

Copy 2

ADVANCE OPINIONS
OF THE
ATTORNEY-GENERAL
OF THE
STATE OF ARIZONA

January 1, 1921—January 1, 1922



W. J. GALBRAITH, Attorney General
GEORGE R. HILL, Assistant Attorney General
F. W. PERRKINS, Assistant Attorney General

AG 13:A 28/1921

Arizona, Attorney General

ADVANCE OPINIONS
 OF THE
ATTORNEY-GENERAL
 OF THE
 STATE OF ARIZONA

January 1, 1921—January 1, 1922



W. J. GALBRAITH, Attorney General
 GEORGE R. HILL, Assistant Attorney General
 F. W. PERKINS, Assistant Attorney General

ARIZ
 344
 A712a
 1921

SEARCHED INDEXED
 OF FILES
 NUMBER 68002
 FEB 20 1921

INDEX

	Page
Corporation Commission, Proceedings Before	131
Interstate Commerce Commission, Proceedings Before	131
Superior Courts, Proceedings in	121-123
Supreme Court of Arizona, Proceedings in	124-128
Supreme Court of the United States, Proceedings in	129
United States District Court, Proceedings in	130
Summary	132

Subject:	Inquirer:	Page
Appropriations—Salaries Fair Commission.	Chas. W. Fairfield	7
Appropriations—School Funds.	State Auditor.	
Appropriations—Immigration Commissioner.	Same	31
Appropriations—Arizona Resource Board.	Thos. E. Campbell	42
Appropriations—Arizona Pioneers' Historical Society	Governor of Arizona.	
Appropriations—Unexpended Balances	Same	42
Agriculture and Horticulture—Cotton Pests	Clayton Bennett	43
Aliens, Eligibility of	Thos. Maddock	53
Asylum, Services of Inmates	State Engineer.	
Automobile License	Don C. Mote	117
Automobile Licenses—Dealers	State Entomologist.	
Automobile, Forfeiture of	Claude Hooker	74
Automobile, Construction of Statutes	County Atty., Greenlee Co.	
Billiards and Pool Tables	Bert Wingar	81
Blue Sky Law	Bd. Directors State Institutions.	
Board of Supervisors—	Ernest R. Hall	36
School Trustee	Secretary of State.	
Bonds—Interest on Co. Highway	Same	64
Bonds—Commission on Sale of	H. O. Morrison	6
Bonds—Sale of County Highway	State Examiner.	
Bonds—Sale of School	Ernest R. Hall	39
Bonds—Proceeds from Sale School	Secretary of State.	
Bonds—Tax Anticipation, Construction of Contract	H. O. Morrison	84
Bonds—Tax Anticipation, Validity of Option	State Examiner.	
Bonds—Tax Anticipation.	Corporation Commission	22
Issuance of	J. L. Sullivan	106
Corporations, Foreign	County Atty., Yavapai Co.	
	H. O. Morrison	48
	State Examiner.	
	J. L. Sullivan	28
	Co. Atty., Yavapai Co.	
	Same	26
	F. M. Gold	8
	Co. Atty., Coconino Co.	
	A. H. DeReimer	52
	Co. Atty., Santa Cruz Co.	
	Thos. E. Campbell	75
	Governor of Arizona.	
	Same	76
	Raymond Earhart	90
	State Treasurer.	
	Corporation Commission	68

INDEX—(Continued)

Subject:	Inquirer:	Page
Corporation Commission, Traveling Expenses of	Same	76
Corporation Commission, Power of	Same	62
Corporation Commission, Filing Charges	Same	69
Companies, Investment	Same	65
Constitutionality of H. B. 21	F. O. Goodell	20
County Highway Commission, Salary of	J. L. Sullivan	102
County Assessor, Traveling Expenses	Co. Atty., Yavapai Co. J. Myron Allred	14
County Attorneys—Appointment and Salaries of Deputies	H. H. Baker	108
County Attorney—Special Counsel	Co. Atty., Yuma Co. H. O. Morrison	47
County Attorney—Employment of Stenographer	State Examiner. E. L. Spriggs	19
County Recorder—Appointment of Deputies	Co. Atty., Graham Co. Claude Hooker	105
County—Demands Against	Co. Atty., Greenlee Co. J. W. Murphy	100
Contracts for Public Office	Co. Atty., Gila Co. Elsie Toles	115
Cotton Pests—Expense of Eradication	Supt. of Public Instruction. Don C. Mote	117
Demands Against County	State Entomologist. J. W. Murphy	100
Divorces of Soldiers	Co. Atty., Gila Co. Thos. E. Campbell	111
	Governor of Arizona.	
EDUCATION:		
Appropriations—Income from School Lands	Chas. W. Fairfield	31
Appropriations from Forest Reserve Funds	State Auditor. Elsie Toles	54
Bonds, Sale of School	Supt. Public Instruction. F. M. Gold	8
Bonds, Proceeds from Sale School	Co. Atty., Coconino Co. A. H. DeRiemer	52
Election—School Trustees	Co. Atty., Santa Cruz Co. W. J. Hookway, Holbrook	94
Funds, Apportionment of School	Elsie Toles	29
Funds—Time of Apportionment of School Funds.	Supt. Public Instruction. Same	97
Funds—School Funds and Attendance	Same	109
Military Training in Schools	Prof. D. J. Jantzen	95
Maintaining Schools	Principal Pheonix High School. Thos. R. Greer	18
Maintaining Schools—Payment Repair Bills	Co. Atty., Navajo Co. Elsie Toles	30
Officers and Offices—Board of Supervisors and School Trustees	Supt. Public Instruction. J. L. Sullivan	106
Salary—Payment of School Teachers	Co. Atty., Yavapai Co. Thos. R. Greer	6
Salary, Clerk School Board	Co. Atty., Navajo Co. A. H. DeRiemer	16
	Co. Atty., Santa Cruz Co.	

