency fund is not sufficient his grant of authority to contract debts against the State to the extent of the actual necessity, in excess of the emergency fund. This proclamation would necessarily issue in each case of emergency, and the amount fixed by the Governor, would limit the amount of liabilities and expenses which could be incurred. The proclamation should be filed with the State Treasurer and the State Auditor, and will serve as an authorization to those officers to perform the duties imposed upon them by this statute.

March 16, 1920.

Hon. C. O. Case,
Secretary, State Board of Education.

Replying to the inquiry of the State Board of Education, in regard to the power possessed by that Board to establish and maintain "Junior High Schools" as a part of the common schools of the State, would say, that we understand by this that the Board desires to be advised as to its power to add a ninth grade to the common schools, leaving the tenth, eleventh and twelfth grades to constitute the "high schools."

The Constitution, Article XI, Section 1, makes it mandatory upon the legislature to establish and maintain a general and uniform public school system,

which system, shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university. We must assume that the legislature intended to carry out this constitutional mandate.

Kindergarten schools are more or less defined by Chapter 120, Laws of 1919, as being schools for children between the ages of four and one-half years and six years. Common schools and high schools are not defined.

The duties of boards of trustees in school districts include that of enforcing in schools the course of study and the use of text books prescribed and adopted by the state board of education. The course of study in high schools is subject to approval by the state board.

Paragraph 2697 of the Civil Code, 1913, prescribes the powers and duties of the State Board of Education, which include the following:

"To adopt rules and regulations, not inconsistent with the laws of the State, for its own government and for the government of the public schools and school libraries. To prescribe and enforce a course of study in the common schools of the State, determine the number of credits necessary for graduation from the high schools," etc.

It has been customary to arrange the schools so that the common schools consisted of eight grades, and the high schools of four advanced grades, this being on the theory that children entering the common schools at the age of six, could complete the eight grades at age of fourteen years, when attendance under the former law was no longer compulsory. However, this distinction was not established by statute, and was probably kept in force by a rule or regulation adopted by the State Board of Education. Whether or not the more modern theory, that schools should be graded, and children grouped, according to the adolescent period, is correct, it is not within our province to decide. The only question before us, is as to the power of the State Board to so regulate the grading of the public schools as to include the ninth grade in the common schools, and this being not inconsistent with the laws of the State, it would seem that it is well within the power delegated to that Board by the legislaure.

March 24, 1920.

Col. Walter S. Ingalls,
The Adjutant General of Arizona.

Your letter March 13th. Subject: Section 8, Chapter 94, Laws of 1919, with reference to which funds should be used to pay the salary and expenses of a National Guard officer detailed as drill and rifle practice inspector for High and Normal Cadet organizations.

Section 10, Chapter 59, Laws of 1917, as amended provides, "The Adjutant General shall provide by order for the compensation of the officer detailed."

Section 20, Chapter 94, Laws of 1919, appropriates for the expenses of the Cadet Commission.

The duties of the Secretary of the Cadet Commission are entirely separate and distinct from the duties of the Adjutant General. Whatever control the Secretary of the Commission may exercise over the fund of the Cadet Commission, he clearly has no control over the military funds. The Adjutant General controls the military funds, but as Adjutant General has nothing whatever to do with the funds of the Cadet Commission. It follows as a natural sequence that when the Adjutant General as such is authorized to provide by order for the compensation of the officer detailed, the compensation so ordered paid must come from funds under the control of the Adjutant General of the State. It is, therefore, our opinion that the compensation which would include the salary and expenses of the National Guard officer detailed for this duty should be paid from the National Guard funds.

March 24, 1920.

Hon. Jesse L. Boyce,
State Auditor.

Hon. Andrew Baumert, Jr., Secretary of the Board of Directors of State Institutions, has today presented to this office a claim upon the State of Arizona by said Board of Directors of State Institutions, for the sum of three thousand seven hundred and ninety-eight (\$3,798.00) Dollars, which he intends to present to you for the issuance of a warrant.

The claim appears to be for the purpose of purchasing additional lands for the State Fair under an agreement dated June 7, 1918, between P. A. Tharaldson and the Phoenix Safety Investment Company, parties of the first part, and the Commission of State Institutions, party of the second part; and it is necessary for the State authorities to have the amount of this claim in cash in order to make a proper tender under the terms of said agreement, so that the purchase of said lands named in agreement can be enforced.

In our opinion such claim is proper and legal under the provisions of Section 17, Chapter 174, Session Laws of Arizona of 1919. Any warrant should issue, therefore, if the claim is in such form as required by statute.

March 24, 1920.

Hon. Jesse L. Boyce,
State Auditor.

Following the conference of the 18th inst between yourself, Governor Campbell and myself, upon the subject of the Emergency Fund provided for in con-

tingencies and emergencies under Chapter 152, Session Laws of 1919, (Senate Bill 90), I desire to state that I concur in the suggestions made in your letter of the 9th inst.

Section 5 of said Act provides for the incurring of liabilities and expenses for cases of emergencies mentioned therein and authorizes the Governor to contract debts in excess of the amount of the emergency fund provided for "but not to exceed the sum of \$350,000, of any such excess."

Said Section 5 of said Act makes no reference to a certificate of indebtedness as provided for in Paragraph 79, Revised Statutes of Arizona, 1913, except that it does state, "warrants shall be issued by the State Auditor to the amount of such liabilities and expenses upon claims verified by the particular officer creating them when such verified claims are provided as to the purposes and amounts by the Governor. Such warrants shall be paid by the State Treasurer when emergency fund is sufficient for that purpose. Or in the cases of emergencies mentioned in this section, the Governor may authorize the contracting of debts against the State to the extent of the actual necessity therefor, in excess of the amount of the emergency fund herein provided for, but not to exceed the sum of \$350,000, in any such case."

I am of the opinion that where the liabilities are in excess of the emergency fund on hand, that the indebtedness thereby created may be met under Paragraph 103, Revised Statutes of Arizona, 1913, if it meets with the judgment and approval of the Governor, under the authority with which is clothed and empowered by Section 5 of said Chapter 152, Laws of 1919.

March 26, 1920.

Mr. John R. S. Reeves,
Superintendent of Irrigation,
Care Indian Agency, Sacaton, Arizona.

We enclose herewith an agreement of the State to come under the Florence-Casa Grande Irrigation Project, duly executed as provided by law. This is the matter that you took up with us some time ago, with reference to water rights for the prison lands lying in Pinal County.

With reference to the question of whether the State can encumber these lands in view of Section 3, Article X of the Arizona Constitution and Section 28 of the Enabling Act, approved June 20, 1910, let us say that the provision that "no mortgage or other encumbrance of the *said lands*, or any part thereof, shall be valid in favor of any person or for any parties or under any circumstance whatever * * * " must be read in connection with the entire Article X of the Constitution and in connection with Section 28 of the Enabling Act, *supra*.

Section 28 of the Enabling Act and Article X of the State Constitution have

reference to lands that are granted to the state which are known as "institutional lands" and have no bearing whatever on lands that have been purchased by the State from private individuals, for the use of the State Prison. So much for that point.

Now if under any stretch of the imagination it can be said that the Enabling Act and Article X, *Supra*, have any application whatever to the lands described in the application and agreement transmitted herewith, then we say that the provision in our Constitution that the State shall not mortgage or place any other encumbrances on its lands (meaning, as we contend, institutional lands, granted to the State by the federal government) then the well known rule of law applies that a provision of this kind has no bearing when the grantee makes the mortgage or encumbrance in favor of the original grantor. This refers to instances where the lien on account of reclamation projects runs in favor of the United States.

February 7, 1920

Hon. C. O. Case,
Superintendent of Public Instruction.

I have your inquiry reading as follows: "Does the law permit the readoption of any texts now in use, the contract for which has expired or which shall expire, at an advanced price provided the publishers will give assurance the advanced price is as low as they are now making on any new business and that the advanced price will be reduced to meet any reduction in price in any other State? Would such an adoption be considered a change of text?"

Paragraph 2828 of the Civil Code, 1913, states that the contract with the publishers shall contain a stipulation that "they will furnish to the State of Arizona such school books provided for in said contract, at prices which shall not exceed the lowest prices then granted to any buyer; being further conditioned that should there be any decrease in the prices given to any person or any one purchasing such books from such publisher, then the State of Arizona shall also have the benefit of such decrease in price." The lowest price required by the statute would mean the lowest current price at the time the contract was entered into, and has no reference to the price that may have been prevalent at the time of the original contract which has expired.

The decision to continue a text book which has been heretofore used by the schools, would not be considered a change of text if the book to be covered by the new contract is a special edition of any book previously adopted, or is essentially the same book, as the Board of Education has the power to substitute such text books under the authority of the provisions of the paragraph above referred to.

April 8, 1920.

Hon. Thomas E. Campbell,
Governor of Arizona.

I have before me your recent letter, accompanied by copy of letter from the Board of Regents of the University of Arizona, wherein that body asks you for a special appropriation from the Governor's emergency fund for certain purposes therein mentioned amounting to some \$125,000.00.

I have examined the letter and papers upon which said request is based and it is impossible to see how such expenditure, or any portion thereof, is at all authorized by any provision of Chapter 152, Session Laws of 1919, known as Senate Bill No. 90. It is a simple request for said sum for the sole and manifest reason, as the Board of Regents views it, that the regular appropriation, made by the legislature for University purposes was, and is, insufficient to meet present conditions, and those conditions are not such an emergency as is embraced within Section 5 of said Chapter 152. Many other institutions of this State may be laboring under similar difficulties yet the legal emergency, as set forth in said Act, is not shown to exist by the request submitted to you from the Board of Regents. It would seem that you are powerless.

I am most anxious to aid such a valuable State institution as the State University but it is not within my power to provide for or create an appropriation which the legislature has not made.

April 15, 1920.

Mr. J. C. Roak,
Forest Supervisor,
Kanab, Utah.

The State Game Warden of Arizona has turned over to this Department your letter of March 27, 1920, in relation to the Grand Canyon National Game preserve and the jurisdiction of the Forest Service.

I note in the letter that you state that you gave permission to a Mr. to take several sets of deer horns off the National Game preserve, presumably within the State of Arizona. It is against the law of the State of Arizona for persons to have any portion of a deer in their possession out of season or to expose or offer same for sale, except where such possession is authorized by our statutes. We have charged Mr. with a violation of a statute and the case is now pending in the Arizona courts.

It is our belief that the Department of Agriculture would not knowingly wish to violate any of the statutes of the State of Arizona, and we are enclosing a copy of our game laws for your information. The State cannot, of course, recognize the right of either the Department of Agriculture or any of its officials to ignore its unquestioned power to regulate the pursuit and taking of game within the

actual boundaries of the State; as this power has been defined time and again by the Supreme Court of the United State as pertaining to the individual states. In view of this fact, we do not believe that the Forest Service will enter into any controversy with the State of Arizona once the matter has been called to your attention.

The United States law does not conflict with the game law of Arizona, but the Arizona game law is enforced and effective within the geographical boundary limits of this State. The same may be said of the prohibition laws of the State of Arizona, which are not suspended or set aside by any provision of the U. S. federal prohibition law. Mr. Webb, Federal Prohibition Director in Arizona fully recognizes that and assures this department that any permit which he may issue will not be permitted to conflict with the state prohibition law of Arizona. In this way perfect harmony will prevail between this department and Mr. Webb and this department and the forest supervisors of the State. I am assuring State Game Warden Prochaska that you will work in entire harmony with him officially for the observances of the game laws of both the federal and the state government, just as Mr. Webb is working with this department for the observance of the prohibition law of both the federal and the state government.

April 19, 1920.

Hon. C. O. Case,
Superintendent of Public Instruction.

Your inquiry in regard to the statute governing the retirement and pensioning of an Arizona teacher, and its effect upon a teacher who serves as a county superintendent.

Chapter 69, Laws of 1919, governs the retirement of teachers, and provides under what circumstances a pension may be granted, after thirty years or more in the aggregate as teacher in the public schools, twenty-five years of which shall be in the public schools of Arizona.

The office of county school superintendent is a public office with duties closely connected with teaching, and conferring upon the incumbent a power of supervision over public schools. Among the numerous duties pertaining to the office are those of presiding over teachers' institutes, and visiting and examining each school in the county. The incumbent of such an office would therefore be in the service of the public schools.

A teacher is not a public officer, in a technical sense. Teaching is a profession regulated by statutory provisions. To hold, therefore, that one who is practicing the profession of teaching in the public schools, would be deprived of certain privileges conferred upon that profession by statute, because of the acceptance of a public office in the service of the public schools, would be to penalize those engaged in the practice of such a profession who sought to hold a public office the

duties of which are to all intents and purposes identical with the practice of such profession, and would be against public policy and of no avail. We are, therefore, of the opinion that the time of service rendered by a county school superintendent could be legally counted as teaching service in the retirement and pensioning of an Arizona teacher.

April 19, 1920.

Hon. C. O. Case,
Superintendent of Public Instruction.

Your inquiry as to whether or not the State Board of Education can legally furnish free text books for Junior High Schools of the State.

In reply we would refer to our opinion under date of March 16th in which it was held that the State Board of Education was fully empowered to add a ninth grade to the common schools of the State. Should the State Board take such action, it would bring the ninth grade within the provisions of Chapter XIX, Title 11, of the Civil Code of 1913, which relates to the furnishing of free text books for the common schools, and it would be the duty of the Board to comply with the provisions of the statute therein set forth.

April 20, 1920.

Dr. R. B. von KleinSmid,
President, University of Arizona.

Your inquiry in regard to the interest on the proceeds of timber sales and rentals of University lands which have been credited annually to the Maintenance Fund of the Institution, and as to the effect of Senate Bill Ninety, or Chapter 152, Laws of 1919, upon these funds.

The maintenance fund of the University is established by Section 22 of Chapter 174, Laws of 1919, to be expended out of taxes collected for the years 1919 and 1920, an appropriation out of funds raised by taxation alone, as is made more definite by reference to Section 2, of Chapter 174, in which the State Auditor is authorized to draw warrants as directed in Section 22, to be paid out of the fund designated in that section, and further emphasized by the proviso that in case of a deficit in the fund, caused by delinquent taxes, the warrants are to be paid out of the General Fund, which fund is to be reimbursed upon the payment of the delinquent taxes.

The Constitution, Section 10, Article XI, provides, that the revenue for the maintenance of the state educational institutions shall be derived from the investment of the proceeds of the sale of the lands granted to those institutions, and

from the rental of such lands. It further provides that in addition to such income the legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance.

The effect of those provisions is that the funds derived from the Federal grants for educational institutions would be available for the maintenance of the institutions, and would be in addition to the legislative appropriation of funds raised by taxation.

April 21, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commissioner.

You have recently submitted to me a letter, to the Commission, dated April 13th, written by Messrs. Modisette & Adams, of Jennings, La., attorneys for the Chicago Jennings Oil Company.

In this letter the position is taken that the laws of Arizona provide for dissolution of a corporation by a majority vote of the stockholders, without the additional formality of a judicial decree. Reference is made to Section 13 of Chapter 49 of the Acts of the regular session of the first (1912) legislature of the State of Arizona. This section has since been embodied in the Civil Code, Revised Statutes of 1913, as paragraph 2105, and reads as follows:

"A corporation shall not be dissolved, *except as herein provided*, prior to the period fixed upon in the articles of incorporation, *except* by a majority vote of the issued and outstanding shares of stock unless a different rule is adopted in the articles."

Counsel have misunderstood the purport of this section. There are two ways that a corporation may place itself in position to be dissolved. One by a vote of the stockholders, looking to voluntary dissolution; the other is by doing something, or committing some act, which is a sufficient reason for involuntary dissolution. I take the first exception in the above section to refer to the acts which would be sufficient reason for involuntary dissolution, and I take the second exception to refer to a vote of the stockholders of the corporation looking to voluntary dissolution. The exceptions are not very carefully inserted in the text. The first one is absent from the 901 Code as well as paragraph 2107 to which it was doubtless intended to refer. Regardless of the provisions of paragraph 2105, paragraph 2107 provides the procedure for judicial dissolution, either voluntary or involuntary and provides all the reasons therefor and the grounds thereof, among which we find:

"Or whenever at any general or special meeting of the stockholders of any such corporation the holders of the majority of its outstanding stock represented or voting at any such meeting shall have directed

the disposal of all corporate assets, or that the corporation be dissolved or that it cease to use or exercise its corporate franchises."

Counsel, in their letter, say :

"We also call your attention to the general Corporate Laws of the country, which we believe, without exception, recognize the authority of stockholders to voluntarily dissolve a corporate entity."

I do not know what is meant by "general corporate laws." If it be statutory enactments to which they refer, my answer is that in each state these enactments would speak for themselves, either permitting or not permitting voluntary dissolution without judicial decree. There are a very few states that have laws which expressly permit voluntary dissolution without judicial decree. Our statutes do not expressly or by logical intendment so provide. I presume that by "general corporate laws of the county" counsel mean the general rules as found in the decisions of the higher courts. If so counsel is certainly in error in thinking that they support their contention that a corporation can dissolve itself without judicial decree. Fletcher's Cyclopaedia of the Law of Private Corporations, 1919, paragraph 4949, says :

"This view cannot be sustained on principle, and the decisions in which it has been recognized are not supported by authority. When a corporation is created, whether by a special charter or under a general law, and whether its object is purely private, as in the case of a manufacturing company, or quasi public, as in the case of a railroad company, there is, in a sense, a contract between the corporation and the State, and this contract cannot be terminated, any more than any other contract, by one of the parties without the consent of the other, given either at the time the corporation is formed or afterwards. According to the weight of authority, therefore, a corporation, while it may dispose of its property and cease to do business under some circumstances, cannot be legally dissolved by a resolution of the stockholders or members, and a surrender of its charter, unless the surrender is authorized by some statute, or is afterwards accepted or ratified by the State; and especially is this true in regard to public service corporations such as railroads.

"The error in assuming or holding in some of the cases that a corporation may be voluntarily dissolved without authority from the State has resulted to a great extent, no doubt, from failure to distinguish the dissolution of a corporation from the mere disposal of its property and cessation of business. In the law, they are very different, and to say that a corporation may dispose of all its property and cease to do business does not at all imply that it may dissolve, and thereby cease to exist. As stated in another chapter, a purely private corporation, owing no special duties to the public, may dispose of all its property, divide the proceeds among its stockholders, and cease to do the business for which it was organized, at least

where the exigencies of the business require it, if its creditors are not prejudiced thereby. This, however, does not dissolve the corporation in contemplation of the law, for it is well settled that it may exist without property and without doing business. It could still sue and be sued, if the occasion for suit should arise, and the State could institute proceedings to forfeit its charter. And, in the absence of such proceedings, there is no principle of law which would prevent it from again acquiring property and resuming business. Obviously, this is altogether inconsistent with a 'dissolution,' in the legal sense. As has been said by Mr. Morawetz, 'a corporation may be dissolved de facto before its legal right to exist has expired, and before it is dissolved de jure.'

In accordance with this view, it has been held that all the stockholders in a corporation may, by mutual agreement, cancel their shares, wind up the business of the corporation, and distribute its property, and thus cease longer to exist as a corporation in fact; but if the surrender of their charter is not accepted or authorized by the State, the corporation still exists in contemplation of the law, and may sue and be sued in the courts."

April 24, 1920.

Arizona Corporation Commission,
Phoenix, Arizona.

Commissioner D. F. Johnson has informed me that the Commission is again confronted with the question as to whether or not it has power to revoke the license of an insurance agent because such agent has made false statements concerning some company other than that for which he works.

The 1913 Code and amendments thereof provide certain instances in which the Commission may revoke the license of an insurance agent, viz: for rebating and allied acts, paragraphs 3408 and 3499, and for splitting commission with or paying a bonus to some person not a lawfully authorized and appointed agent, paragraph 3409 as amended in 1915.

It is further provided in paragraph 3461 that an insurance agent's license may be revoked for violation of any of the provisions of Article III (Title 24) which relates to life, health and accident insurance. There is no provision in said article, however, touching the matter of an agent making false statements regarding another company. Paragraph 3417 in Article I (Title 24) is sometimes construed to give the Commission power to revoke the license of an insurance agent for such conduct, but such construction does violence both to the letter and to the spirit of the text, as a careful reading will disclose. It is intended for the protection of insurance companies against fraud in connection

with applying for and obtaining insurance and does not pretend to grant authority to the Commission to revoke an agent's license for making false statements against another company, or for any other reason. Even if said paragraph included such act in the offense defined (which it does not) the Commission is still without the necessary power to revoke the agent's license and such power cannot be drawn from paragraph 3461 for that refers only to the acts prohibited in Article 111.

It is quite evident, and we so hold, that the Commission is without power to revoke the license of an insurance agent for making false statements about a competing company, if by such false statement such agent is enabled to sell certain insurance and the other elements of fraud are present criminal prosecution can be had therefor.

April 26, 1920.

Mr. M. C. Hutchinson,
Tombstone, Arizona.

Your wire of the 24th instant is at hand, and I can only say that the rule of this Department is that we do not accept responsibility for the shipment into the State of any liquors with alcoholic contents. All shipments or beverages of the State are wholly at the risk of those engaging in the traffic.

I was obliged to take this stand in the beginning and I do not feel that I can do otherwise and perform my duty at law enforcement. You will understand that this is through no want of courtesy on my part.

April 27, 1920.

Mr. Earl L. Matteson,
San Pedro Water Users' Association,
St. David, Arizona.

Answering your letter of the 26th instant, will state that we have no right as officials to go upon private property for investigation and experimental drilling purposes, without the consent of the owner of the land.

I suggest that such arrangements be made with the land owner before drilling, as will protect the interest of the State in whatever beneficial results that may be obtained from the drilling. If you will make such arrangements, I will cheerfully draw the proper agreement therefore.

April 27, 1920.

Mr. Joe V. Prochaski,
State Game Warden.

I have before me yours of the 23rd in reference to the slaughtering of deer out of season and the stealing of the venison after it had been taken by the Officer from the possession of those named in your letter.

The subsequent stealing of the venison does not destroy the evidence. Had the witness or witnesses, who saw the deer meat, been killed, then the evidence would have been destroyed. The making way with the meat whether done by Asimont and Ford or by any other parties has not destroyed the State's evidence if the witnesses can be produced, to testify positively that it was deer meat which they took into possession from the defendants.

The making way with the venison might be held to be corroborative evidence. If the evidence as above suggested can be produced even though the venison has vanished, I think the County Attorney can safely proceed with the case.

April 28, 1920.

Mr. D. C. Mote,
State Entomologist.

Answering your letter of the 16th instant, will say I think it is the duty of all persons interested in cotton raising and the distribution of cotton seed for planting should observe the Quarantine regulations of the Commission of Agriculture and Horticulture.

The matter of Quarantine as applied to any object is to be regulated by proper officers, and is not left to the voluntary will of any private individual of the State.

Since I have been Attorney General, I was obliged to sacrifice, at El Paso, Texas, two perfectly healthy horses being shipped by me from Louisiana, a point which was quarantined against by Arizona officials. I was obliged to respect that order, in fact, it was my duty as Attorney General, to aid in this enforcement.

April 28, 1920

Mr. M. Eberstein,
Chief of Police,
City of Omaha

Answering your letter of the 23rd instant, Paragraph 736 PENAL CODE of Arizona 1913, provides that any person convicted of Petit Larceny or felony,

who commits any crime after such conviction shall be punished for the second offense by imprisonment in the State Prison.

You will find our PENAL CODE on file in your State Library, of your State. The above paragraph and the succeeding paragraphs are the only provisions that I know of that might be referred to as "habitual criminal statute."

April 28, 1920.

Mr. W. A. Moeur,
State Land Commissioner.

Answering the question raised by Judge of Cochise County, who purchased $\frac{3}{4}$ of a section of State Land, and transferred it to his wife. I will say that the Judge has the right to purchase another $\frac{1}{4}$ section of similar land, upon which he will have exhausted his right to one section of land as allowed him by law. I am sure upon this point.

I also inclined to the opinion that his wife has the right to make an original purchase in her name of a full section of similar land. If such application is made by her, kindly bring the same to our attention, that we may give a definite and final opinion therein.

April 30, 1920.

Mr. George E. Goodrich,
Arizona State Board of Health.

Answering your letter of the 24th instant, in reference to quarantine against infectious diseases will say that I do not think (sub-division 4) of paragraph 1128, of the Penal Code of Arizona, prevents the enforcement of the penalty provided by your regulations for the violation of a quarantine.

I do hope that the physicians of the State, whose profession has been so generously protected by our laws, will work in completed harmony for the enforcement of your quarantine, against infectious diseases.

April 30, 1920.

Hon. Clayton Bennett, Sec'y,
Board of Directors of State Institutions.

In reply to your letter of April 20th, in regard to the salaries of the Secretary and Purchasing Agent of the Board of Directors, would say that under date of

August 11th, 1919, this department rendered an opinion to the State Tax Commission, which in part reads as follows:

"A reading of Chapter 64, Session Laws, 1919, creating the State Board of Directors, will show that the total sum of the salaries created by such act will exceed the said \$25,000.00 contingent fund, so it must have been the intent of the Legislature that a levy should be made to pay these salaries in addition to said contingent fund."

From the above it is apparent that the \$9600.00 for the salaries is not appropriated out of the moneys set aside for the Board of Directors, but is payable in the same manner as the salaries of other state officers.

If the auditor has paid these salaries out of the contingent fund of the Directors he should arrange with the state treasurer to see that that fund is properly reimbursed.

May 1, 1920.

Mr. A. E. Stelzer, Sec'y.
Arizona Corporation Commission.

In re Service of Summons.

I have your letter of May 1st, in regard to the attempted service upon the Corporation Commission of Summons to the Maryland Casualty Company, a foreign insurance company doing business in this State, in an action now pending in the Superior Court of this county.

The statute under which this service is being made is 3386 of the Civil Code, Revised Statutes of Arizona, 1913, which provides that each and every member of the Corporation Commission shall be named an attorney in fact to receive service for any foreign insurance company. You will note that this is a somewhat different provision than paragraphs 443 and 2118. Those paragraphs provide for what may be termed constructive service. Paragraph 3386, however, provides for actual service upon a member of the Corporation Commission, which is the same as service upon an officer or agent of the company. Where constructive service is had under the provision of paragraph 443 or 2118 the two copies of the summons and attached complaint are merely deposited with the commission. That is not actual service, but it takes the place of actual service. When, however, the sheriff comes with a summons under paragraph 3386 he is not affecting constructive service but actual service, for the provisions of this paragraph are upon an entirely different theory than the others referred to. Actual service, of course, only requires one copy of the summons and complaint. When the commissioner upon whom this service is made receives the same the law does not say what he shall do, but since he acts in the place of the statutory agent and is denominated an attorney in fact he will naturally be supposed to do what an actual agent or

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attorney upon notice, either by writing a letter explaining the situation, or by sending it the summons and complaint.

You will note that the service is to be made upon some one commissioner and it is not sufficient for the sheriff to hand you, as Secretary of the Commission, a copy of the summons and complaint. I do not think you would have the power or authority to accept service, even though the sheriff designated to you the particular commissioner he desired to serve. You will, therefore, return to the sheriff the summons handed you in this instant case. You are not concerned with it.

This department has previously, in opinions given in the matter of accepting service of summons, indicated to the commission, without expressly so stating, that the service under paragraph 3386 was the same service as the under paragraphs 443 and 2118. So far as such opinions may have led to that conclusion, however, we now hold they were in error. The service provided for in the paragraphs above mentioned is further differentiated from that in paragraph 3386 in that the latter provides for service on a foreign corporation without reference to whether or not such corporation has officers or agents within the State upon whom service could be had. Paragraphs 443 and 2118 relate only to service upon corporations incorporated in this State and then only when the sheriff is unable to find any officer or agent of said corporation on whom to make service.

I have written thus at length because the provisions of our code respecting the service of summons on corporations is very confusing, I have herein attempted to clearly define, for the commission, and this department, our present understanding and opinion arrived at after careful study and comparison of the provisions of our code and the law applicable thereto.

May 1, 1920.

Henry, Pepper, Bodine & Stokes,
Philadelphia, Pa.

Under date of April 23rd, you addressed a communication to Mr. Joe C. Haldiman, who was then Chief Clerk of the Insurance department of the Arizona Corporation Commission. As attorney for the Commission your letter has been given to me for reply.

I could not bind this department by an opinion to you as to whether or not an inter-leader suit, provided for by the Act of Congress, February 22, 1917, would be construed by us to be such suit or proceeding, the removal of which to a Federal Court is prevented by the laws of this State. I regret that I must leave it for you to answer this question for yourself until such time as it is officially before us.

The supply of printed copies of our insurance code has been exhausted or I would be glad to send you one which embodies in it those provisions to which you refer as the "removal act"

In the first place the general incorporation laws of the State of Arizona, more particularly paragraph 2243 of the Civil Code, Revised Statutes of Arizona, 1913, provides as follows:

"If any foreign corporation shall, without the consent of the adverse party, remove to a Federal Court any action pending against it in any court of this State, or institute an action against a citizen of this State in a Federal Court of this State, such action on the part of the corporation shall forfeit its right to transact or carry on any business in this State; and such corporation, and any officer, agent, or employee thereof, who shall thereafter transact or engage in any business or employment for such corporation in this State, shall be severally guilty of a misdemeanor, and upon indictment or information and conviction therefor, in the Superior Court of any county in which such corporation, or any officer, agent or employee thereof, transacts or engages in any business, be fined for each offense not less than five hundred dollars nor more than one thousand dollars."

This would apparently include foreign insurance companies but other paragraphs found in the same chapter, might make such conclusion somewhat uncertain. However, we find practically the same provision under the law relating to insurance companies which is title 24 of the 1913 code. Paragraph 3382 reads as follows:

"3382. And if any foreign corporation, person, association, co-partnership or organization shall without the consent of the other party to any suit or proceeding brought by or against them in any court or before the corporation commission in this State remove, or endeavor to remove, said suit or proceeding to any federal court, or shall institute any suit or proceeding against any citizen or the corporation commission, of this State in any federal court, it shall be the duty of the corporation commission to forthwith revoke all authority to such person, co-partnership, association, organization or corporation, and its agents, employees or representatives to do, transact, or solicit any business in this State, and to publish such revocation in some newspaper of general circulation in this State. Provided, however, that the revocation of such authority shall not in any manner affect the duties and liabilities of any such company, corporation, association or concern under any policy or contract of insurance issued by it prior to and in force at the time of the revocation of such authority."

We also have the provisions regarding the suit and process in paragraphs 3386 and 3387, which read as follows:

"3386. Any foreign insurance company having the usual place of business in this State, shall appoint each and every member of the corporation commission its attorney, upon whom all lawful process in any action or proceeding against such company may be served,

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and file such appointment with the corporation commission and shall file with the corporation commission a copy of its charter or articles of incorporation, and its by-laws. Service of summons in any civil action upon such attorney shall be deemed personal service upon the company within the county where the action is brought. For the filing of such appointment with the corporation commission, said company shall pay to the corporation commission to be paid into the general fund of the State, a fee of five dollars, and shall not pay any further fees to said corporation commission for any service as such attorney.

"3387. Any insurance company may be sued upon a policy of insurance in any county within the State where the cause of action arose or in the county where the state capitol is located, or by serving a summons and a copy of the complaint upon the company, or upon its duly appointed agent."

All this is supplemented by paragraph 3391 which reads as follows:

"Any insurance company, society, association or partnership, who shall hereafter apply to enter this State to transact business as a new company, or to have its certificate of authority renewed, shall, before permission is given to transact business, or before the renewal of its certificate of authority be issued, file with the corporation commission a certificate signed by its president or other chief officer, to the effect that the terms and obligations of the provisions of this title are accepted by them as a part of the conditions of its right and authority to transact business in this State."

I do not know of any decisions having to do with these provisions of our code and the legal effect thereof, but they are very similar to the provisions which have been approved by the United States Supreme Court and many of the decisions of the highest court of many of the states.

If you will turn to Joyce on Insurance, Volume 5, you will find in paragraph 3397 and 3398 a very good brief analysis of this subject and an exposition of the law thereon with numerous citations. I have not the time to look the matter up, but my recollection is that there are also other more recent cases, along the same line; one in the Supreme Court of the United States.

May 7, 1920.

The Red Wing Company, Inc.,
Chicago, Ill.

Answering your letter of the 28th instant, regarding the shipment into Arizona of grape juice and apple cider with an alcoholic content of not to exceed

one-half of one per cent, I will state that I do not regard the shipment of such liquors into Arizona as permissible.

May 14, 1920.

George E. Goodrich, M. D.,
State Superintendent of Public Health.

Answering your inquiry of May 3rd with reference to the filing of a birth certificate for a child born to American parents in Cananea, Sonora, Mexico, on January 25, 1920, I see no objection to your doing so upon the proper proof being produced, and particularly if the parents are citizens of the State of Arizona. If such certificate really recites the facts, it certainly would be a protection for and benefit to the child in future years.

May 15h, 1920.

George E. Goodrich, M. D.,
State Superintendent of Public Health.

If your letter of April 30th has not been answered heretofore, I now make reply, and suggest that all birth certificates in cases of illegitimate children be issued in the name of the mother, even though she may mention the alleged father's name, as her name is the legitimate name of her offspring in such case. If any legal steps are necessary for her to take for redress, the statute points out the method.

I am sure that the above is the only proper method of dealing with the question.

May 18, 1920.