I N D E X—(Continued)

Subject:	Inquirer:	Page
Salary Warrants—School	Elsie Toles	51
Tax—School Poll	Supt. Public Instruction. Thos. R. Blair	35
Tax—Levy of Tax for School	Bursar, Univeristy of Ariz. Elsie Toles	49
ELECTION:		
Qualification of Voters	J. M. Hines, Jr.	57
Qualifications—Candidates and Electors	Co. Atty., Mohave Co. Geo. C. Creswell	112
Employment of Special Counsel by Counties	Winslow, Ariz. H. O. Morrison	47
Employment of Stenographer by County Attorney	State Examiner. E. L. Spriggs	19
Fair Commission—Salary Appropriations	Co. Atty., Graham Co. C. W. Fairfield	7
Fees and Duties, Secretary of State	State Auditor. Ernest R. Hall	82
Fees—Clerk, Superior Court	Secretary of State. A. H. DeRiemer	92
Fees—Sheriffs'	Co. Atty., Santa Cruz Co. H. O. Morrison	84
Fire Department—Volunteer	State Examiner. G. H. Wheelock, Safford.....	114
Forest Reserve Fund—Schools	Elsie Toles	54
Foreign Corporations	Supt. Public Instruction. Corporation Commission	68
Game Laws	F. M. Gold	44
Gasoline—License Tax on Sale	Co. Atty., Coconino Co. Ernest R. Hall	65
Hay—Sale Baled	Secretary of State. F. R. Dyas, Inspector.....	15
Highways—Laying Out	Weights and Measures. H. H. Baker	9
Highway—Interest on Bonds	Co. Atty., Yuma Co. H. O. Morrison	48
Highway—Sale County Bonds	State Examiner. J. L. Sullivan	26
Highway—Right of Way	Co. Atty., Yavapai Co. Thos. E. Campbell	116
Holidays	Governor of Arizona. Published	16
Immigration Commissioner—Appropriations for	Thos. E. Campbell	42
Immigration Commissioner	Governor of Arizona. Same	45
Inheritance Tax	Raymond R. Earhart	10
Interest on Delinquent Tax	State Treasurer.....	65
Investment Companies	Corporation Commission	67
Insurance Company—License Taxes	Same	68
Judicial Offices—School Trustee	H. H. Baker	91
Lands—State	Co. Atty., Yuma Co. Rudolph Kuchler	23
Livestock—Special License	State Land Commissoiner. E. I. Whiting	105
	St. Johns.	

INDEX—(Continued)

Subject:	Inquirer:	Page
Marriage Licenses	Lloyd C. Henning, Clerk.....	45
Medical Credentials—Sufficiency of	Superior Court, Navajo Co. Board of Medical Examiners....	5
Medicine—Reciprocity Certificate	Dr. Ancil Martin, Phienix.....	85
Military Training in Schools	Prof. D. F. Jantzen	95
Minors in Pool Halls	Prin. Phoenix High School.	
Oaths and Official Bonds	John Roberts	93
Officers and Officers—Holding Several Offices	Ernest R. Hall	110
Officers and Offices—Board of Su- pervisors and School Trustee	Secretary of State. Thos. E. Campbell	31
Osteopathy—Reciprocity Certificate	Governor of Arizona. J. L. Sullivan	106
Offices and Officers—Official Oaths	Co. Atty., Yavapai Co. Paul R. Collins	75
Passenger Fares—Soldiers	Thos. E. Campbell	119
Pioneers' Historical Society— Appropriations for	Governor of Arizona. W. S. Ingalls	27
Pioneers' Home—Admittance to	Adjutant General. Clayton Bennett	43
Pool Halls—Minors	Board of Directors, State Institutions. Bert Wingar	104
Referendum	Board of Directors, State Institutions. John Roberts	93
Resource Board— Appropriations for	Ernest R. Hall	63
Salaries—Payment of School Teachers	Secretary of State. Thos. E. Campbell	42
Salaries—Appropriations for Fair Commission	Governor of Arizona. Thos. R. Greer	6
Salary—Clerk, School Board	Co. Atty., Navajo Co. C. W. Fairfield	7
Salary Warrant—School	State Auditor. A. H. DeRiemer	16
Schools—(See Education)	Co. Atty., Santa Cruz Co. Elsie Toles	51
State Funds—County Fair	Supt. Public Instruction.	
State Examiner—Approval and Dis- approval of Depository Bonds by State Lands—Sale and Purchase of	C. W. Fairfield	41
Statutes—Enacting Clause	State Auditor.	
Session Laws and Statutes	Thos. E. Campbell	107
Secretary of State—Fees and Duties	Governor of Arizona. Rudolph Kuchler	23
Sheriffs Fees	State Land Commissioner. H. E. Dunlap, Willcox.....	59
Suffrage in Arizona	Ernest R. Hall	71
Superior Court—Clerks' Fees	Secretary of State. Same	82
Tax—Inheritance	H. O. Morrison	84
	State Examiner. "World Almanac"	88
	A. H. DeRiemer	92
	Co. Atty., Santa Cruz Co.	
	Raymond R. Earhart	10
	State Treasurer.	

I N D E X—(Continued)

Subject:	Inquirer:	Page
Taxes—Town	Clarence Pulliam	17
	Flagstaff.	
Tax—School Poll	Thos. R. Blair, Bursar	35
	University of Arizona.	
Taxes—Levy of State	Clarence Standage	72
	State Tax Commissioner.	
Tax—Levy of School	Elsie Toles	49
	Supt. Public Instruction.	
	Same	65
Taxes—Interest on Delinquent	Tax Commission	70
Taxes—Power of Cities to Increase	J. W. Murphy	73
Tax—Levy 10% for School	Co. Atty., Gila Co.	
Reserve Fund	Thos. E. Campbell	75
Tax Anticipation Bonds—	Governor of Arizona.	
Construction of Contract		
Tax Anticipation Bonds—	Same	76
Validity of Option	Raymond R. Earhart	90
Tax Anticipation Bonds—	State Treasurer.	
Issuance of	Claude Hooker	95
Taxes—Costs of Dismissed Tax	Co. Atty., Greenlee Co.	
Suit	Elsie Toles	12
Traveling Expense—County School	Supt. Public Instruction.	
Superintendent	J. Myron Allred	14
Traveling Expense—County	Co. Assessor, Safford.	
Assesor	Corporation Commission	78
Traveling Expenses—Corporation		
Commission		
Validity of Chap. 102—S. B. 167,	Raymond R. Earhart	91
S. L. 1921	State Treasurer.	
Warrants—Interest on	Elsie Toles	50
	Supt. Public Instruction.	
Warrants—Countersigning of	Ernest R. Hall	56
	Secretary of State.	
Warrants—Payment of 8% Interest	Elsie Toles	51
on Salary	Supt. Public Instruction.	
Workmen's Compensation	Frank O'Connor	79

OPINIONS

(No. 1—January 14, 1921.)

SUBJECT—Board of Medical Examiners—Sufficiency of Credentials.

STATUTES AND LAW—Revised Statutes of Arizona 4738, as amended, Chapter 66, Laws of 1917.

FACTS

In this case it appears that Dr. Eric S. Flett, having made application to the Board of Medical Examiners of the State of Arizona for a license to practice medicine and surgery in Arizona, submitted to the said Board among other papers a diploma from the Pacific Medical College;

That the Board of Medical Examiners have decided that the standard of such school did not meet the requirements of the American Medical Association, and for that reason rejected the application insofar as the right to practice medicine and surgery is concerned.

OPINION

Under this state of facts, it is our opinion that it is lawful for the State of Arizona to require an applicant for a license to practice medicine and surgery to submit to the Board of Examiners his diploma. This duty is imposed upon the applicant by the provisions of Act 66, of the Laws of 1917.

The diploma having been submitted to the Board of Examiners by the applicant, then it is the duty of the Board to determine whether or not the school which issued such diploma had the qualifications prescribed in the said Act.

In making such determination the Board of Examiners acts within its discretion as a judicial body, and its determination of the quality of the school is final, unless the applicant should take steps to review the same by a suit in court. In this case it appearing that the Board of Medical Examiners has determined that the Pacific Medical College did not meet the requirements specified in the law, and there being no other diploma from a school of medicine and surgery, it is our opinion that the application of Dr. Flett was properly rejected.

(No. 2—January 20, 1921.)

SUBJECT—Forfeiture of Automobile Used for Illegal Transportation of Intoxicating Liquor.

STATUTES AND LAWS—Chapter 58, Session Laws of Arizona, 1919.

FACTS

An automobile was searched by the county officers of Navajo County, Arizona, which car was carrying whiskey from some point in Mexico. Driver of car stated that he was the owner of said automobile. Another party claims that he is the owner of said car, that automobile company in El Paso, Texas, holds a mortgage on said car for balance of purchase price, and that said automobile had been stolen.

What disposition should be made of said automobile?

OPINION.

Section 3 of Chapter 58, Session Laws of Arizona, 1919, in part reads as follows:

“Any person other than the one in custody of said property at the time of its use in such unlawful transportation, claiming the same as owner thereof, must prove by satisfactory evidence that said property was stolen from such claimant or used for said unlawful purpose without his knowledge, in which event the court shall make no order of forfeiture of said property.”

This statute clearly provides that if the owner of the car can prove by satisfactory evidence that the automobile was stolen from him, that the court shall make no order of forfeiture of said property.

I would therefore suggest that you do not deliver possession of this car to the party claiming it, but let him bring suit to recover such possession, and then the question of the ownership of the automobile can be decided by the court or jury.

(No. 3—January 20, 1921.)

SUBJECT—Payment of Salaries of School Teachers.

STATUTES AND LAWS—Section 2807, Revised Statutes of Arizona, 1913, Civil Code.

FACTS.

A party is now, and for two or three months last past, has been teaching school in Navajo County, Arizona; said party has no certificate authorizing him to teach school, but

expects to take the next teachers' examination and procure a certificate.

May such party receive pay for the time he teaches without having such teacher's certificate?

OPINION.

Section 2807, Revised Statutes of Arizona, 1913, is as follows:

"No warrant shall be drawn in payment of a teacher's salary by the County Superintendent, unless such teacher is the holder of a legal certificate in force for the full term for which payment is demanded. Any County Superintendent who shall draw any warrant not authorized under this chapter shall be liable on his official bond for the amount of such illegal warrant."