Hon. Jesse L. Boyce, State Auditor:

With reference to the State Road Tax Fund claim, approved by the State Engineer, for One Hundred and Fifty Dollars (\$150.00), presented for professional services in the state of STATE vs. J. B. CHADWICK—inquiry as to the services rendered discloses the fact that Mr. Chadwick while attached to the office of the State Engineer, employed aliens to perform road work on the highways of the State, in violation of the laws and Constitution. At the time of Mr. Chadwick's arrest, a request was made to this Department by Mr. Baumert of the Board of Directors and State Engineer Maddock, to render legal aid to Mr. Chad-

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wick, as a State employee, against the charge under which he was held in Cochise County.

The duty of the Attorney General is to protect the interests of the State against violations of its laws, and we therefore refuse to represent Mr. Chadwick or any other employee of the State who was guilty of a violation of any statute. It is evident that the State Engineer attempted to employ an attorney to defend his subordinate in a trial of the charge against him. State employees, when charged with a violation of any provision of the Penal Code, are in exactly the same position as any other citizen of the State; that is—if they desire to employ counsel to defend them against the charge, employment shall be at their own expense. There is no statute in Arizona providing otherwise.

We cannot, therefore, approve the claim, nor advise you to permit a warrant to issue.

May 20, 1920.

Hon. Thomas Maddock,
State Engineer.

Your favor of the 19th inst., addressed to the Attorney General, with reference to the cow that fell into the irrigation ditch, has been handed to me for reply.

As a general proposition, the State is not liable for cattle injured while running at large on the State highways. In my opinion, the State of Arizona is not liable for any negligent acts of its officers, agents, servants and employees. The Supreme Court has lately decided in the case of STATE OF ARIZONA vs. CLAUDE SHARP, by W. L. Sharp, his guardian Ad Litem, appellee, that the State, under the statute with reference to claims against the State for negligence, is not liable to respond in damages, for the very obvious reason that the State has not, by statute, expressly assumed liability for such claims.

May 20, 1920.

Col. Walter S. Ingalls,
Adjutant General.

I am returning herewith a letter from Mr. E. P. Meade of Cooley, Arizona, in regard to the qualifications of an elector in the coming general election, and further in regard to the liability of a person formerly in military service to pay school and road taxes.

One of the qualifications of an elector is that he shall have become a resident of the State one year next preceding the election. Mr. Meade, therefore, having

come into the State in December, 1919, would not be qualified to vote in the coming state general election.

As to the liability for poll or school tax, Chapter 12, Session Laws 1918, provides that all persons in military service shall be exempt from any poll or school tax during the period of military service. The term "period of military service" includes the date of entering active service, and terminates six months after the date of discharge from active service. Therefore your correspondent would be exempt from these taxes for a period of six months, dating from December 26, 1919.

May 21st, 1920.

Mr. Bruce Dodson,

Manager Casualty Reciprocal Exchange,
Kansas City, Mo.

Answering your letter of the 12th instant, inquiring of the Commissioner of Labor "no such office in Arizona," requirements of notice given by the employee to his employer, in case of injury, will state that the notice given to the employer shall state:

1. The name and address of workman.
2. The date and place of the accident.
3. State in simple words the cause thereof.
4. The nature and degree of the inquiry sustained.
5. That compensation is claimed under the workman's compulsory compensation law.

The written notice is served personally by the workman or by someone in his behalf upon the employer, or by mail, postpaid to the employer, addressed to his office, place of business or residence. A defect or inaccuracy does not bar the workman's right to claim and receive compensation.

The above provisions will be found in paragraph 3172, Revised Statutes of Arizona 1913, on file in the State Law Library in Jefferson City, Mo.

May 24th, 1920.

Dr. W. A. Baker,
President Arizona State Dental Board.

Have just received your letter of today making inquiry about the right of Dr. D. T. Frye of Nogales, Arizona, under the law to take examination for dentistry.

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I have examined his post graduate certificate, issued by the Haskell Post Graduate Dental College of Chicago, in 1892, and I am sure that you have full authority to accord him the examination provided for in paragraphs 4759 and 4760, Revised Statutes for 1913, and that he has a lawful right to such an examination. I presume that the genuineness of his certificate is not questionable.

May 27, 1920.

Hon. Kirke T. Moore,
County Attorney,
Tucson, Arizona.

I am in receipt of a letter from you, handed to me by Mr. John E. White, President of the Board of School Trustees of School District No. 1 of Pima County, Arizona.

I am sure that even though the high school district and the common school district may have common boundaries or are co-terminous, as you express it, yet they each have a distinct entity, and that the indebtedness against the common school district is not an indebtedness against the high school district, and vice versa. Though the real estate and property in each district or entity may be identical and the same, yet the indebtedness of each is separate and distinct, neither district being responsible or liable for the indebtedness of the other; and the indebtedness of the two districts are not added together in ascertaining the "total indebtedness" of either district.

I think that the election for bond purposes may be held on the same day, and that the election board or boards may act in both elections, but for safety and as a precaution in aid of the sale of the bonds, I would suggest that separate voting ballots be prepared, and separate boxes for voting for each district, and perhaps polling lists and tally lists, though the latter is probably not necessary. It seems, however, that as a matter of precaution, the ballots should be separately prepared and voted in separate boxes upon each proposition.

As to the question of the sale of the school land of the common school district, this question should be on a separate ballot, which could then be cast in the common school ballot box, without holding a separate election.

May 28, 1920.

Mrs. Lydia A. Munson,
Grand Canyon, Arizona.

Your letter of the 24th inst., addressed to the Chamber of Commerce, has been referred to me for answer. If any person advances money to a second party, the second party is responsible for its reimbursement, unless there is an understanding or contract to the contrary. If your employer advances money for your transpor-

tation, you owe him the money advanced, unless you can prove a contract to the effect that you are not to reimburse him, and that your employer is to stand the expense of the transportation. We have no such law upon the subject, but the general rule would apply.

The employer does not owe you at the time he advances you transportation money. Therefore, when it is advanced to you, you must prove that he agreed to stand that expense or it will be difficult to prevent his deducting the amount from your wages. I am stating it plainly to you for your own protection, as the Arizona Legislature has passed no law upon the subject.

I am always willing to help the laboring people in their trouble, and it is my duty to tell you exactly how the law is at the present time. I have had a number of similar inquiries, and have answered all just as I have answered you in this letter.

May 28, 1920.

Hon. H. H. Baker,
Deputy County Attorney,
Yuma, Arizona.

Answering your inquiry of the 24th inst., I feel sure that ordinary farm products may be sold throughout the county and outside of the municipalities without a license, under paragraph 3586, Revised Statutes, 1913, cited by you. That will apply, in my opinion, to the peddling of the meat of swine.

However, when it comes to the sale of beef throughout the county, we are confronted with paragraph 3741, Revised Statutes, 1913, which requires a license to slaughter cattle, sheep and goats, which would be \$30.00 per annum if the place of slaughter is not within four miles of a municipality.

Par. 3738, Revised Statutes, permits the slaughter and sale, without a license, by any person, of three head of cattle and twenty sheep or goats in any one calendar year "Other than range stock," which presumes that the stock is farm raised, but the meat thereof must not be sold in any municipality or mining camp wherein another person is slaughtering under a license.

I think the provisions of par. 3536, exempting farm products from the license exempts the peddler, whether he raised the meat products or buys it from another and then peddles it.

Of course, all vegetables raised on the farm are exempt from the license where the peddling is done outside municipalities as your question suggests.

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May 28th, 1920.

Mr. Dennis, O'Keefe,
Bisbee, Arizona.

I find on my desk a letter from you, written April 29th, inquiring as to the law authorizing you to vote outside of your Precinct and County, and I would answer as follows:

Paragraph 2906 of the election laws in the Revised Statutes of Arizona, 1913, provides "the form of a certificate of registration," which is different from the registration blank A given you at the time of registration. With this certificate of registration above mentioned, you can vote for State Officers in any outside County of the State and for County Officers also in your own County, although outside of your Precinct on election day.

After your name is upon the Great Register for this year, you can apply at any time for the certificate of registration, and take it with you wherever you may go in the State

June 2, 1920.

Mr. S. W. Stewart,
County Attorney,
Kingman, Ariz.

In response to your inquiry upon the question of husband and wife as owners of community property and tax payers thereon, being entitled to vote on bond issues, I wired you today my opinion that each had such a right.

I herewith enclose an opinion written March 19th, 1919, from this Department to the President of the School Board of Tucson, Arizona, and I think as expressed therein that we must look to the plain provisions of the State Constitution, in order to interpret any statutes passed thereunder.

Payment of a tax on community real estate, is a payment by for and on behalf of both husband and wife and releases the tax lien upon the property interest of each therein. The legal title of the community property is in both husband and wife, regardless of the name of the grantee mentioned in the deed as shown by the record. You observe that I have gone to the State Constitution itself in considering this matter, and have placed my construction upon the provisions of that instrument as controlling the statute on bond issues.

June 2, 1920.

Mr. Wm. Ruesch, Jr.,
Hurricane, Utah.

A letter recently written by you, upon the subject of killing unbranded live

stock in Arizona, to-wit, wild horses, has been forwarded by Sheriff Mahoney of Kingman, Arizona, to this office for my attention, and it is my duty to inform you that all unbranded live stock in Arizona, under the Arizona law, is legally the property of the state where no claimant of the animal appears.

In your letter you use the following defiant language to the Sheriff of Mohave County :

“So long as the above decree (referring to a letter from the Governor) is not revoked, I would likely proceed with this business (slaughtering unbranded range stock) should you call on me every day. Personally I have not been able to devote much time to the cause, but I am converted to it if it is pursued with the proper amount of caution.”

Our statute points out the way whereby unbranded live stock is taken possession of by the State of Arizona for the benefit of the state and there is no authority of law for any person to slaughter such stock for the purpose of converting either the flesh or the hides of such animals to the use of the one doing the slaughtering.

Therefore, in view of the unlawful and defiant declaration set forth in your letter to an Arizona sheriff this letter is to warn you against the further slaughtering of any such animal in the State of Arizona. The subject has been brought to my attention by proper complaint and since complaint has been made it is my duty to warn you of the danger which you incur in conducting such “business” in the defiant manner toward our law as manifested in your letter to the sheriff.

I am the chief law officer of the state and as such charged with an official duty to enforce the criminal laws of Arizona. You are a non-resident of Arizona and in slaughtering an animal in violation of the Arizona law you would no doubt be found promptly on the other side of our state line should the sheriff endeavor to seek you out. I am, therefore, writing to inform you of the danger you incur and to request that you slaughter no Arizona range stock in the future.

June 3, 1920.

Hon. Thomas E. Campbell,
Governor of Arizona.

Following our discussion at the last meeting of the State Land Department, regarding a majority of the members' calling a meeting of the Department, shortly thereafter on May 25th, I received your inquiry thereon, and in reply would state that the Public Land Code, creating the State Land Department, designates the Governor as an ex-officio chairman thereof, and of course the presiding officer at all meetings at which he is present. The Act provides for semi-monthly meetings to be held, without designating the time thereof, and is silent upon the question of special or called meetings of the Department.

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The custom has been for the majority of the members, or at least two thereof, to request a special meeting, and it has been the practice of the Governor to issue the notice of such meeting. Neither the place nor the time of special meetings having been fixed, nor the method of calling such meetings having been provided for, I think the usual rule that a majority of the members can call the meeting is legal and regular, though courtesy would suggest that the members desiring such meeting should request the Governor, if he is in the city, to call the same.

However, notwithstanding the general rule above mentioned, the matter is made plain by Subdivision 2 of Paragraph 5352 of the Revised Statutes of Arizona, 1913, which reads as follows:

"All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

In discussing with other members of the Board this subject, and the matter of the meeting held on May 22nd during your absence, you may be assured that no thought of discourtesy toward the Governor was entertained by either of the members, present at the said meeting, and I am sure that such was not in the minds of any of them at any time.

June 3rd, 1920.

Mr. Lemuel P. Mathews,
Justice of the Peace,
Casa, Grande, Arizona

Answering your letter of yesterday, would state that it does not appear that the agreement of Physicians fixing a charge for vaccination, is covered by the provisions of the Trust Law of Arizona, set forth in TITLE XIV of the Penal Code of Arizona, 1913.

I do not think it a violation of the law for a child to be vaccinated without charge by any careful person. Caution should be used in getting through your druggist carefully prepared and safe vaccine points, and keeping them free from contamination until the moment of use.

The arm at the spot of vaccination should be carefully washed and the suitable antiseptic or alcoholic preparation applied to the arm, by cotton saturated therein. After vaccination suitable antiseptic gauze should bandage the arm and be kept in place.

I am not a physician or nurse but have certainly seen much of modern vaccination.

June 8, 1920.

Arizona Corporation Commission,
Phoenix, Arizona.

The vast increase in the number of mutual insurance companies throughout the nation, and the growing number of foreign mutuals seeking to enter this state, makes necessary a careful survey of the provisions and limitations placed by law and the constitution on the entry of such insurance companies. I therefore for your guidance submit this memorandum:

Insurance companies, unlike corporations generally, must in this state confine their activities to those certain kinds of insurance permitted under the license granted by the Corporation Commission. This limitation is stated as follows in Paragraph 3405 of the Civil Code, Revised Statutes of Arizona, 1913:

"3405. * * * no foreign or alien (insurance company admitted to transact business in this state under the provisions of this act, shall transact any other kind of business than that which it has been authorized to transact."

And as follows in Paragraph 3381:

"3381. No company nor any individual as principal shall transact business of insurance within this state without the certificate or license of the corporation commission, * * * certifying that such company or individual has complied with all the requirements of law to be observed by such company or individual and that such company or individual is authorized to transact business of insurance specified therein in this state and no corporation or individual shall transact in this state any insurance business not specified in the certificate or license of authority granted by the corporation commission. * * *"

Paragraph 3424 seems to restrict the business in this state of foreign insurance companies to such insurance as is expressly permitted by its articles, in the following language:

"Any insurance company having the required amount of capital, or assets, when permitted by its articles of incorporation or charter may be authorized and licensed by the corporation commission to make insurance in this state under one or more of the classes prescribed (in Par. 3423) * * *"

Foreign corporations, including all classes of foreign insurance companies, are placed under further limitation in Section 5 of Article XIV of the Constitution, which reads as follows:

"Section 5. No corporation organized outside of the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law for similar corporations organized under the laws of this State; and no foreign corporation shall be permitted to transact business within this State

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unless said foreign corporation is by the laws of the country, State, or territory under which it is formed permitted to transact a like business in such country, State, or Territory."

Assuming that a foreign mutual company desires to apply for a license to transact in this state some kind or kinds of insurance authorized by its articles or charter, the laws under which it is organized, and the laws of the State of Arizona, the next question is how it shall apply and qualify under our laws. In section 8 of Article XIV of the Constitution we find this language:

"Section 8 - No domestic or foreign corporation shall do any business in this State without having filed its articles of incorporation or a certified copy thereof with the Corporation Commission, and without having one or more known places of business and an authorized agent, or agents, in the State upon whom process may be served. Suit may be maintained against a foreign corporation in the county where an agent of such corporation may be found, or in the county where the cause of action may arise."

In addition to the above constitutional provision, the admission of foreign corporations to do business in this State is regulated generally by Chapter 7, Title IX of the Civil Code, Revised Statutes of Arizona, 1913. Paragraph 2226 of said Chapter provides what shall be done by such foreign corporation to qualify for a license, but it is expressly therein provided:

"This section, however, shall not apply to insurance corporations

* * *

The admission of foreign insurance companies is governed exclusively by Title XXIV of the Civil Code, Revised Statutes of Arizona, 1913, which relates to insurance. Paragraph 3398 reads as follows:

"3398. Every insurance company before engaging in the business of insurance in this state must file in the office of the corporation commission a legally authenticated duplicate copy of its charter, articles of incorporation or association, or record of its organization and by-laws as follows:

"First. If a domestic company, a copy of its articles of incorporation or association, together with any amendments or alterations made therein.

"Second. If a foreign or alien company, a copy of its articles of incorporation or charter and by-laws including all amendments or alterations made therein, with a certificate duly certified by the officer having custody of such articles of incorporation or charter under his seal of office, that such company is duly authorized under the laws of such state or country to do business therein, and a certificate showing the amount of capital stock and assets as required by this act."

Paragraph 3399 provides the amount of capital or assets necessary to do an

insurance business in the state, and reads in part as follows:

"3399. Every insurance company before transacting any business of insurance in this state, must own, have and possess in its own exclusive name and right, paid up, unimpaired capital, if a stock company; or must own, have and possess, in its own exclusive name and right, net assets unimpaired, of the kind required by this act, if it be a mutual company, fully equal to the minimum amount of capital paid up in cash or assets required by the provisions of this act to entitle any insurance company to be authorized to transact like business. No part of said capital or assets shall consist of the capital stock, investments, property or assets or any other insurance company or organization, nor shall such capital or assets include any sum or thing of value not acquired, produced or earned and owned exclusively by such company in its own right; provided: * * *"

Title guarantee or insurance companies are required, under Paragraph 3424 (3) to deposit with the State Treasurer approved securities to the value of \$50,000.00. If such company be a foreign company, either stock or mutual, it comes within the provisions of Paragraph 3402, which reads in part as follows:

"3402. An insurance company incorporated under the laws of any other state depositing with its home state authorities securities approved by the laws of such state, shall be allowed credit for such deposits covered by any such certificate of deposits furnished the corporation commission as hereinafter required * * *"

We take the words "insurance companies" to refer to mutuals as well as to stock companies, because it is so defined in Paragraph 3504, in the following words:

"3504. The terms 'company,' 'corporation,' or 'insurance company,' or 'insurance corporation,' in this act, unless otherwise requires, includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance * * *"

In paragraph 3424, above referred to, which also fixes the requisite amount of the capital stock for each class of insurance, an express exception is made in Sub Section (7), which reads as follows:

"(7). The provisions of this section shall not apply to life or fire insurance companies operating on the mutual, or assessment, or fraternal plan."

Said Sub Section (7) relates to assessment life mutuals and assessment fire mutuals, and should be read in connection with certain other sections of the Code. Fire mutuals are provided for in Paragraph 3426 and Paragraph 3427, which also fix the assets required.

A special limitation is placed on foreign fire mutuals by Paragraph 3428, which reads as follows:

"3428. No alien or foreign mutual fire insurance company shall

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be licensed to make insurance in this state until it shall have accumulated from its underwriting business and earnings surplus assets of not less than one hundred thousand dollars, and shall have a re-insurance reserve computed on pro rata basis, which surplus assets, if an alien, shall be maintained on deposit in a depository or depositories for insurance company funds in some state or states of the United States. Such company shall not carry insurance on a single risk for an amount in excess of ten per centum of its surplus assets, as shown by the last report to the corporation commission, without protecting such excess by re-insurance in a solvent company."

Assessment life mutuals are controlled by Paragraph 3436, which reads in part as follows:

"3456. No life insurance company or association, other than fraternal beneficiary associations, which issues contracts the performance of which is contingent upon the payment of assessments or calls upon its members, shall do business within this state, except such companies or associations as now are licensed to do business within this state, and which shall value their assessment policies, or certificates of membership as yearly renewable term contracts according to the standard valuation of life insurance policies prescribed by the laws of this state * * *"

It is apparent from the foregoing and other Code provisions that the law contemplates, and we so hold, that all foreign mutuals, except those assessment life mutuals barred by Paragraph 3456, may be admitted to do insurance business in this State. A sample of such "other provisions" is Paragraph 3384, whereby provision is made for revoking the license of foreign mutuals. Most of the general provisions of the code for the regulating of insurance apply to mutual as well as stock companies.

On January 31, 1918, this department, in a communication to your honorable commission, advised "that no statutory provisions are made for the licensing of foreign mutual health and accident associations, doing business on the assessment plan (except fraternal societies)".

If the language quoted is to be taken literally, it must be admitted that there is no affirmative and express statute so providing. In so far, however, as such opinion intended to express the thought that foreign mutuals cannot be admitted, I must respectfully dissent therefrom. I do not know to what extent you have followed the logical intendment of said opinion, but for your future guidance, it is now overruled.

Foreign mutuals seeking admission to this State must comply with all the other laws relating to the admission of foreign insurance companies, among which may be mentioned Paragraphs 3386, which requires the appointment of all the members of the Corporation Commission as attorneys in fact for the acceptance of service of process; and Paragraph 3391, which requires the company seeking to enter the State to file with the commission a statement that it accepts the terms and obliga-

tions of our laws.

Any foreign insurance company seeking to enter this state must, in addition to complying with the laws above mentioned, file with the Corporation Commission such financial statements, etc., as are required by the rules of the Commission, and satisfy the Commission as to soundness and financial condition. Foreign fraternal insurance societies are not included in this memorandum.

June 7, 1920.

Hon. Jesse Boyce,
State Auditor.

Replying to your several inquiries in regard to transferring from the permanent school fund to the State common school fund the sum of \$136,673.06, and in addition the receipt of the sum of \$58,775.83, which amount is the income derived from school lands within the National Forest Reserve for the fiscal year ending June 30, 1919, in which you ask if this money may be expended out of the State common school funds, in addition to the various amounts appropriated by the Legislature of 1919:

Section 8, Article 11, of the Constitution says:

"The income derived from the investment of the permanent state school fund, and from the rental derived from school lands, with such other funds as may be provided by law, shall be apportioned annually to the various counties of the State in proportion to the number of pupils of school age residing therein."

In a recent case decided by the Supreme Court of the United States, on a question as to the use of the proceeds from the public lands granted to the State of New Mexico, which grant in its terms is identical with our own, the Court said:

"There is in the Enabling Act a specific enumeration of the purposes for which the lands were granted, and the enumeration is necessarily exclusive of any other purpose. And to make assurance doubly sure, it was provided that the natural products and money products of such lands should be subject to the same trusts as the lands producing the same. To preclude any license of construction or liberties of inference, it was declared that the disposition of any of the lands or of the money or anything of value directly or indirectly derived therefrom, for any object other than the enumerated ones, should 'be deemed a breach of trust.'"

The Court has assumed the attitude that the United States, being the grantor of the lands, could impose conditions upon their use, and have the right to exact the performance of the conditions.

Taking this into consideration, we are of the opinion that those funds cannot be diverted by any legislative enactment. Therefore the sum of money transferred from the permanent school fund to the State common school fund, and the further amount, which represents income derived from the school lands within the National Forest Reserve for the fiscal year ending June 30, 1919, are both available for distribution, with the proviso, however, that the distribution must be made upon the basis of the number of pupils of school age residing in the various counties, according to the census at the time the money became available, that is, the sum of \$136,673.06, as of the date of December 30, 1919, and the sum of \$58,775.83, as of the date of June 30, 1919.

June 11, 1920.

Hon. Jesse L. Boyce,
State Auditor.

Responding to your recent inquiry in relation to certain school funds for the maintenance of the Normal Schools of the State of Arizona, I would state that under the provisions of Article XI of the State Constitution entitled Education, Section 10 thereof provides that:

“The revenue for the maintenance of the respective state educational institutions shall be derived from the investment of the proceeds of the sale and from the rental of such lands as have been set aside by the Enabling Act * * * for the use and benefit of the respective state educational institutions. In addition to such income the legislature shall make such appropriations, etc.”

Section 98 of the Public Land Code provides that the fund for the Normal Schools shall be for the benefit of support equally of the Normal School of Tempe and the Northern Arizona Normal School of Flagstaff “and the interest only of such fund (derived from the sale of normal school lands) together with the moneys derived from rentals of state land and property shall be used.”

Under the above provisions of the State Constitution and the Public Land Code of 1915 said revenues derived from the investments of the proceeds of the sale of normal school lands and from the rental of such lands are set aside for the maintenance of the Normal School at Tempe and the Normal School at Flagstaff and the constitution provides that in addition thereto the legislature “shall make such appropriations to be met by taxation as shall insure the proper maintenance” of the same.

June 12, 1920.

Hon. Jesse L. Boyce,
State Auditor.

Responding to your recent inquiry in relation to certain school funds for the

maintenance of the Normal Schools of the State of Arizona, I would state that Section 10 of Article XI of the State Constitution, entitled "Education," provides that:

"The revenue for the maintenance of the respective state educational institutions shall be derived from the investment of the proceeds of the sale and from the rental of such lands as have been set aside by the Enabling Act * * * for the use and benefit of the respective state educational institutions. In addition to such income the legislature shall make such appropriations, etc."

Section 98 of the Public Land Code provides that the fund for the Normal Schools shall be for the benefit of support equally of the Normal School of Tempe and the Northern Arizona Normal School of Flagstaff "and the interest only of such land (derived from the sale of Normal School lands) together with the moneys derived from rentals of state land and property shall be used."

Therefore, under the above provisions of the State Constitution and the Public Land Code of 1915, the moneys received from rental of Normal School lands, as well as the interest upon moneys received from the sale of such lands, are set aside for the maintenance of the Flagstaff Normal School and the Tempe Normal School, to be equally divided between them, and "in addition to such income, the legislature shall make such appropriation, to be met by taxation, as shall insure the proper maintenance of state educational institutions, and shall make such special appropriations as shall provide for their development and improvement."

June 15th, 1920.

Hon. W. S. Ingalls,
Adjutant General of Arizona.

I return herewith copy of "An Act to Increase the Efficiency of the Commissioned and Enlisted Personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," which was approved by the President on May 18th, 1920. I note the provision that an increase of Seven Hundred Dollars (\$720.00) a year is granted to Captains in the United States Army, in addition to all pay and allowances now allowed by law.

Paragraph 3944 of the Civil Code of Arizona, 1913, provides that the Adjutant General shall receive the same pay and allowances as a Captain in the United States Army.

The action of the Legislature in making the salary of the Adjutant General depend upon an Act of Congress, is not such a delegation of legislative power, as would render the statute invalid. The Legislature may not delegate power to enact a law, or to declare what the law shall be, or to exercise an unrestricted dis-

cretion in applying a law; but it may enact a law complete in itself, which delegates a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. Congress having determined the amount of pay and allowances to be received by a Captain of the United States Army, your salary has then been fixed by the Legislature at an amount equal to the sum so determined, and upon the presentation of a proper claim or claims to the State Auditor covering the increased pay and allowances, from January 1st, 1920, it will be legal for that officer to issue his warrant to cover.

June 17, 1920.

Hon. W. F. Timmons,
County Attorney,
Yuma, Arizona.

In answer to your letter of yesterday, calling attention to the demand of your Superior Court Reporter, presented to the Board of Supervisors, I would state that I have carefully read your letter and duly considered the facts therein stated. I appreciate the importance of the case, and the necessity for our giving prompt attention to the request of the State Department for full particulars as to the Calles murder case therein mentioned. The gravity of this case was brought to the attention of this office and the Governor of the State through diplomatic channels in Washington and Mexico, which demanded our prompt and courteous attention.

Paragraph 2505, Revised Statutes of Arizona, 1913, designating the twelve officers of the county, does not mention the court reporter as one of them. While he must take an official oath when appointed, he is subject to change at any time at the will of the Superior Judge. Subdivision 2 of Paragraph 2391 Revised Statutes of Arizona, designating county charges, states "the compensation of the county attorney, his deputy and stenographer and all expenses necessarily incurred by him in criminal cases arising within the county." As another county charge, Subdivision 11 of said paragraph reads:

"The contingent expenses necessarily incurred for the use and benefit of the county."

In such a contingency out of which the claim of the court reporter arises, it would be a calamity if the county officers would be unable to promptly respond for want of authority to meet the financial question of expense required thereby. Every precaution, of course, should be observed by the county attorney and the board of supervisors, in approving claims under the provisions of said Paragraph 2391, Revised Statutes of Arizona.

The law constitutes the county attorney the legal adviser of the Board of Supervisors, under Paragraph 2530, and in the performance of that duty he shall oppose all claims against the county which he deems illegal, and of course he

would not oppose a claim which he deems to be legal, and he should so advise. Said Paragraph constitutes him the legal adviser of all county officers (see Sub-division 6).

This letter in response to your inquiry is written under the provisions of Paragraph 107, R. S. A., 1913, which requires me to exercise supervisory powers over county attorneys, and to give to them my opinion in writing without fee when requested.

I feel that the expense of the services performed in this case is a legal charge, but I do not mean by that that an overcharge should be allowed, and your office, as well as the board of supervisors, should watchfully guard against it. It would seem that the matter is fully covered under the charges enumerated in Paragraph 2391, R. S. A., and most certainly you and no other official (or person) are the legal adviser of all officers of Yuma County.

June 18th, 1920.

Mr. S. D. Stewart,
County Attorney,
Kingman, Arizona.

In answer to your letter of the 15th, I would say that I do hope that Yucca School District trouble may be adjusted without a re-call election and an end put to the feud which exists.

Under the provisions of our State Constitution, however, I think the re-call applies to all elective officers within the State, and therefore applies to District School Trustees.

Section 6, of Article 8, of the State Constitution and also paragraph 3355, Revised Statutes of Arizona, 1913, makes the general election laws apply to all re-call elections.

June 18, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission.

Answering your inquiry of June 14th, I would advise that I am of the opinion that the Commission may cancel or revoke a certificate of incorporation which it has been induced to issue through fraud on the Commission or fraud on the law pertaining to the organization of such corporation. A certificate given under such circumstances is a nullity, and I see no reason why it may not be recalled.

June 18, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission.

I have your recent inquiry as to whether or not the secretary of a foreign corporation, over his hand and the seal of the company, may certify to the company's articles so as to satisfy the provisions of Paragraph 2226 of the Civil Code, Revised Statutes of Arizona, 1913, which among other requirements says that such foreign corporation applying for a license in this state, shall 'file a certified and duly authenticated copy of its articles of incorporation or charter.'

As to what is meant by such authenticated copy, the Statute is silent. It is usually held, however, that an authenticated copy is a copy with such certification as will render it legally admissible as evidence in the courts. This is the definition laid down in *Mayfield vs. Sears, et al.*, 133 Ind. 86, 32 N. E. 816, which cites the following authorities in support thereof:

American & English Encyclopaedia of Law, Burrill's Law Dictionary, Bouvier's Law Dictionary, Rap. & L. Law Dictionary, and the Century Dictionary.

The copy of articles is not sufficiently authenticated to entitle it to be admitted as evidence in court which only has the certificate of the secretary of the company. A copy of the articles of a domestic company so certified could not be used in evidence, much less could a copy of the articles of a foreign corporation. After the articles have been filed they become part of the records of the office receiving them.

The Constitution of the United States, in Section 1 of Article IV, provides:

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Under this provision the Congress has, in Paragraph 906, Revised Statutes of the United States, the same being Paragraph 1520 of the United States Compiled Statutes, 1918, enacted:

"All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the State, or Territory, or country, that the said attestation is in due form, and by the proper officers.

If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken."

The federal law above quoted, governs the introduction as evidence in the state courts of copies of records from foreign states, and would clearly include articles of incorporation filed in the offices of a foreign state. In such manner, and only in such manner, could such copy of such articles be used in evidence in this State. We therefore conclude that such is the kind of certification and authentication contemplated by Paragraph 2226 above referred to.

In the case of *Mayfield vs. Sears, et al*, above mentioned, there was a law in the State of Indiana against any person selling a patent right without first filing in the office of the county recorder a copy of the letters patent "duly authenticated." The court, after stating the definition, as above, of the phrase "duly authenticated," says:

"A copy of letters patent is therefore duly authenticated only when it bears such official attestation as will render it legally admissible in evidence."

In the case above, the vendor of the patent right had filed an affidavit to the effect that his letters patent were genuine; that they had not been revoked or annulled, and that he had full authority to sell the right thereto, but the court concluded that such showing was not such attestation as would justify the admission of a copy of letters in evidence. We must come to the same conclusion regarding a copy of articles of incorporation certified to by the secretary of the corporation.

We stated above that a copy so certified could not be used, even though it be of a domestic corporation. We base such opinion on the provisions of Paragraph 1739 of the Civil Code, Revised Statutes of Arizona, 1913, which reads as follows:

"Copies of the records of all public officers and courts of this state, certified to under the hand and seal (if there be one) of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible."

If we judge the copy offered for filing with the Commission by the terms of the federal law, it would need to be certified by some proper official over the great seal of the State, or be authenticated as in said Act provided. If we are content with the provisions of our Code relating to copies of records of offices of this

state, it would seem that if the copy is certified to as such by the official custodian of such record, over the seal of his office, it would be a sufficient authentication to justify the Commission in accepting the same as a compliance with the Statute relating to licensing of foreign corporations. Such is, I believe, as a matter of fact, the policy and practice of the Commission, rather than to require the more cumbersome method prescribed by the federal statute.

As to the relative merits of the two methods, or as to which one the Commission should follow, I express no opinion. I am simply giving you the law as I find it. It may be pertinent for me in this connection to suggest that there is further uncertainty in our law relating to the admission of foreign corporations. It is only contemplated that such foreign corporation shall be licensed in this state as are duly authorized in the State from which they come. A mere authenticated copy of its articles would not be conclusive evidence that it had complied with the laws of its own state, and been duly incorporated therein. It would seem that there should also be a certificate from the proper official to that effect, or a certified copy of its original certificate of incorporation.

Taking as a sample the particular company which prompted your inquiry, the files in your office do not disclose whether the company applying for a license as a foreign corporation ever completed its incorporation according to law in the State of New York and received a certificate to that effect, entitling it to do business. The nearest to supplying such evidence is the appointment of the statutory agent, in which is found this recital by way of inducement:

“A corporation organized and existing under the laws of the State of New York.”