Subdivision 8 of Section 2733 of the Revised Statutes of Arizona, 1913, provides that Boards of Trustees shall not employ any teacher in any school supported by public funds or any part thereof until such teacher has received a certificate of qualification therefor, granted by the State Board of Examiners.

Section 2821 of the Revised Statutes of Arizona, 1913, among other things, provides that no district shall pay any teacher from apportionments, unless the teacher employed in the school of the district holds a legal certificate, in full force and effect during the whole period of his employment.

These laws covering the employment of school teachers are so clear that there can be no question as to their meaning. I am therefore of the opinion that no school teacher can receive any pay or compensation for teaching school for any period of time that he does not hold a legal certificate authorizing him to teach, and that the County Superintendent has no authority to draw any warrant for the payment of any salary of such teacher for any period of time that the teacher was teaching school without such certificate.

No. 4—January 20, 1921.)

SUBJECT—Appropriations.

STATUTES AND LAWS—Chapter 152, Session Laws of Arizona, 1919.

FACTS.

The Board of Directors of State Institutions filed with the State Auditor three claims:

1—For salary of Secretary of State Fair Commission \$1,462.50

2—For salary of Assistant Secretary of State Fair Commission \$975.00.

3—For salary of Superintendent of State Fair Grounds \$500.00.

The appropriation for State Fair Maintenance Fund for the fiscal year ending June 30, 1921, was exhausted when these claims were filed.

What disposition should be made of these claims?

OPINION.

Section 7 of Chapter 152, Session Laws of Arizona, 1919, makes it unlawful for any officer of the State to enter into any contract or contract any debt or obligation whereby the result of such action is to create any debt, liability or claim which will, when all prior claims, debts or liabilities by the same State agency made or created for payment from that same fund, exceed the specific appropriation for the specific purposes for which the fund in such case was created, and that all such excess debts, claims or liabilities shall be void to the amount of such excess and shall not be paid from any State Fund whatever.

Section 1 of said Chapter 152 of the Session laws of 1919, provides that no money in excess of the amount specifically named in the appropriation made for any purpose shall be available for such purposes, object or use.

As the fund appropriated for the State Fair maintenance fund was exhausted before the above mentioned claims were filed, the State Auditor is without authority to draw any warrant for the payment of such claims and the State Treasurer would have no power or authority to pay the same.

I would suggest that these claims be presented to the Legislature for such action as the Legislature may see fit to take, as the claims cannot be paid without an appropriation being made for that purpose.

(No. 5—January 21, 1921.)

SUBJECT—Sale of School Bonds Below Par.
 STATUTE—Revised Statutes 2742.

INQUIRY.

May a Board of Supervisors legally sell School Bonds under the provisions of paragraph 2742 Revised Statutes, for less than par?

OPINION.

Paragraph 2742 among other things provides that the bonds "must be sold in the manner prescribed by the Board of Supervisors for not less than par."

In this connection it has been decided that the word "par" as used in this statute means the face value of the bond together with interest accrued on such bond from the date thereof to the date of sale. 19 *R. C. L. Mun. Cor.* No. 315 and *Smith vs State*, 99 Miss. 859; 56 So. 1799; 35 L. R. A. (N. S.) 789.

As to the effect of a sale of bonds below par, it has been held that the purchaser thereof having notice cannot recover more than the amount actually paid for the bonds, together with the interest on that amount. (See same Section 19 *R. C. L.*)

We will not pass on the question of liability of any of the Board of Supervisors in violating the conditions of this Statute, but it would seem that the Board of Supervisors do so at their peril.

At best, a sale of bonds under paragraph 2742 for less than par is a clear violation of the law and irregular in all respects.

(No. 6—January 24, 1921.)

SUBJECT—Highways.

STATUTES AND LAWS—Chapter 1, Title 50, Revised Statutes of Arizona, 1913, Civil Code.

FACTS.

The Board of Supervisors desire to lay out a road one hundred (100) feet in length, connecting private roads.

Can this be legally done?

OPINION.

Under the provisions of Chapter 1, of Title 50, entitled "Roads" of the Revised Statutes of Arizona, 1913, the Board of Supervisors are authorized to lay out any road in their county, provided same is without the limits of any incorporated city. There appears to be no restrictions contained in said road law which would prevent the Board of Supervisors from establishing such highway, connecting private roads.

I am therefore of the opinion that the Board of County Supervisors can establish the road in question, provided they follow all of the provisions relating to the establishment of highways.

(No. 7—January 26, 1921.)

SUBJECT—Inheritance Tax on Estate of Deceased Non-Resident.

STATUTES AND LAWS—Chapter 13, Title 49, Revised Statutes of Arizona, 1913, Civil Code.

FACTS.

A resident of the State of Utah died in that State, leaving an estate exceeding Two Million (\$2,000,000) Dollars, in value. He left a will which, after devising certain property, left the residue and remainder of his property, two-sixths to his wife and one-sixth each to his four children. At the time of his death he owned \$6500.00, par value, of the capital stock of an Arizona corporation.

What property of the decedent is subject to inheritance tax, if any, under the provisions of the Arizona statutes?

OPINION.

Section 4995 of the Revised Statutes of Arizona, 1913, among other things, provides that all property within the jurisdiction of this State, and any interest therein, whether belonging to the inhabitants of this State or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other State, shall be subject to the inheritance tax at rate specified in Section 4996 of the Revised Statutes of Arizona, 1913, and all legatees shall be liable for any and all such taxes. Said Section 4996 provides that when any legacy shall pass to the wife or children the tax shall be at the rate of one per cent of the appraised value thereof received by each person, and further provides that in such cases any estate which may be valued at a sum less than \$10,000 shall not be subject to any such tax, and the tax in such cases is to be levied only on the excess of \$5,000 received by each person.