I think something further should be required to evidence the actual corporate status of the applying foreign corporation.

June 22, 1920.

Hon. C. O. Case,
Superintendent of Public Instruction.

Your letter of June 19th, with inquiry as to applicants for teachers' certificates, who have not attained the age of eighteen years.

Under paragraph 2704, a second grade certificate can not be issued to candidates, less than eighteen years, nor may a first grade certificate be issued to candidates less than eighteen years. However, this qualification does not apply to candidates for primary certificates, nor to the issuing of special certificates, which entitles the holder to teach only the subject, for which the certificate is granted. Therefore, it would seem that a candidate who is less than eighteen years of age, would not be entitled to take an examination for a first grade, or second grade certificate, but may take the examination for a primary or a

special certificate, as provided in paragraph 2704, of the Civil Code.

Under paragraph 2701, the State Board of Examiners, has the power to adopt rules and regulations, governing the examination of teachers, but these rules and regulations must be in conformity with the statutory laws, as above set forth.

June 22nd, 1920.

Hon. C. O. Case,
Superintendent of Public Instruction.

Replying to your inquiry, as to whether or not High School Districts are entitled to State aid under the Smith-Hughes Act as supplemented by chapter 134, of Session Laws of 1919, as well as State aid, where they conduct separate courses in vocational training, as defined by paragraphs 2791 to 2797, that is where they maintain both the courses provided for in the Smith-Hughes Act, and also the courses provided for in the State Law, are they entitled to \$2,500.00 under Chapter 134, in addition to the \$2,500.00 provided for in the Civil Code.

We would refer you to our opinion of July 26th, 1919, in which it is declared that inasmuch as chapter 134, the laws of 1919, is not in conflict with paragraphs 2791 to 2797 of the Civil Code, it must be construed as being supplemental to those statutes.

Sections 2791 to 2797 remain unchanged, so far as they relate to High School, but the scope of the State aid has been extended to cover schools, which establish the courses provided for in the Smith-Hughes Act, and it is therefore, our opinion that where the high schools maintain separate courses, under the provisions of the State Law and the Smith-Hughes Act they are entitled to State Aid in both cases which could be, not to exceed \$5,000.00 a year, provided all of the terms of the statutes are complied with.

June 29, 1920.

..... & Co.:

Complaint has been made to this department that & Co. is not observing the minimum wage law of Arizona, and an instance has been cited, pointing to the violation of that law. This law was approved March 8, 1917, and took effect ninety days thereafter. Soon after its taking effect, this office, under the law, was called upon for an interpretation and opinion upon its terms and effect, and we held at that time that the purpose of the law was to fix a minimum weekly wage, as the law itself designates as follows:

"A lesser amount being hereby declared inadequate to supply the

necessary cost of living to any such female to maintain her health, and to provide her with the common necessities of life."

The minimum wage law is a new law that has been adopted in several states dealing wholly and entirely with the question of the minimum amount necessary to maintain a woman under the present living conditions. Under the general rule, six days constitute a week's work.

The eight-hour law, which has been in force in many states for years, deals entirely with another question, that is, with the health and strength of the female, and such laws have been adopted to protect and guard women wholly from that viewpoint. This matter also presents itself to us: Some few lines of business are open on Sunday, while most lines are not open upon that day, but whether open or not, and entirely independent of that fact, the minimum amount of wage fixed is just as necessary for maintenance and to meet living conditions. I am sure the court will sustain the opinion which I have heretofore rendered in my official report, in accordance with the views above expressed.

The conclusions above arrived at have been reached after I have carefully studied the laws of other states, and the many reasons and arguments advanced in support of such laws.

June 29, 1920.

Dr. George E. Goodrich,

Superintendent of Public Health.

I return herewith telegram from your Deputy Registrar at Morenci, which was enclosed in your letter of even date. I would call your attention to Par. 4412 of the Civil Code, which says that a coroner whose duty it is to make the certificate of death required for a burial permit, shall state in his certificate the cause of the death, and shall furnish such information as may be required by the State Registrar to properly classify the death. If this information has not been given to your deputy, he could not consistently issue a burial permit until the coroner would comply with the requirements of the Statute.

June 29th, 1920.

Hon. C. O. Case,

Superintendent of Public Instruction.

I have your inquiries whether or not it is a violation of the school laws to require all teachers who teach the primary grades to speak Spanish and to interpret sentences, stories and songs in Spanish for two and sometimes three months.

Paragraph 2769, Civil Code, 1913, reads as follows:

"All schools must be taught in the English language"

The term "school" as used in the statute evidently means a school which is a part of the public school system of the State, or a school which presents a course of study such as those prescribed for the public schools, and attendance upon which would satisfy the requirements of the compulsory law.

The purpose of the act is obvious; to abolish the use of foreign languages in schools as the medium of instruction. This is well within the province of the law-making body as the state has not only the power but also the duty to control the education of its citizens at least far enough to see that it is given in the language of the United States. The assertion of those who would require teachers to possess a knowledge of a foreign language, that it is necessary to teach a foreign language in order to teach English is not correctly based upon fact. If this assertion were true we would be forced to the conclusion that because children, when they first attend school cannot understand or speak English, they must be taught the language of their parents in order to learn English. Such a conclusion would lead to astonishing results, as in some of the mining camps of the State, it would be necessary for a teacher to possess a working knowledge of some twenty-six dialects and languages in order to meet the needs of the foreign born population. To the contrary, it is a matter of common knowledge that the easiest way to acquire knowledge of a foreign language is to associate only with those who speak and use it. Of course, the occasional use of a few words of a foreign language, by an instructor, in explaining the meaning of English words, would not, if used in good faith, violate the provisions of the statute, but extreme care would be necessary in order to avoid the abuse of this practice, and I am of the opinion that the knowledge of a foreign language which such a custom would make necessary may not be made an added qualification for teachers in the regular primary grades.

June 30, 1920.

Hon. F. A. Jones, Commissioner,
Arizona Corporation Commission

Replying to your letter of June 26th, I would advise you that any railroad desiring to appropriate or procure from the State rights-of-way over State lands would need have the portions of such State lands as would be included within such rights-of-way appraised and sold to the highest bidder, at which sale the railroad could bid it in.

There are no regulations at this time by law or by order of the State Land Department affecting the sale to the railroads of State lands for rights-of-way. This applies as well to school lands as to other lands belonging to the State. I can only suggest that for purposes of valuation, the estimated reproduction cost

could probably be arrived at by estimating the appraisal value of such portion of each section as is included in the right-of-way and the amount which the same would bring at public sale. The appraisal would be for general purposes, and under such a valuation would probably amount to less than if considered as a part of the entire right-of-way, or sold as a component part thereof.

Your communication to me was prompted by a letter addressed to you under date of June 24th, by H. B. Harding, Land and Tax Agent of the El Paso & Southwestern Railroad, asking questions pertinent to the matters herein discussed. I am returning herewith said letter for your files.

June 30, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission.

Replying to your letter of June 26th, in regard to the expenditures made by your Commission in administering the law governing the operation of motor vehicles as common carriers in Arizona, would say that the Statute was passed in the Session of 1919 as Chapter 130 of the Session Laws. In passing the bill, a great many additional powers and duties were imposed upon the Corporation Commission without any special appropriation to cover the expenses incurred. The general appropriation bill, which was of course based upon the estimates submitted by the Corporation Commission, did not contemplate any expenditures for the administration of this law, the passage of which was unforseen by the members of the Commission.

No doubt in adopting the statute governing the operation of motor vehicles as common carriers, the Legislature had in mind Paragraph 2282 of the Civil Code, in which it is provided that the Commission shall have power to employ during its pleasure such officers, experts, clerks and employees as it may deem necessary to perform the duties and exercise the powers conferred by law upon the Commission, which taken in connection with Paragraph 98 of the Civil Code, 1913, which Section provides that expenses incident to the offices of state officers as authorized by law shall be paid out of the general fund, would be, under the rulings of the Supreme Court of the State, a specific appropriation covering the amounts actually necessary to be expended by your Commission in administering the new law, this being in full compliance with Chapter 152 of the Session Laws of 1919, since it would be a special fund for a distinct purpose, and the specific amount authorized to be expended would be ascertainable when expenditures are made.

We are therefore of the opinion that claims made by you against the Auditor under Paragraph 2282, supra, will be sufficient legal authority for that officer to issue the warrants covering the amounts expended by the Commission in administering the law governing the operation of motor vehicles as common carriers.

July 2, 1920

Arizona Corporation Commission,
Phoenix, Arizona.

Answering your recent inquiry, I would inform you that Chapter 112 of the Acts of the last Legislature, fixes certain fees for filing an application for permit to issue and sell securities under our investment company law. By general order of the Commission, and also by express condition imposed on every permit, the same is made to expire the ensuing June 30th. If the company or its representatives desire to continue the sale of the stock, it is necessary for them to make a new application, as the old one has expired, and the fees on the filing of such new application are governed by the provisions of Chapter 112 above referred to.

I cannot see that the fact that some of the stock for which permit is asked could also have been sold during the previous year under a permit then granted, would affect in any way the fee to be paid on filing the application. The only way that this can be changed would be by an affirmative order of the Commission, making these permits expire June 30th unless renewed.

July 9, 1920.

Mr. H. J. Casseday,
Commercial Hotel,
Phoenix, Arizona.

Replying to your favor of the 8th inst, in which you inquire whether a rating bureau of the medical and dental professions would be illegal in the State of Arizona, permit me to submit the following:

I have carefully examined the data submitted to me, together with your letter, and if the plan you propose to put into operation is carried out along the lines as suggested by you, I cannot see where it would conflict with the law.

In this connection, I would call your attention to the fact that there are several mercantile agencies and credit bureaus that furnish just such information, or rather information of a kindred character to that which your association intends to furnish the members of the medical and dental professions. Such mercantile agencies and rating bureaus appear to me to be highly commendable, and it would seem that no honest man need be alarmed at the establishment of such an organization. That it would be of great benefit to the doctors and dentists goes without saying.

There is no law on the Statute Books of Arizona so far as I am able to ascertain, that would prevent the establishment of such a rating bureau as you mention.

July 9, 1920

Miss Lucille Schnebly, Acting Chief Clerk,
Insurance Department,
Arizona Corporation Commission.

I have received your communication of July 5th, enclosing letter from Dougherty & Dougherty, attorneys of Mesa, Arizona, and a letter written to the Mesa Dairy & Ice Company by Bruce Dodson, manager of the Casualty Reciprocal Exchange of Kansas City, Mo.

The opinion which you call for is as to whether or not the said Casualty Reciprocal Exchange is an insurance company subject to regulation under the laws of the State of Arizona. This department has heretofore advised the Corporation Commission that many of the so-called reciprocal or inter-insurance associations are ordinary mutuals sailing under false colors. We put the Casualty Reciprocal Exchange in this class. Its name does not indicate purely reciprocal insurance, which as defined by the law of Arizona, is the exchanging of private contracts of indemnity.

I have not studied the question, and cannot now answer as to the validity of the 15 per cent tax which by Paragraph 3420 of the Civil Code, Revised Statutes of Arizona, must be paid on all premiums paid by an insured in this State to a foreign insurance company not admitted here. The case referred to in your enclosures is Johnson, State Treasurer, vs. Copper Queen Consolidated Mining Company, No. 7697, in the Superior Court of Maricopa County. The State Treasurer sued the defendant company for the above-mentioned 15 per cent tax, but the court sustained a demurrer to the complaint. There was no written opinion or judgment, and I am unable to say on what point the decision was made.

July 13, 1920.

O. O. Fullerton, Esq.,
Kingman, Arizona.

I am in receipt of your letter of the 8th inst., inquiring if a woman living in Oregon can marry in Arizona within six months after decree of divorce has been obtained in Oregon, which is forbidden by the Oregon law.

In reply will state that from the current of authorities it appears that a marriage is null and void if contracted by a party in Arizona within one year after decree of divorce obtained in Arizona. Both the Wisconsin and New York Supreme Courts have held such marriages void which were contracted within the time forbidden by the Statute, and both courts held that they must recognize the law of another State which forbids marriage within a certain time after decree of divorce.

I should not at all advise a marriage within the time prohibited after date of

decree by the Arizona law. The property rights and the legitimacy of children are such grave matters that I certainly advise that the Statute of the State where the decree is granted be strictly observed.

The cases to which I refer are *Lanham vs. Lanham* (Wisconsin) 17 L. R. A. (N. S.) 804, and *Cunningham vs. Cunningham* (New York) 43 L. R. A. (N. S.) 355.

July 19th, 1920

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

In re right-of-way claim by the canal company, over certain State Lands, would say that under the Public Land Code of the United States, all persons settling on a tract of public land to part of which a right-of-way has attached for a canal, ditch or reservoir, take the land subject to such right-of-way. The grant of the right-of-way is not in the nature of an easement, but authorizes a mere permission in the nature of a license revocable at any time, and gives no right whatever to take from the public lands adjacent to the right-of-way any material, earth or stone for construction or other purpose.

It is therefore apparent that while the State has a patent to the land in question, its rights are subject to those of the grantee of the right-of-way for the canal, but there is absolutely no property connection between the right-of-way and the land granted to the State, and a canal built upon the right-of-way would not be an improvement on the adjacent lands, nor an appurtenant to the lands which the right-of-way crosses.

July 21, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission.

Answering an inquiry of July 19th, I would advise you that the organization of Cemetery Associations in this State is not sufficiently provided for by law to avoid confusion and uncertainty. It is doubtful if any such association in Arizona is not in some way a violation of the law. This seems, however, in many respects to be unavoidable, and is therefore excusable. Evidently that part of the Civil Code of 1913 embracing paragraphs 2206 to 2214 inclusive, was intended to provide for the organization and control of non-profit cemetery associations, although it is difficult to understand why the burial grounds to be provided were limited to deceased members. In order to give any sensible effect to this provision, it will be necessary for us to hold, and we do hold, that the burial grounds to be pro-

vided are not limited literally to deceased members. The same burial lot may in addition to a deceased member, provide graves for others of the family of the member.

Having thus interpreted the law in question, we shall proceed more directly to answer the inquiries referred to in your letter, as propounded by Mr. C. B. Wilson of Flagstaff, in his communication to you of July 16th.

Chapter 5, of Title 9, of the Civil Code of 1913, is entitled "RELIGIOUS, SOCIAL AND BENEVOLENT ASSOCIATIONS," and the first part of said Chapter relates to corporations formed for acquiring, holding and disposing of church or religious society property. This part of said chapter, however, was not in the 1901 Code, but was originally passed in 1903. Chapter 8 of Title 13 of the 1901 Code, is entitled "RELIGIOUS, SOCIAL AND BENEVOLENT ASSOCIATIONS," and is the same as said Chapter 5, except for that part of said Chapter 5 brought forward from 1903, above referred to.

Mr. Wilson asks whether or not a certain proposed non-profit cemetery association at Flagstaff would be a religious charitable corporation. We do not think so, but nevertheless it will fall somewhere within the religious, social and benevolent association law of the 1901 Code, and consequently must also be embraced in said law, as it is found in the 1913 Code. The provisions of paragraph 2274 of the Civil Code, Revised Statutes of Arizona, 1913, for filing of annual reports with the Corporation Commission, and the payment of an annual registration fee, except non-profit religious, social and benevolent and many other like associations. We hold this to include cemetery associations organized on a purely non-profit basis. Those cemetery associations, however, that are so organized as to provide a profit for the promoters, are not exempt.

I have done the best I could herein to interpret for you, as far as the same pertains to cemetery associations, a law which has given us a great deal of trouble in many other respects.

July 26, 1920.

Hon. A. E. Stelzer, Secretary,
Arizona Corporation Commission

Answering your inquiry of the 22nd inst., I would advise you that a foreign corporation making loans on real estate in the State of Arizona need not comply with our law relating to the licensing of foreign corporations, if such business is transacted outside the State. If the company shall maintain an office in Arizona, and does all or part of said business here, it would have to comply with the law and secure a license. Whether or not the company does business through the mails is immaterial. The point is whether the business is transacted in Arizona or is transacted elsewhere. If transacted in Arizona, a statutory agent must be appointed and the law otherwise complied with. If transacted elsewhere, the law does not apply.

This should be qualified by saying that it is practically impossible for a corporation such as you mention to do business through the mails. It must rely upon someone in this State to assist in the negotiations. This would bring it within the law. I am governed herein by the case of *Martin vs. Bankers' Trust Company*, 75 Arizona 55, 156 Pacific 87, wherein it was held that a foreign trust company, in accepting a trust and executing in New York as the trustee therein named, a trust deed on land in Arizona, was not violating any law of this State, and need not under such negotiations be licensed here as a foreign corporation.

July 29, 1920.

Hon. Joseph Hansen,
Assistant County Attorney,
Tombstone, Arizona.

I am in receipt of your letter in reference to the signing of nomination papers and the designation of the precinct of the signers to such paper or petition. The form we are using in Maricopa County, and which I have sent throughout the State, uses the words "a qualified elector of the hereinafter designated precinct of the County of....., State of Arizona."

While it is customary to circulate such petitions in each precinct, I am certainly of the opinion that such petition can be circulated throughout the county, but the elector signing must designate the precinct in which he claims his residence.

He should, I think, give the election precinct, but I would not hold it void if he gives the Justice Precinct as the precinct of his residence. I believe in ruling, if possible in favor of the validity of the petitions and the electors' signatures and designated precinct, and will pursue that course advising the Secretary of State.

July 30th, 1920.

Hon. Jesse L. Boyce,
State Auditor.

Your inquiry in regard to the maintenance and expenses of the office of the Superintendent of Banks.

The office of superintendent of banks is created by Paragraphs 284 to 305, Civil Code of Arizona, 1913, as amended by Chapter 117, Session Laws of 1919. It is an office, separate and distinct from that of the State Auditor, the only connection being in the person of the incumbent of the Auditor's office who by virtue of holding that office is the superintendent of banks. It is not necessary therefore to consider the office of the superintendent of banks in connection with the office of the state auditor.

The duties of the superintendent of banks are set out in great detail by the provisions of the banking laws and require of that officer that he keep proper books or records of all acts, matters and things done by him under the provisions of the law, in addition to making the required examinations and reports. The failure to perform certain of the duties imposed upon this officer is penalized by making him subject to fine and imprisonment as well as subject to removal from office.

In construing statutes, the intention of the Legislature should be ascertained and given effect. The intent of the legislature is plain, and the terms of the statutes mandatory. To so construe the statutes as to render the superintendent of banks powerless to perform the duties of his office would be unreasonable and lead to an absurdity. It is therefore apparent that the legislative intent was to provide the office of the superintendent of banks with sufficient funds, where not otherwise provided by law, to carry out and perform the duties of the office. Such expenditures are therefore authorized by law, and as provided in Paragraph 98, Civil Code, 1913, are payable out of the General Fund, your budget as submitted to the Tax Commission fixing the estimated amount appropriated for the purpose of the tax levy. The authority should be given on your warrants, showing the section of the banking law under which the expenditure is made.

August 2, 1920

Hon. H. G. Richardson,
County Attorney,
Florence, Arizona.

I am in receipt of your favor upon Paragraph 4839, Civil Code, 1913.

Paragraph 4839, Revised Statutes of Arizona, 1913, Civil Code, provides, among other things, as follows:

" * * * and upon the same property and upon the same valuation the Board of Supervisors of each county shall levy and collect for the same fiscal year, on an estimate for county purposes, additional taxes for such purposes which together with other sources of revenue, shall not, however, aggregate a total sum of money, exclusive of taxes for school purposes, the percentum greater in amount than the total sum levied and collected for other than school purposes from all sources during the next year prior to that in which the levy is made. * * *"

This section of the statute was amended by Paragraph 50, Session Laws of 1917, but did not change that portion of the Statute in question, except to exclude taxes for bonding purposes as well as school taxes, upon the aggregate to be reckoned each year in estimating taxes.

The Supreme Court of the State of Arizona, in the case of SOUTHERN PACIFIC COMPANY vs. YUMA COUNTY, 19 Arizona 211, in considering paragraph 4839, Civil Code, 1913, together with other paragraphs of the same Code, said:

"It is declared that in no event shall the expenditure for county purposes exceed those of the preceding year more than ten per centum, except it be for school purposes. The restriction on the Board of Supervisors could not very well be more specifically or plainly stated, and if it stood alone it would need no construction; it would be too plain that any excess over the ten per cent, exclusive of taxes for school purposes, would be without authority of the law, and, if paid under protest, might be recovered."

In the case of the ARIZONA EASTERN RAILROAD COMPANY vs. GRAHAM COUNTY, 19 Arizona 320, the Supreme Court of this State, in construing Paragraphs 4839-4842 of the Civil Code, 1913, seems to hold that a county, in making its estimate of taxes for the ensuing year, cannot exceed a total sum of money, exclusive of taxes for school and bond purposes, ten per centum greater in amount than the total sum *levied and collected* for other than school and bond purposes. The Supreme Court in that case does not seem to give any force whatever to the words "from all sources during the next year prior to that in which the levy is made," and in that case the Court held that the county could not add to its aggregate the sum of \$18,000, levied during the previous year, for a bridge that was constructed.

From these decisions I am inclined to think that under our law, as it now stands, and as laid down by our Supreme Court in these two decisions, that your Board of Supervisors, in making its estimate for the ensuing year, shall not aggregate a total sum of money, exclusive of taxes for school and bond purposes, ten per centum greater in amount than the total sum levied and collected for other than school and bond purposes during the preceding year. In other words, you are restricted to the aggregate of taxes actually levied or collected during the previous year, and cannot add thereto receipts or collections from other sources such as fines, etc.

August 4, 1920.

William Coxon, Esq.,
Secretary Non-Partisan League,
Bowie, Arizona.

I returned home this morning after a visit in Cochise County, and found your letter, making inquiry about the nomination of candidates for supervisor, and the election of the same. The law is unchanged, and you should pursue the practice heretofore followed in Cochise County, as laid down by Paragraph 2404, Revised Statutes of Arizona, 1913, which reads:

"Supervisors shall be nominated in the primary election preceding each general election for state and county officers, by the qualified electors of the district *from which* such supervisor is to be elected, as other candidates are nominated."

Paragraph 2405 reads:

"Supervisors shall be elected by the qualified electors of the county, as other county officers are elected."

Therefore, he is nominated by the qualified electors of the district, but he is elected by the qualified electors of the county. In nominating, and to be safe, I would get three per cent, if possible, of the entire county upon the petitions for supervisors, though I think the court might hold three per cent of the district sufficient, but for safety I would advise three per cent of the county. The signers can all be obtained in the district

August 4th, 1920.

Hon. W. F. Timmons,
County Attorney,
Yuma, Arizona.

Answering your letter of July 24th, regarding the change of the party affiliation upon the great register upon the application of the person registered, I would refer you to the opinion of this office, thereon rendered June 20th, 1918, and found on page 188, of my last biennial reports, that refers to the right of a person to demand and compel a change to be entered, wherein Nevada under a similar law, has held the demand for change by the elector, cannot be enforced by him. Perhaps it might be well now to permit such change wherein a mistake has occurred in the registration, and perhaps also where the party has changed his affiliation in good faith, and not for the mere purpose of voting in the primaries of the opposing party.

Much trouble has arisen heretofore, through attempts to change the party after registration, and yet, I think a strict construction of the law is announced in my opinion rendered in 1918 on that subject, and that deals particularly with the right of the elector, to demand a change in the entry of registration, and compel the compliance therewith.

August 5, 1920

Dan C. Mote, Esq.,
State Entomologist.

Your letter of August 4th, accompanied by letters from the Casa Grande

Chamber of Commerce regarding the control of Johnson grass, is at hand, and I can only refer you to Paragraph 594 up to Paragraph 601 of the Penal Code of Arizona, 1913, in reference to "sorghum halapense, otherwise known as Johnson grass."

Paragraph 596 forbids the sowing of Johnson grass; Paragraph 597 forbids allowing it to grow and go to seed along irrigated canals, ditches or laterals. The paragraph above referred to are the only provisions or law that I can recall to mind at this time.

August 6, 1920.

S. H. Phillips, Esq.,
Seligman, Arizona.

Your letter of the 4th inst. is just received, and from its contents I can see that someone is persistently giving out wrong information throughout the State regarding the lands owned by the State.

Arizona's State lands were given to the State by Congress under the Enabling Act admitting Arizona to statehood. That Act declared that all the State lands deeded or conveyed by Congress under the Enabling Act should be leased for money consideration or sold at a minimum price, and all moneys received by sale or lease paid into the State treasury. None of such lands can be homesteaded the same as United States land can be.

If the State of Arizona violates the Enabling Act donating said lands to the State, the Enabling Act of Congress says:

"It shall be the duty of the Attorney General of the United States to prosecute in the name of the United States, and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom."

Thus it will be seen that if the State of Arizona or its State Land Department does not comply with the Act of Congress in leasing or selling said State lands and properly applying the funds received therefrom, the whole matter is taken up by the Attorney of the United States and properly presented.

The lands you mention were patented by the State of Arizona in 1918, and must be handled according to the Act of Congress above mentioned. The provisions of said Enabling Act of Congress as to lease and sale of these State lands are incorporated in and made a part of the Constitution of the State of Arizona, and the Public Land Code of the State must be administered in obedience to the State Constitution and the Enabling Act of Congress, donating these lands to the State.

Thus you will see that State lands are permitted to be leased or sold to applicants, but the State is not permitted to throw them open for homesteads, as that is expressly forbidden by the Constitution and the Act of Congress above mentioned. I have fully explained matters to you, so that you may explain the situation to others. I will cheerfully give you any further information you may desire if the matter is not made plain to you.

August 10, 1920.

Hon. Jesse L. Boyce,
State Auditor.

In reply to your letter of August 5th in regard to claims against the State Industrial School Improvement fund for labor performed in June which were presented by the Board of Directors.

The appropriation was made by Section 21, Chapter 174, Laws of 1919, and was for buildings, improvements and repairs at the State Industrial School, to be expended during the year ending June 30, 1920, out of taxes collected for the year 1920.

Mr. Bennett advises that the two dormitories erected under this appropriation are practically completed; that some improvements and repairs are under way and for this they have purchased materials and expected to expend money as needed for the necessary labor.

Chapter 174 is the general appropriation bill for the fiscal years beginning July 1, 1919, and ending June 30, 1921.

The obvious intent of the legislature was to direct the Board of Directors to make the first expenditures on the authorized improvements and repairs during the fiscal year ending June 30, 1920, and this, it seems, has been done. Because an appropriation for improvements and repairs is required to be drawn out of the treasury only as may be found necessary in the course of construction or the performance of the labor, it does not necessarily follow that the money would cease to be available at the end of the fiscal year of 1920.

The statute contemplates the expenditures out of taxes collected out of that fiscal year and in view of the physical facts which rendered it almost impossible to construct the necessary buildings and make the repairs contemplated by the legislature, within the period of time elapsing between March 25, 1919, and June 30, 1920, because of shortage of material and other things which we need not mention, and since the intention of the legislature must govern, we hold to the opinion that since the initial expenditures were made by the Board of Directors during the fiscal year ending June 30, 1920, the funds appropriated necessary for the completion of the work under way during that year will remain in the improvement fund and are now available for their contemplated use.

August 13, 1920.

John Gleeson, Esq.,
Bowie, Arizona.

Ex-soldiers have the same status as any other citizens of the State. Our laws require a year's residence in the State before a person is entitled to vote here. If these men have the required residence, they are entitled to register and vote, but if they have only lived here for 90 days, they are not entitled to a vote. If they were residents of this State for the period of one year prior to the time they entered the army, and upon their discharge returned to this State without obtaining residence in any other States, they are certainly entitled to vote here.

August 14, 1920.

W. R. Hill, Esq.,
Superintendent of Schools,
Clarkdale, Arizona.

Replying to your letter of August 11th, in regard to the payment of salaries to teachers, would say that Boards of Trustees are fully empowered to pay such salaries for a period of twelve months instead of ten, but the salaries must be paid in equal semi-monthly installments as is provided by law. The Board of Trustees holds this power under Paragraph 2733, Civil Code, and while I do not care at this time to make such a ruling, I believe that the teachers' salaries are amenable to the semi-monthly statutes the same as all other county employees, and that it would be the duty of the Board to pay these salaries once they are fixed in semi-monthly installments covering a period of twelve months.

August 14, 1920.

Dr. R. B. von KleinSmid,
University of Arizona.

Some time ago Dean Working laid before this Department a question in regard to the land belonging to the Yuma Date Orchard. It seems that you purchased Blocks 39, 40 and 44 of the Townsend Tract as an addition to the Horticultural Station at Yuma, and at the time received from the Townsends a quit claim deed to certain streets which border upon this tract of land. The Abstract of Record accompanying your file shows that on March 23, 1905, Oscar F. Townsend, the owner of the land in question, placed on record with the County Recorder of Yuma County a plat or map of the Townsend Tract, showing streets, alleys, avenues and highways, and the width thereof, together with all

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lots and blocks with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of such lots, and that such plat or map was acknowledged by the said O. F. Townsend before a notary public, and a copy of the said map or plat so acknowledged was filed in the office of the County Recorder.

It also appears that the County Recorder of Yuma County recorded such plat or map in the Book of Maps of Yuma County Records at page 14. Under Section 1895 of the Civil Code, upon the filing of any such map or plat, the fee of all streets, alleys, avenues, highways, etc., reserved therein to the use of the public, vested in the County of Yuma

We are therefore of the opinion that before the University could close the streets by the quit claim deed, it would be necessary for the legislative body of the county, that is the Board of Supervisors, to take formal action to vacate such streets and alleys

September 1, 1920.

Mr. S. J. Phillips,
Pica, Arizona.

Yours of the 16th inst duly received and in reply to same beg to state:

The State, in respect to land owned by it, is precisely in the same situation as an individual with respect to lands owned by him. The laws governing the individual in the same use made and control his lands are applicable to the State in reference to its land. The law is as follows: "Where land is leased, then no sale can be made thereof." Thus, any sale of State land must be made subject to the law. Under the circumstances it would be necessary for you to make application for the land and wait until the lease terminates.

September 18th, 1920.

Mr. Ed Gardner,
Winslow, Arizona.

I write to you in reference to the sale of marihuana, about which you consulted me when I was in Winslow.

I herewith enclose a circular from the State Board of Pharmacy, which shows that they have placed the drug in the list of poisons, and I suggest that you enforce the same by having the cases brought against violators of the law, under the chapter on the sale of poisons, beginning on page 1456, Revised Statutes of Arizona, 1913.

Please examine Paragraphs 4818 and 4819, and the County Attorney will conduct the prosecutions, under the enclosed circular.

September 29, 1926.

O. S. Williams,
Los Angeles, Calif

Your letter of September 20th, addressed to the Arizona Corporation Commission, has been handed to me for reply as the attorney for the Commission. I will answer separately the questions propounded in your letter.

1. "Where an Arizona corporation has simply ceased business for ten years, absolutely done nothing and it wants to dispose of its property, can the directors simply go ahead and close up the business as the statute says, and give the proceeds to the stockholders and quit?"

No.

2. "What is its status?"

It is always a corporate entity, capable of being sued and with all the usual liabilities and responsibilities resting upon the Board of Directors until a court of competent jurisdiction shall in a proper proceeding make an order dissolving and disincorporating such corporation and forfeiting and annulling each and every of its rights, Privileges and franchises. A corporation may quit business, but it cannot dissolve itself and lose its status as a corporation without court proceedings.

3. "How shall it proceed? Through the directors as trustees distribute the money and quit, I suppose?"

The directors could not take upon themselves the capacity of trustees to distribute to the stockholders the proceeds of the corporate assets without an order of the court authorizing the same to be done. Paragraph 545 of the Penal Code, Revised Statutes of Arizona, 1913, makes it a misdemeanor for directors of a corporation "to divide, withdraw or in any manner except as provided by law, pay to the stockholders or any of them, any part of the capital stock of the corporation." It is not anywhere provided by law that the directors may distribute the assets of the corporation to the stockholders preparatory to or for the purpose of dissolution.

The proper procedure is that "whenever at any general or special meeting of the stockholders of any such corporation, the holders of the majority of its outstanding stock represented in voting at any such meeting, shall have directed the disposal of all corporate assets, or that the corporation be dissolved, or that it cease to use or exercise its corporate franchises" someone acting for the corporation shall bring into court the proceeding for dissolution provided for in Paragraph 2107, Civil Code, Revised Statutes of Arizona, 1913.

The application for an order of dissolution would show that the stockholders had voted to dissolve, that the assets had been converted

into cash by sale or otherwise, and praying that the court order distribution of the same to the stockholders in their proper shares, and dissolve the corporation.

October 4th, 1920.

Colonel W. S. Ingalls,
Adjutant General.

Replying to your inquiry in regard to the discipline which may be administered for violation of the rules and regulations adopted for the conduct of the State Normal and High School Cadet Companies, would say that this seems to be a question that should be handled by the proper school authorities. The military instruction and rifle practice provided by the statute are in the nature of a special course of study which all pupils subject to the provisions of the statute are required to take in addition to the subjects prescribed by the Board of Education. The military instruction in charge of this work, not referring to the officer detailed from the National Guard, is a school teacher engaged to give instruction in a subject deemed advisable by the Legislature, and should be governed accordingly in dealing with any infraction of the discipline of the school to which he is attached.

October 5, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission.