An inheritance tax is an excise on the privilege of taking property by will or by inheritance or by succession upon the death of the owner, and in such cases is imposed upon each legacy or distributive share of the estate as it is received. Such a tax is called a legacy or succession tax. Inheritance taxes imposed by the State have almost uniformly been construed to have been imposed upon the right to receive rather than upon the right to transmit.

20 R. C. L., Section 166, p. 196.

The State may tax the succession of all property ordinarily and permanently kept within its territorial limits, even if the owner was a resident of another State.

Blackstone vs. Miller, 188 U. S. 189; 23 S. Ct. 277; 47 U. S. (L. Ed.) 499.

Stock in a corporation is subject to the inheritance tax of the State, under the laws of which it was incorporated, though the stockholder was a resident of another State and the stock certificates were there kept at the time of his death.

McDougald vs. Lilienthal, 174 Cal. 698; 164 Pac. 387.

In determining what inheritance tax is due the State of Arizona, the amount received by the legatees or distributees from property of a deceased non-resident situated in another State, cannot be taken into account.

Attorney General vs. Barney, 97 N. E. (Mass.) 750, 751.

Section 5033 of the Revised Statutes of Arizona, 1913, is as follows:

"5033. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this State, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State. In the event that the executor, administrator, or trustee, of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this State bears to the value of the entire estate."

As the appraised value of the \$6500.00 of stock does not exceed the par value, no inheritance tax is due the State of Arizona.

If the appraised value of the said stock exceeds the sum of \$10,000 after deducting the percentage of the indebtedness of said estate, if any, as provided in said Section 5033, then such stock would be subject to an inheritance tax, provided more than the sum of \$5,000 was paid to one legatee or distributee, such excess over \$5,000 being taxed at the rate of one per cent, as provided in Section 4996 of the Revised Statutes of Arizona, 1913.

(No. 8—January 29, 1921.)

SUBJECT—Travelling Expenses and Office Supplies of County School Superintendent and Warrants in Payment of Same; and Signing of Warrants on County School Fund.

STATUTES AND LAWS—Chapter 162, Session Laws of Arizona, 1919; Chapter 61, Session Laws of Arizona, 1917; Sections 2391, 2503, 2416, 2418, 2708 and 2819, Revised Statutes of Arizona, 1913, Civil Code.

QUESTION No. 1.

May the Board of Supervisors allow travelling expenses to County School Superintendent in discharge of his duties as prescribed by law? Is there a limit fixed by law in counties of the first, second and third classes? If so, what is the limit in third class counties?

Section 5 of Chapter 162, Session Laws of Arizona, 1919, is as follows:

OPINION.

“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; provided, that necessary expenses in addition to the salaries herein provided and not otherwise expressly provided for in this act, may be audited and allowed by the boards of supervisors of the respective counties, when such expenses are necessarily incurred in the discharge of their duties
* * *”

Subdivision (a) of Section 7 of said Chapter 162 limits the travelling expenses of the County School Superintendents of the first class to the sum of Five Hundred (\$500.00) Dollars. No limit is placed on the amount of the travelling expenses of Superintendent of Schools in counties of the second, and third classes, except as provided in said Section 5, above quoted, that they must be “necessary” expenses. The “Salaries” and “emoluments” mentioned in Sections 8 and 9 of Chapter 61, Session Laws of Arizona, 1917, do not include “expenses,” and all expenses necessarily incurred in the discharge of the duties of Superintendent of Schools are in addition to such salaries or emoluments, and as provided in said Section 5 of Chapter 162, above quoted, such expenses may be audited and allowed by the Board of Supervisors.

QUESTION No. 2.

What constitutes travelling expenses? Does a person performing a duty in behalf of the County, which necessitates

the expenditure of money out of one's salary, other than mere train fare, have to meet board and hotel bills?

OPINION.

The Supreme Court of Arizona, in the case of *Van Veen vs. Graham County*, 13 Ariz. 167; 108 Pac. 252, held that travelling expenses of a court reporter included an allowance for his board and lodging. I have been unable to find any case in which the expression "travelling expenses" of a County Superintendent of Schools has been defined, but following the decision in the *Van Veen* case above cited, I am of the opinion that the expression "travelling expenses" includes railroad fare, and also board and lodging, where the board and lodging are at a different town or place than the home or domicile of the Superintendent of Schools, and also expense of automobile, if use is necessary, and claims for the same should be audited and allowed by the Board of Supervisors.

QUESTION No. 3.

Does a County School Superintendent have to secure the O. K. of the clerk of the Board of Supervisors before office supplies can be purchased for the needs of his office?

OPINION.

As cost of supplies for office of County School Superintendent are expenses, under the provisions of Section 5, Chapter 162 Session Laws of Arizona, 1919, above quoted, the Board of Supervisors are authorized to audit and allow all bills for supplies.

QUESTION No. 4.

Does the chairman of the Board of Supervisors have to countersign all warrants on the General School Fund?

OPINION.

Under the provisions of subdivision (1) of Section 2708, Revised Statutes of Arizona, 1913, it is the duty of the County School Superintendent to apportion the school moneys to each district in his county, and under the provisions of subdivision (2) of said Section 2708, it is made the duty of the County School Superintendent upon receipt of an order of the Board of School Trustees of any district to draw his warrant on the County Treasurer for all necessary expenses against the school fund of any such district.