In re steps necessary to be taken to validate in this State an amendment to the articles of a foreign corporation:

Under date of October 1st you have submitted to this Department a certified copy of a decree issued by the Superior Court of Los Angeles County, State of California, changing the name of the M. H. Sherman Investment Company of California, a California corporation, to The Sherman Company. Doubtless this decree is sufficient to effect such change of name in the State in which it was rendered. It cannot have that effect, however, in this State where the M. H. Shrman Investment Company is licensed as a foreign corporation. The method prescribed by our laws must be followed.

Sections 2102 and 2103 of the Civil Code, Revised Statutes of Arizona, 1913, prescribe the manner in which amendments to the articles of incorporation of domestic and foreign corporations may be made and put into effect in this State. Sections 2102 and 2103 read as follows:

"2102—The capital stock of any corporation doing business in this State or of any corporation organized under the laws of this State, or of the Territory of Arizona, may be increased or decreased and the articles of incorporation may be amended in any of the particulars mentioned in this chapter, by the affirmative vote of the person, or persons, holding a majority of the issued and outstanding shares of stock of such corporation, and upon at least thirty days' notice in writing of such proposed increase, or decrease, of the capital stock, of such proposed amendment to the articles of incorporation, having been given the stockholders of such corporation."

"2103—The amendments mentioned in the next preceding section shall be signed and acknowledged by the president and attested by the secretary of the corporation, and no such amendment shall be valid unless filed as the original articles of incorporation are required to be."

These two paragraphs include changing the corporate name, which is an amendment of the original articles.

Chapter VII of Title IX, Civil Code, Revised Statutes of Arizona, 1913, is entitled "Foreign Corporations," and prescribes how such foreign corporations shall qualify in order to do business in this State. An amendment having been executed according to the two paragraphs above quoted, the same must be filed in all respects according to the provisions of said Chapter VII relating to the filing of the original articles. Nowhere in the laws of Arizona is it expressly provided that amendments to articles of either foreign or domestic corporations shall be published as provided for the original articles, but this Department has heretofore ruled that that part of Paragraph 2103, which reads as follows: "* * * * no such amendment shall be valid unless filed as the original articles of incorporation are required to be filed * * * * " includes the publication of amendments in the same manner as the original articles.

October 9th, 1920.

John H. McMahon & Company,
El Paso, Texas.

We have your letter of September 28th, enclosing a copy of letter which you sent to the Federal Prohibition Director at Phoenix, and also copy of his reply.

After giving careful consideration to the matters set forth in your letter to the Federal Prohibition Director, we would advise that our verbal opinion given to your Mr. McMahon, on his recent visit to this office, remains unchanged; that is, that the shipment into Arizona of any liquor, containing alcohol, which might be used as a beverage, is entirely at the risk of the consignor and consignee.

October 11th, 1920.

Mr. L. F. Kuchenbecker, Clerk,
Board of Supervisors,
Tombstone, Arizona.

In a conversation over the 'phone you asked certain questions which I will now answer. You inquired as to the number of publications required of the Governor's proclamation of the general election. Paragraphs 2871-2872, Civil Code of Arizona, 1913, provide: that the Governor shall transmit a copy of his proclamation of a general election to the Clerk of each Board of Supervisors of the State; that the Board of Supervisors of the County shall be notified by the Clerk of his receipt of such proclamation, and within five days after its receipt the Board shall meet and cause a copy to be published in the official newspaper of the County at least ten days before a general election. So, under these circumstances, you are required to publish your proclamation only once, and you shall cause such publication to be made in the official newspaper of the County at least ten days before the time of the general election.

You also inquired as to the listing upon the ballot of candidates for office who have been legally nominated, but are not affiliated or associated with any party. Paragraph 293-, Civil Code of Arizona, 1913, provides: That the lists of candidates of the several parties shall be arranged with the names of the parties in alphabetical order, commencing with the left hand column, but on the right hand side of the ballot there shall be a column headed, "Non-Partisan." Paragraph 2932, of the Civil Code, prescribes the substantial form of ballot and I refer you to this paragraph for such form. If candidates for public office have been duly and legally nominated, but are not the candidates of any recognized political party as prescribed by our statute, and are running for office independently and unaffiliated with any party, their names should be listed in the column of the official ballot headed, "Non-Partisan."

You also inquired as to whether the candidates for supervisors are to be elected at the general election by the County or according to districts. Paragraph 2402, Civil Code of Arizona, 1913, provides: That at the general election for State and County officers following the districting of a county one supervisor shall be elected from each of the supervisorial districts; Paragraph 2403 provides: that thereafter at every general election for State and County officers one supervisor shall be elected from each district where any vacancy occurs. Paragraph 2404 provides: that supervisors shall be nominated at the primary election, preceding every general election by the qualified electors of the district from which said supervisor is to be elected as other candidates are nominated. Paragraph 2405 provides: that supervisors shall be elected by the qualified electors of the county as other county officers are elected.

These statutes are somewhat ambiguous and there may be a question as to whether supervisors at the general elections are to be elected by the county in general or by the particular district. However, in my opinion, I believe that from the way the statutes are worded that they contemplate a nomination of the

supervisors at the primary election they should be elected by the qualified electors of the entire country as are other county officers. Therefore, I am inclined to believe that the supervisors should go upon the ballot at the general election to be elected by the qualified electors of the entire county.

October 15, 1920.

Hon. C. O. Case, Superintendent,
Public Instruction.

Your letter of October 9th, enclosing an inquiry from Mr. C. T. Lewis, of Ash Fork, Arizona, in regard to a school bond election at Ash Fork on October 30th, 1920, to vote on bonds for a schoolhouse and equipment.

Paragraph 2337, of the Civil Code of 1913, fixes the time for the notice of an election by posting at not less than twenty days before the election, and if there is a newspaper published in the county, by publishing not less than once a week for three successive weeks.

As to the qualifications of electors, Paragraph 2736, of the Civil Code, says that question shall be submitted to a bonafide taxpayer of the district and only such persons may vote as have paid in their own name the County or States tax upon property situated within such district, other than poll, road or school tax during the preceding year and who are in all other respects qualified electors at regular school elections, this would include a man and wife who owned community property.

October 28, 1920.

Guaranty Trust & Savings Bank,
Los Angeles, Cal.

Your letter of the 11th inst., addressed to the Arizona Corporation Commission has been referred to this Department for reply.

You state that California bankers are inclined to assist in financing the cotton crops of the Southwest, and of Arizona in particular; that in so doing it may be necessary to purchase crop mortgages or other negotiable securities; that if to enforce said mortgage and securities such banks must qualify under the banking laws of Arizona as foreign corporations, there is fear that the requirements thereof, especially the appointment of resident agents, would necessitate greater delegation of authority than California banks would be willing to undertake.

We have no law in this State applying especially to foreign banks. Our statute on foreign corporations makes no distinction between banking and other

corporations. The requirements of our banking laws being such that a foreign bank cannot qualify thereunder, it follows that while a foreign banking corporation can qualify and obtain a license to do business in this State, it could not engage in strictly banking business, but could transact any other business authorized under its charter and permitted by the laws of its domicile and the laws of the State of Arizona, such as dealing in negotiable instruments or securities. If such transactions, however, are carried on and completed outside the State, the corporation engaged there in could not be said to be transacting business in this State, and need not be licensed as a foreign corporation, even though the property pledged or mortgaged by such securities be located within this State. There has been no decision directly to that effect by our Supreme Court, but that conclusion is supported by reason and the great weight of authority, and is deductible from the opinion in *Martin vs. Bankers Trust Co.*, 18 Ariz. 55, 156 Pac. 87, decided in 1916.

A different question is presented, however, when such foreign corporation, having purchased outside the State crop mortgages or other securities, seeks to enforce payment thereof in the courts of this State. In *Martin vs. Bankers Trust Co.*, supra, it was held that

“The prosecution of a suit in the courts of this State is not carrying on a business, enterprise or occupation in this State within the plain meaning of the statutory provision. 19 Cyc. 1279 and 1280, where numerous authorities in support of the text are cited.”

That case was decided on Par. 909 of the Civil Code, Revised Statutes of Arizona, 1901, which reads as follows:

“Any company incorporated under the laws of any other state, territory or foreign country which shall carry on any business, enterprise or occupation in this territory shall, before entering upon, doing or transacting such business, enterprise or occupation in this Territory * * * *”

In the 1913 Code this paragraph, now numbered 2226, reads as follows:

“Any company incorporated under the laws of any other State, Territory, or any foreign country, which shall carry on, *do, or transact* any business, enterprise, or occupation, in this State shall, before entering upon, doing, or transacting such business, enterprise, or occupation, in this State: * * * *”

You will note that the words “do or transact,” which have been inserted, materially increase the limitation upon unlicensed foreign corporations. Nevertheless, on the strength of the above case, we think that our Supreme Court would make the same ruling as to the meaning of Par. 2226 of the 1913 Code. This would accord with the recent decision of the United States Supreme Court of Appeals for the Eighth Circuit, in *Lane v. Equitable Trust Co.*, 262 Fed. 918. In both these cases, only one suit was instituted, but the rule therein adhered to is given general and unrestricted application in Section 5935 of *Fletcher on Private Corporations* and the numerous cases there cited. It is thus concisely stated by Mr.

Justice Cook in *Alpena Portland Cement Co. v. Jenkins & Reynolds Co.*, 244 Ill 354, 91 N. E. 480:

"The words 'doing business' and 'transacting business' as used in statutes regulating foreign corporations, have by numerous judicial decisions been given a settled and recognized meaning, and refer only to the transaction of the ordinary business in which the corporation is engaged, and do not include acts not constituting any part of its ordinary business, such as instituting and prosecuting actions in courts * * * *"

We therefore conclude:

First: That the transactions your banks contemplate as above referred to, looking toward rendering assistance in financing Arizona cotton crops, will not of themselves require such banks to qualify in this State as foreign corporations, provided, of course, that such transactions are, as I understand they will be, carried on and completed in California.

Second: That instituting proceedings in our courts to enforce payment of the mortgages and other securities purchased pursuant to the arrangements contemplated will not of itself require your banks to qualify in this state as foreign corporations.

Third: That there is nothing in our law which requires your banks to be licensed as foreign corporations as a pre-requisite to instituting such actions to enforce payment

In view of our opinion above expressed, the questions you propound regarding statutory or resident agents are immaterial and we therefore do not answer the same.

You will please bear in mind that our courts are the final arbiters in all these matters, and that when they have spoken, our opinion is no longer the official guide. Until such time, however, you may depend upon this office to rule in accord herewith. We have taken pains to make our conclusions well founded and dependable in order that, as far as may be, we may anticipate the judicial interpretation. This we have done because your plans for financing cotton crops are of the utmost import to many parts of this State and of general interest and benefit to all. We want to assist in every way consistent with and permissible under the duties of our office.

October 29, 1920.

A. E. Stelzer, Secretary,
Arizona Corporation Commission

Answering your letter of October 5th, asking for answers to certain questions

propounded to you by the Accounting and Auditing Association under date of September 27th, I would advise you that the failure of an Arizona corporation to exercise its corporate powers for over five years, or to have a resident agent in this State, or to hold a stockholders' meeting or election of directors during such period, do not of themselves dissolve the corporation. It is still a corporate entity, capable of suing and being sued, and will so remain until an Arizona court of competent jurisdiction decrees otherwise. That is the law in Arizona, regardless of what it is in other states.

When there is a failure to hold the annual or stockholders' meeting for the election of directors, the old directors hold over with all the power and authority of regularly elected directors. That question frequently arises where a board of directors sells the stock of some stockholder who has failed to pay an assessment levied for some lawful purpose. The action of the board is frequently attacked on the ground that the term of office of some of the directors participating therein had expired, and that therefore the directors had not authority to continue to exercise the rights and functions of directors. Such a case was *Hatch vs. Lucky Bill Mining Co.*, 25 Utah 405, 71 Pac. 865, in which regarding the same contention therein made, the Court said:

"It is well settled that a director once elected may continue to act until his successor is elected and qualified. Therefore the three holdover directors were still in office and qualified to act. 2 Cook on Corporations, 624; 2 Morawetz on Corporations, 640."

If a corporation owns patent rights, holdover directors, if there be such, may proceed with the collection of royalties or the enforcement of damage claims, even though such corporation has ceased to do business in Arizona or elsewhere. If there be vacancies on the board of directors, they may be filled in such manner as the by-laws provide. The laws of Arizona leave such matters entirely with the corporation to be stipulated in the articles or by-laws. The only enactment we have on that subject is found in Paragraph 2100, which says that the articles must contain, among other things:

"(5) By what officers or persons the affairs of the corporation are to be conducted, and the time at which they are to be elected."

October 30, 1920

Gray Mining Company,
Contact, Nevada.

Replying to your letter of October 19th, addressed to the Attorney General, we answer as follows the questions propounded:

Question: Can any corporation, mining or otherwise, organized and existing under the laws of the State of Arizona, sell or dispose of

its real estate holdings or mineral rights without the unanimous consent of its stockholders in a regular or special meeting held for that purpose?

We answer "yes" to this question, meaning thereby that there is nothing in the laws of the State of Arizona which would prevent such transaction, unless the holdings and rights referred to constitute the total assets of the corporation and the sale is preparatory to dissolution, in which event our statutes provide in Paragraph 2107 of the 1913 Code that the same shall be authorized by a majority of the outstanding stock represented and voting at a general or special stockholders' meeting.

Question: Can the directors of any corporation sell or dispose of the real estate of the corporation by the vote of a majority at any regular or special meeting held for that purpose?

Our answer to this question generally is "Yes," but such answer should have the qualifications above noted. If the transaction is in the usual course of business, the directors may sell or dispose of real estate, subject of course to any limitations contained in the articles of incorporation or the by-laws.

Questions: Could any member of the public write your department and secure a certified copy of that part of the articles in any corporation that would pertain to authorizing the sale of real estate to that corporation, and if so, to whom should such an inquiry be addressed?

The articles of incorporation are on file with the Incorporating Department of the Arizona Corporation Commission. Said Department will furnish you with a certified copy of said articles on payment of the necessary fee therefor

November 13, 1920.

Hon. Thomas E. Campbell,
Governor of Arizona.

Your inquiry of the 11th inst. regarding the boll weevil danger duly received accompanied by a letter and report from the Commission of Agriculture and Horticulture, and I am inclined to agree with you in reference to the emergency funds provided for in Chapter 152, Session Laws of 1919.

The pest referred to might be held to be "an epidemic of diseases," as it results in the destruction of the cotton boll and is a menace to the property of a great number of persons. Construing it in that light it would seem that you are authorized to incur such liability or expense under Section 5 of the said Chapter 152, as your careful judgment would dictate.

I think a necessity of the circumstances and the threatened great danger calls for a liberal construction of the said section to meet the emergency confronting the State and the property of her citizens, in order to prevent the disastrous boll weevil ravages in our State.

November 24, 1920.

Hon. Joe V. Prochaska,
State Game Warden.

Answering your letter of the 20th inst., regarding violation of the Arizona State laws off of military reservations by soldiers in military service of the United States, will state that Superintendent Davis is entirely in error in his position.

No soldier can leave a military reservation where the United States has exclusive jurisdiction, and commit a public offense against the State laws of Arizona without subjecting himself to liability and a criminal prosecution under the State law. A civilian who commits an offense against the United States law upon a military reservation is subject to prosecution not under the State law but under the United States law. His being a civilian and residing off the reservation does not render him immune for prosecution by the United States for an offense committed on the military reservation.

Superintendent Davis, when made acquainted with the law as above stated, will no doubt promptly inform the soldiers of Fort Apache that they are liable to prosecution under the State laws if they violate a State law off the military reservation. When made aware of this fact, I hope the utmost harmony will prevail between the two jurisdictions, and that they will understand that the United States authorities prosecute for violations of law upon the military reservations, no matter by whom committed, and that the State of Arizona will

prosecute for violations of law committed within our boundaries but off the military reservations, no matter by whom committed. This applies to violations of the game law in killing game as well as violations of the criminal law in killing a human being. It also applies to offenses committed upon the Indian Reservations in this State.

December 2, 1920.

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commissioner

I return herewith a letter from Gordon & Lattner, attorneys of El Paso, Texas, together with a copy of articles of incorporation and amendments of the Rio Grande Oil Co., a Texas corporation, as filed in New Mexico, which you submitted to me under date of November 30th, asking for an opinion on the question raised by said attorneys in their letter.

The said question is as to whether or not a foreign corporation desiring to qualify in Arizona to secure a license to do business in this State should file a certified copy of the original articles of incorporation, together with each and all of several amendments increasing the amount of the capital stock and changing the purpose, or whether such foreign corporation could simply file a certified copy of the articles of incorporation as amended.

The law provides that such foreign corporation shall file a copy of its articles of incorporation or charter. The original articles would have the signatures, acknowledgements and attestations as of a certain date. In a certified copy there could not be shown a capitalization and purpose different from the original. I have looked over the copy of the articles and amendments, and have concluded that while the amended capitalization and purpose must be shown in a separate certification or under the same certificate but separate from the original articles, it is not necessary that all the proceedings by which the amendments were made be certified to. In the original articles, Paragraph 2 relates to the purpose of the organization, and Paragraph 6 to the amount of the capital stock. It will be sufficient if the Secretary of State of the State of Texas certified to the original articles and to said paragraphs as amended.

I do not know that we will be justified in adopting this as a rule to go by under all circumstances, but because of the peculiar conditions in this case, and the length of the amendment proceedings, I am satisfied that we may accept the certification outlined above as a full compliance with the law. You may consider this as our opinion to that effect.

December 3, 1920.

The Arizona State Tax Commission,
State House.

Your favor inquiring as to when increase of salaries of county officials becomes effective when the county automatically enters a higher class, is at hand

This question by reason of our statutes is a troubled one and involves many angles. It is contended by certain county officials that by reason of their particular county automatically going into a higher class on account of increased valuation shown by the tax roll, their increased salaries caused thereby are payable from and after the first of January of the particular year in which such increase occurs; I am inclined to believe that this contention is not sound in law.

In reference to the above question I wish to quote the statutes touching thereon.

Prior to the year 1917, counties, for the purpose of determining salaries, were classified according to population. These statutes we declared unconstitutional and were repealed and superseded by Chapter 61, Session Laws of Arizona, 1917. This 1917 statute provides in part as follows

"Section 5 for the purpose of regulating and fixing the compensation of all county and precinct officers, herein provided for, the several counties of this State are hereby classified according to the assessed valuation of their taxable property *as fixed and determined upon the assessment and tax rolls of the said counties*; * * * * Counties

having an assessed valuation of more than \$50,000,000 shall belong to and be known as counties of the first class * * * * Section 5. Whenever the assessed valuation of the taxable property of any county, *determined as herein provided*, shall advance to the minimum fixed by this Act for Counties of the next higher class, such counties shall thereafter become and be a county of the next higher class, and whenever the assessed valuation of any county shall fall below the minimum, herein fixed for the counties of any such class, such counties shall thereupon become and be a county of the next lower class."

This 1917 law was amended by Chapter 162, Session Laws of Arizona, 1919, by merely changing the number of classes of counties, in other words, the total number of classes of counties was changed from five to four.

From these laws classifying counties and providing for salaries according to classification, it is apparent that the governing factor in determining the class of the county is the valuation of the taxable property of the county as fixed and determined on the assessment and tax roll of the county in question. It is further apparent that the county does not pass into a higher or lower class until its taxable property is so determined by the assessment and tax roll. So, it seems to me, that the first question for us to decide is when the tax and assessment roll is fixed and determined.

Chapter 39, Session Laws of Arizona, 1917, provides that on or before the 20th day of May of each year the County Assessor shall complete his assessment roll and deliver the same to the Clerk of the Board of Supervisors.

Paragraphs 4881-4883, Revised Statutes of Arizona, 1913, provides that the County Board of Supervisors, acting as the County Board of Equalization, may at its meeting held in June of each year, change any valuation fixed by the Assessor on the tax roll, and in the event that such Board proposes to increase the assessed value of any property appearing on the said tax roll, it shall give proper notice of such proposed increase to the owner, and the said County Board shall again meet in the first Monday of July of each year and and at such meeting shall consider and act upon said proposed increase.

Paragraph 4889, Revised Statutes of Arizona, 1913, provides that within ten days after the close of the said July meeting, the Clerk of the said County Board of Supervisors shall transmit an abstract of said assessment roll as amended and changed by the said County Board of Supervisors to the State Board of Equalization.

Paragraphs 4834-4838, Revised Statutes of Arizona, 1913, provide for the duties and powers of the State Board of Equalization, among which are the power to increase or decrease the aggregate valuation of any class or classes of real or personal property of any county by said abstract of assessment roll, and to increase or decrease the assessment of any individual, firm or corporation, as the same appears upon said abstract.

The said last mentioned paragraph further provides that the said State Board of Equalization shall on or before the second Monday in August of each year transmit to the County Board of Supervisors all changes made by the said State Board in said assessment roll, and shall at the same time notify the said County Boards of the tax rate of the State.

Paragraph 4844, Revised Statutes of Arizona, 1913, provides that the Board of Supervisors of each county shall meet on or before the *third Monday in August of each year*, and shall make all changes in the tax roll that were ordered by the said State Board of Equalization and shall also at the said meeting make the required tax levy for the current year.

In my opinion, under the statutes the assessed valuation of the taxable property of any county is not taxed or determined by the assessment roll until such assessment roll has been acted upon by the State Board of Equalization and the County Board of Supervisors have been notified by the said State Board of such action. As the statutes hereinbefore referred to provide that the County Boards of Supervisors shall meet on or before the 3rd Monday of August in each year and another upon the assessment roll and enter upon the assessment roll all changes ordered by the State Board and shall at the same meeting designate the amount of the tax levy; thereupon, in my opinion the assessment roll is not fixed and determined until such last mentioned meeting of the Board of Supervisors.

Therefore, a county would not pass into a higher class or be reduced to a lower class until said meeting of the Board of Supervisors, provided to be held on or before the 3rd Monday of August.

It is contended, however, that taxes so fixed and determined under and by virtue of Paragraph 4845, Revised Statutes of Arizona, 1913, become a lien upon the property assessed on the first Monday of January of each year, and thereafter increased salaries caused by increased valuation of the taxable property of the county should also revert to and become effective as on the first Monday of January. I cannot agree with this contention.

The lien statute is designed solely for the purpose of insuring the property of the tax lien and was never designed to cause a retroactive increase in salaries.

The county classifications laws of 1917-19 provides that a county shall not pass into a higher class or be reduced into a lower class until the assessment roll is *fixed and determined*. Section 17, Article IV, Constitution of Arizona. It is contended that the automatic change of a county from one class to another and the automatic increase or decrease of salaries caused hereby, as provided in said county classification law, works an increase or diminishment of the compensation of a public officer during his term of office, and is prohibited by said Constitutional Provision.

In my opinion said Constitutional Provision is purposed to prevent a legislature from directly increasing or diminishing an officer's salary during his term of office and does not apply to the condition created by said county classification laws. In other words these acts of the legislature classifying counties and pro-

viding salaries for the various classes do not directly alter or change the compensation of the officers of such counties but merely provide a condition of affairs or state of facts which would automatically work a change of classification of counties and incidentally thereto change the compensation of officers. The change in the compensation is caused by a change in the condition of the county and not by an act of the legislature and is therefore not prohibited by the Constitutional Provision referred to.

Upon this point I find a conflict of authority and some reputable authorities do not agree with my conclusion. However, in my opinion our county classification laws do not violate this Constitutional Provision and the automatic increase or decrease of salaries is not affected thereby.

In conclusion I wish to state that the question is not free from doubt, but the result of my investigation is that increase or decrease of salaries of county officers caused by the automatic change in the classification of the counties would be and become effective after the assessment roll is fixed and determined, that is, from and after the assessment roll is fixed and determined, that is, from and after the said meeting of the Board of Supervisors of the county in question, provided by statute, to be held on or before the third Monday in August of each year.

December 3, 1920

The Arizona State Tax Commission,
State House

Your favor inquiring as to when increase of salaries of county officials becomes effective when the county automatically enters a higher class, is a hand.

This question, by reason of our statutes is a troubled one and involves many angles. It is contended by certain county officials that by reason of their particular county automatically going into a higher class on account of increased valuation shown by the tax roll, their increased salaries caused thereby are payable from and after the first of January of the particular year in which such increase occurs; I am inclined to believe that this contention is not sound in law.

In reference to the above question I wish to quote the statutes touching thereon

Prior to the year 1917, counties, for the purpose of determining salaries, were classified according to population. These statutes were declared unconstitutional and were repealed and superceded by Chapter 61, Session Laws of Arizona, 1917. This 1917 statute provides in part as follows:

"Section 5. For the purpose of regulating and fixing the compensation of all county and precinct officers, herein provided for, the several counties of this State are hereby classified according to the assessed valuation of their taxable property *as fixed and determined*

*upon the assessment and tax rolls of the said counties; * * * **
Counties having an assessed valuation of more than \$50,000,000 shall belong to and be known as counties of the first class. * * * *
Section 6. Whenever the assessed valuation of the taxable property of any county, *determined as herein provided*, shall advance to the minimum fixed by this Act for counties of the next higher class, such counties shall thereafter become and be a county of the next higher class, and whenever the assessed valuation of any county shall fall below the minimum, herein fixed for the counties of any such class, such counties shall thereupon become and be a county for the lower class.

This 1917 law was amended by Chapter 162, Session Laws of Arizona, 1919, by merely changing the number of classes of counties, in other words, the total number of classes of counties was changed from five to four.

From these laws classifying counties and providing for salaries according to classification, it is apparent that the governing factor in determining the class of the county is the valuation of the taxable property of the county as fixed and determined on the assessment and tax roll of the county in question. It is further apparent that the county does not pass into a higher or lower class until its taxable property is so determined by the assessment and tax roll. So, it seems to me, that the first question for us to decide is when the tax and assessment roll is fixed and determined.

Chapter 39, Session Laws of Arizona, 1917, provides that on or before the 20th day of May of each year the County Assessor shall complete his assessment roll and deliver the same to the Clerk of the Board of Supervisors

Paragraph 4881-4883, Revised Statutes of Arizona, 1913, provide that the County Board of Supervisors, acting as the County Board of Equalization, may at its meeting held in June of each year, change any valuation fixed by the Assessor on the tax roll, and in the event that such Board proposes to increase the assessed value of any property appearing on the said tax roll, it shall give proper notice of such increase to the owner, and said County Board shall again meet on the first Monday of July of each year and at such July meeting shall consider and act upon such proposed increase.

Paragraph 4889, Revised Statutes of Arizona, 1913, provides that within ten days after the close of the said July meeting, the Clerk of the said County Board of Supervisors shall transmit an abstract of said assessment roll as amended and changed by the said County Board of Supervisors, to the State Board of Equalization.

Paragraphs 4834-4838, Revised Statutes of Arizona, 1913, provide for the duties and powers of the State Board of Equalization, among which are the power to increase or decrease the aggregate valuation of any class or classes or real or personal property of any county as shown by said abstract of assessment roll, and to increase or decrease the assessment of any individual, firm or corporation, as the same appears upon said abstract. The said last mentioned paragraph fur-

ther provides that the said State Board of Equalization shall on or before the second Monday of August of each year transmit to the County Board of Supervisors all changes made by the said State Board in said assessment roll, and shall at the same time notify the said County Boards of the tax rate of the State.

Paragraph 4844, Revised Statutes of Arizona, 1913, provides that the Board of Supervisors of each county shall meet on or before the 3rd Monday in August of each year, and shall make all changes in the tax roll that were ordered by the said State Board of Equalization, and shall also at the said meeting make the required tax levy for the current year.

In my opinion, under these statutes, the assessed valuation of the taxable property of any county is not fixed or determined by the assessment roll until such assessment roll has been acted upon by the State Board of Equalization and the County Board of Supervisors have been notified by the said State Board of such action. As the statutes hereinbefore referred to provide that the County Boards of Supervisors shall meet on or before the 3rd Monday of August in each year and enter upon the assessment roll all changes ordered by the State Board and shall at the same meeting designate the amount of the tax levy; therefore, in my opinion the assessment roll is not fixed and determined until such last mentioned meeting of the Board of Supervisors. A county would not pass into a higher class or be reduced to a lower class until said meeting of the Board of Supervisors, provided to be held on or before the 3rd Monday of August.

It is contended, however, that taxes so fixed and determined under and by virtue of Paragraph 4845, Revised Statutes of Arizona, 1913, become a lien upon the property assessed on the first Monday of January of each year and therefore increased salaries caused by increased valuation of the taxable property of the county should also revert to and become effective as of the first Monday of January. I cannot agree with this contention.

The lien statute is designated solely for the purpose of insuring the property of the tax lien and was never designed to effect a retroactive increase in salaries.

The county classification laws of 1917-19 provide that a county shall not pass into a higher class or be reduced to a lower class until the assessment roll is *fixed and determined*, and provide for salaries to be paid the officers of each class. I do not believe that these county classification laws can possibly be construed to have a retroactive effect as to salaries, and therefore any increase or decrease of taxable value would not become effective until such taxable value was fixed and determined by the assessment roll of the county in question, that is, such increased or reduced salaries would not be effective until after the said meeting of the County Board of Supervisors held on or before the 3rd Monday in August of each year.

There is another question involved, which is probably more serious; that is the effect of our constitutional provision prohibiting the increase or diminishment of compensation of any public officer during his term of office. Section 17, Article IV, Constitution of Arizona. It is contended that the automatic change of a county from one class to another and the automatic increase or decrease of salaries

caused thereby, as provided in said county classification law, works an increase or diminishment of the compensation of a public officer during his term of office, and is prohibited by said constitutional provision.

In my opinion said constitutional provision is purposed to prevent a legislature from directly increasing or diminishing an officer's salary during his term of office and does not apply to the condition created by said county classification laws. In other words these acts of the legislature classifying counties and providing salaries for the various classes do not directly alter or change the compensation of the officers of such counties but merely provide a condition of affairs or state of facts which would automatically work a change of classification of counties and incidentally thereto change the compensation of officers. The change in the compensation is caused by a change in the condition of the county and not by an act of the legislature and is therefore not prohibited by the constitutional provision referred to.

Upon this point I find a conflict of authority and some reputable authorities do not agree with my conclusion. However, in my opinion our county classification laws do not violate this constitutional provision and the automatic increase or decrease of salaries is not affected thereby.

In conclusion I wish to state that the question is not free from doubt, but the result of my investigation is that increase or decrease of salaries of county officers caused by the automatic change in the classification of the counties would be and become effective after the assessment roll is fixed and determined, that is, from and after the said meeting of the Board of Supervisors of the county in question, provided by statute, to be held on or before the third Monday in August of each year.

December 3, 1920

Hon. D. F. Johnson, Commissioner,
Arizona Corporation Commission

Under date of November 23rd you submitted to me for consideration and reply a memorandum prepared by the chief clerk of your investment company department in the matter of the Comobabi Consolidated Mines Company, regarding the fee which should be paid on filing application for permission to issue stock. The jurisdiction of the Commission and the necessity for a permit extends to every sale of stock by an investment company. It does not matter whether the thing which is given in exchange for the stock is money or property. It is, nevertheless, a sale within the meaning of the law.

The theory of the investment company law is that all stockholders shall be protected by requiring the Commission to scrutinize and give its permission, if warranted, to any proposed sale of stock, or even any proposed issue of stock, for when once a company brings itself within the class known as an investment

company, and as such, within the jurisdiction of the Corporation Commission, its every transaction with its stock affecting the investment of prior or future stockholders is subject to regulation by the Commission. It is no longer free to act as it pleases in that regard. In order to cover the time and expense incurred by the State through the Commission in investigating the financial standing of a company and the management of its affairs for the purpose of determining whether or not the company should be permitted to sell its stock or transfer the same for a consideration, certain fees are required to be paid by the company. It does not matter whether the proposed issue is to be sold for cash or traded for property, it is within the law as far as computing the fee is concerned.

What I have said above relates to investment companies only, that is, companies that propose to offer their stock for sale to the public, or to engage in the business of disposing of said stock in some manner. A company which does not engage in selling or trading its stock directly or indirectly is not an investment company.

If a corporation organizes for the purpose of engaging in the grocery business, and after its organization issues all or a part of its stock in one block in exchange for a grocery stock and store, it would be selling the stock, but said corporation would not be an investment company. The same might be true of a mining company, or any other corporation. As long as any company does not bring itself within the definition of an investment company, it does not need permission for its stock transactions. When once it becomes an investment company, all its stock transactions are subject to regulation. It is the classification which determines the propriety and extent of the regulation.

The company referred to in the memorandum should be required, with its application to pay a fee covering the issue of stock to be transferred for property, as well as stock to be sold for cash.

I desire in this connection to correct the statement in Mr. Williamson's memorandum to the effect that by an opinion from this office, so-called closed corporations may issue pre-organization stock without a permit. I have repeatedly said that every case must stand on its own facts. The sole test is whether the corporation is an investment company or not. In the application of this test, we do not know of any such classification as closed corporations, pre-organization stock, or anything of that nature. One closed corporation might be required to take out a permit and another might not. The law looks through every plan and subterfuge to the end sought to be attained. If that end is to bring the company's stock before the public for sale, there is no escape from its being classified as an investment company. No fictitious designations of stock as pre-organization stock, personal stock or anything of that character will avail to eliminate a company from the investment company classification if the actual facts of its organization, management and business show that it is in fact such investment company.