Section 2819 of the Revised Statutes of Arizona, 1913, in part, reads as follows:

"It shall be the duty of the treasurer of each county:

(1) To receive and to hold as a special fund all public school moneys, whether received by him from the

sate treasurer, or raised by the county for the benefit of public schools, or from any other source, and to keep a separate account thereof, and when the same is apportioned among the school districts to open and keep a separate account of each district.

(2) On receiving any public school moneys amounting to one thousand dollars, subject to distribution, to immediately notify the county school superintendent of his county of the amount thereof.

(3) To pay over, on the warrants of the county school superintendent, duly endorsed by the person entitled to receive the same, any or all money."

As it is the duty of the County Treasurer to pay all warrants drawn on the County School Fund when drawn by the County School Superintendent, the chairman of the Board of Supervisors does not have to countersign any warrant drawn by the County School Superintendent on the County School Fund or on any school fund set aside for any school district.

The chairman of the Board of Supervisors shall draw all warrants for payment of salary of County School Superintendent, and audit and allow all claims for expenses.

(No. 9—February 11, 1921.9)

SUBJECT—Travelling and Office Expenses of County Assessor.
STATUTES AND LAWS—Chapter 162, Session Laws of Arizona, 1919;
Chapter 61, Session Laws of Arizona, 1917.

QUESTION No. 1.

May the Board of Supervisors allow travelling and office expenses to a County Assessor in discharge of his duties as prescribed by law? Is there a limit fixed by law in counties of the first, second and third classes? If so, what is the limit in third class counties?

OPINION.

Section 5 of Chapter 162, Session Laws of Arizona, 1919, is 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; provided, that necessary expenses in addition to the salaries herein provided and not otherwise expressly provided for in this act, may be audited and allowed by the boards of supervisors of the respective counties, when such expenses are necessarily incurred in the discharge of their duties." * * *

No limit is placed on the amount of travelling expenses of County Assessors in counties of the second, third and fourth classes, except as provided in said Section 5, above quoted, that they must be "necessary" expenses. The "salaries" and "emoluments" mentioned in Sections 8 and 9 of Chapter 61, Session Laws of Arizona, 1917, do not include "expenses", and all expenses necessarily incurred in the discharge of the duties of County Assessor are in addition to such salaries or emoluments, and as provided in said Section 5 of Chapter 162, above quoted, such expenses may be audited and allowed by the Board of Supervisors.

QUESTION No. 2.

What constitutes travelling expenses? Does a person performing a duty in behalf of the County, which necessitates the expenditure of money out of one's salary, other than mere train fare, have to meet board and hotel bills?

OPINION.

The Supreme Court of Arizona, in the case of *Van Veen vs. Graham County*, 13 Ariz. 167; 108 Pac. 252, held that travelling expenses of a court reporter included an allowance for his board and lodging. I have been unable to find any case in which the expression "travelling expenses" of a County Assessor has been defined, but following the decision in the *Van Veen* case above cited, I am of the opinion that the expression "travelling expenses" includes railroad fare, automobile expense, and also board and lodging, where the board and lodging are at a different town or place than the home or domicile of the County Assessor, and claims for the same should be audited and allowed by the Board of Supervisors.

(No. 10—February 11, 1921.)

SUBJECT—Sale of Baled Hay.

STATUTES AND LAWS—Paragraph 5538 Revised Statutes of Arizona, 1913, Civil Code.

FACTS.

A party has agreed with the owner of baled hay to purchase the same on a basis other than by weight. Is it necessary for the seller of such baled hay to mark or stamp the weight on each bale sold?

OPINION.

Section 5538 Revised Statutes of Arizona, 1913, Civil Code, provides, among other things, that "it shall be unlawful to sell or offer to sell in the State any baled hay in any other

manner than by weight, except by an agreement between the seller and the purchaser to the contrary." And said section further provides that "where hay is sold in bales, each of such bales shall have printed or stamped or marked thereon the correct weight of such bale in pounds or fractions of a pound avoirdupois."

We are of the opinion that where the seller and purchaser enter into an agreement for the sale and purchase of baled hay on any basis other than by weight, that it is unnecessary for such seller to mark the weight on bales of hay sold under the terms of such agreement, and that in doing so the seller would not be violating the provisions of Section 5538 Revised Statutes of Arizona, 1913, Civil Code, above quoted.

(No. 12—February 11, 1921.)

SUBJECT—Holidays—Lincoln's Birthday, February 12th, Admission Day, February 14th, and Washington's Birthday, February 22nd.

STATUTES AND LAWS—Paragraphs 3283, 3284 and 3285.

QUESTION.

Are February 12th, Lincoln's Birthday, February 14th, Admission Day, and February 22nd, Washington's Birthday, holidays?

OPINION.

Paragraph 3283 provides that the 14th day of February, known as Admission Day, and the 22nd day of February, known as Washington's Birthday, and certain other days thereafter through the calendar year, shall each be a holiday.

Paragraph 3284 provides that public offices shall not be open on holidays.

Paragraph 3285 provides that no court shall be open nor shall any judicial business be transacted on legal holidays, except for certain specific instances.

There is no statutory provision covering February 12th or Lincoln's Birthday. It is the opinion of this office that February 12th is not a holiday; that February 14th and February 22nd are legal holidays.

(No. 13—February 15, 1921.)

SUBJECT—Salary of Clerk of School Board.

STATUTES AND LAWS—Paragraph 2764, Revised Statutes of Arizona, 1913, Civil Code.

FACTS.

The Board of Trustees of a school district with a school

census of 1,800 and average attendance of 800, employed a person as substitute teacher and secretary to the Board at a salary of \$150.00 per month. This School Board also employed a member of the Board as Clerk at \$25.00 per month. The clerical work of the School Board is so extensive as to make it necessary to employ this clerk and also to use the services of the substitute teacher when not engaged in teaching. Is the County Superintendent of Schools authorized to draw warrants for the payment of said salaries?

OPINION.

Section 2764 of the Revised Statutes of Arizona, 1913, Civil Code, authorizes the Board of Trustees of any school district having a school population of one thousand or over to employ a clerk, and limits the compensation for clerical work to nine hundred dollars per annum. If the clerk above mentioned employed at \$25.00 per month receives \$300.00 per year, then only \$600.00 of the salary of the substitute teacher and clerk could be charged to salary account for clerical work, and the balance of the salary of the substitute teacher would have to be paid from the teachers' fund. In case this is done, we see no reason why the County Superintendent of Schools should not draw warrants for the payment of such salaries.

(No. 14—February 24, 1921.)

SUBJECT—Town Taxes.

STATUTES AND LAWS—Section 4842, Revised Statutes of Arizona, 1913, Civil Code; Chapter 50, Session Laws of Arizona, 1917.

FACTS.

Certain additions were annexed to a town during the past year. This greatly increased the expenses of the town. Can taxes be levied and collected in excess of ten per cent over and above the total amount of taxes levied and collected for the preceding year?

OPINION.

Section 4842 of the Revised Statutes of Arizona, 1913, Civil Code, as amended by Chapter 50, Session Laws of Arizona, 1917, provides that in no event shall the aggregate amount of taxes to be raised, excepting taxes for school and bond purposes, exceed ten per cent greater in amount than the total sum levied and collected from all sources, for all pur-

poses other than school and bond purposes, during the next year prior to that in which the levy is made.

We are of the opinion that no town in this State can levy or collect taxes in excess of said ten per cent over and above the amount levied and collected for the preceding year, in addition to the amount raised for school and bond purposes.

Dated February 24, 1921.

(No. 15—February 25, 1921.)

SUBJECT—Maintaining Schools and Payment of Bills for Repairs.

STATUTES AND LAWS—Sections 2708, 2750 and 2751 Revised Statutes of Arizona, 1913, Civil Code.

FACTS.

A school district contains two school houses. The Board of Trustees of said school district have contracted for lumber for repairing one of the school houses in the sum of \$297.33 and have contracted for fire insurance, the premium amounting to \$259.20. Both schools in said districts have been maintained for the past five months. Have the Board of Trustees power to close one of these schools at the end of the five month period and to pay the bills above mentioned?

OPINION.

Section 2750 provides that all schools shall be maintained for a period of not less than eight months during any school year.

Section 2751 provides that Boards of Trustees must use the school moneys received during the school year from the State and County apportionment exclusively for the payment of salaries, of teachers and other employees of the district and contingent expenses for the school year, and if a balance remain in the school fund of the district after the expense of maintaining school for a period of eight months during the school year shall have been actually paid, such balance may be expended for repairing the school house or for improving the school ground or in the purchase of school furniture equipment and supplies.

Paragraph 2708 provides than on the order of the Board of Trustees of any district it is the duty of the County Superintendent to draw his wararnt on the County Treasurer for all necessary expenses against the school fund of any such district, and that no warrant shall be drawn unless the money is in the proper fund to pay it.

I am of the opinion that the two bills above mentioned for lumber for repairs and for fire insurance premium should not be paid until both the schools in said school district have been maintained for at least eight months during the school year, and that the County Superintendent of Schools should not draw his warrant for the payment of the bills for lumber and fire insurance premium until both of said schools had been kept open for eight months, and then only after the salaries of all school teachers and contingent expenses had actually been paid, unless there is sufficient money in the school fund to pay the salaries of teachers and contingent expenses and also the expenses of the lumber and fire insurance premium.

(No. 16—March 2, 1921.)

SUBJECT—Employment of Stenographer in Office of County Attorney.

STATUTES AND LAWS—Sections 2390, 2391 and 2531, Revised Statutes of Arizona, 1913, Civil Code, and Sub-division (e), Section 7, Chapter 162, Session Laws of Arizona, 1919.

FACTS

The County Attorney appointed a stenographer at a salary of \$125 per month. The Board of Supervisors allowed this stenographer the sum of \$50 per month. What are the powers of the County Attorney and Board of Supervisors with reference to the employment of such stenographer?

OPINION.

Section 2531, Revised Statutes of Arizona, 1913, Civil Code, provides that the County Attorney, except for his own services, shall not present any claim, account or demand for allowance against his own county, or in any way advocate the relief asked on a claim or demand asked by another.

Section 2390 provides that accounts for county charges of every description must be presented to the Board of Supervisors to be audited, and Sub-division 2 of Section 2391 provides "the compensation of the county attorney, his deputy, and stenographer, and all expenses necessarily incurred by him in criminal cases arising within the county" are county charges.

Sub-division (e), Section 7, Chapter 162, Session Laws

of Arizona, 1919, reads as follows:

“All of the county officers hereinbefore named may, by and with the consent of and at salaries to be fixed by the Board of Supervisors, appoint such deputies, stenographers, clerks and assistants as may be necessary to properly conduct the affairs of their respective offices.”

We are, therefore, of the opinion that no stenographer can be employed by a county attorney except with the consent of the Board of Supervisors, and that the Board of Supervisors has full power and exclusive authority to fix the salary of such stenographer.

(No. 17—March 3, 1921.)

SUBJECT—The Constitutionality of House Bill 21. Constitution, Section 17, Article 4 and Section 7, Article 9.

FACTS.

One Claude Sharp received an injury while employed by the State of Arizona in the construction of the West Wing of the Capitol building. During the progress of the work, a derrick used for lifting heavy stones was negligently operated by some of the State's employees other than Claude Sharp, and fell upon him and seriously injured him.

Through his guardian, he brought suit against the State for damages and recovered a judgment for \$5,000. The State appealed the case. The Supreme Court of Arizona held that there was no liability on the part of the State, and reversed the judgment of the lower court with instructions to sustain the demurrer to the complaint.

This case is reported in 189 Pac. p. 631.

House Bill No. 21 provides for an appropriation of \$5,000 for compensation on account of injuries received by Claude Sharp while an employee of the State as laborer in the construction of the West Wing of the Capitol Building.

Is House Bill No. 21 constitutional?

OPINION

Section 7 of Article 9 of the Arizona Constitution is as follows:

“Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall

ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law."

The word "donation" is defined in the Standard dictionary as "that which is donated or bestowed; gift; grant; offering; transfer of property, either real or personal, without valuable consideration."

In the case of *Bourn vs. Hart et al.*, 28 Pac. p. 951 the Supreme Court of California in its opinion ordering judgment for the defendants, said:

"This is an original proceeding, wherein the petitioner asks this court to issue a writ of mandamus directed to the defendants, as members of the state board of examiners, commanding them to allow his claim against the state for the sum of \$10,000, in accordance with the provisions of an act of the legislature, the first section of which, and the only one necessary to a proper understanding of this case, is as follows: 'Section 1. The sum of ten thousand dollars (\$10,000) is hereby appropriated, out of any moneys in the general fund of the state treasury not otherwise appropriated, to pay the claim of A. J. Bourn, a guard at the state prison at San Quentin, in this state, for personal injuries, namely, the loss of his right arm while in the discharge of his duties, under the order of his superior officers, and while in the service of the state of California * * *

"The exemption of the state from paying damages for accidents of this nature does not depend upon its immunity from being sued without its consent, but rests upon grounds of public policy which deny its liability for such damages. It is argued, however, that the state has in this instance assumed and acknowledged its liability by the act under consideration. But this is precisely what the legislature is forbidden to. A legislative appropriation made to an individual in payments of a claim for damages on account of personal injuries sustained by him while in its service, and for which the state is not responsible either upon general principles of law or by reason of some previous statute creating such liability, is a gift, within the meaning of the constitution. The appro-

priation made to petitioner was a mere gratuitous assumption of an obligation from which the state was and is exempt, and is within the mischief which the framers of the constitution intended to remedy by the sections before referred to.' ”

“Const. Art. 4, paragraph 31, provides that the legislature shall have no power to make any gift of any public money. *Held*, that a legislative appropriation for the benefit of sufferers from the Tia Juana flood was void.” *Patty vs. Colgan, State Comptroller*, 31 Pac. p. 1133 (Cal.)

As there is no obligation on the part of the State of Arizona to pay Claude Sharp any sum of money, we are of the opinion that House Bill 21 is in violation of the provisions of Section 7 of Article 9 of the Arizona constitution, wherein the legislature is prohibited from making any donation to any individual, and that said bill is unconstitutional and void.

It may be that House Bill 21 is also in conflict with the provisions of Section 17 of Article 4 of the Arizona constitution.

(No. 18—March 3, 1921.)

SUBJECT—Blue Sky Law, Sale of Stock.

STATUTES AND LAWS—Title IX, Chapter 9, Revised Statutes of Arizona, 1913, and Amendments.

INQUIRY.

I.

Can a domestic investment company, under the Arizona Investment Company law, evade the necessity of obtaining a permit from the Arizona Corporation Commission to sell stock, bonds, or other securities by confining its disposal of stock, bonds or other securities exclusively to and in other States?

II.

Can a domestic investment company, under the Arizona Investment Company law, issue stock, bonds or other securities in exchange for real or personal property, or personal services, without the necessity of first obtaining a permit authorizing same?

OPINION.

I.

The disposal of stock, bonds or other securities in California or some foreign State is merely the delivery of a

certificate. Corporation stock itself is incorporeal and intangible. It is a chose in action. The situs is in the State where the corporation is created. On the other hand, the certificate of stock is merely a written or printed evidence of the incorporeal, intangible chose in action. A transfer or delivery of the evidence of this right is not the transfer of the chose in action itself. The disposal of the evidence in a foreign State is not the thing that constitutes a sale of the stock, bonds or other securities. The transfer of the stock, bonds or other securities itself takes place in the State where the domestic investment company was organized, at the situs of the stock.

In my opinion, the Corporation Commission may require investment companies organized in this State to obtain a permit for the sale of the stock, bonds or other securities, even though said investment company proposes to confine the disposal of the certificates of stock, bonds or other securities exclusively in foreign states.

II.

In my opinion, the original or first issue of any stock, bonds or other securities of a domestic investment company, whether to one person or to the public, comes within the purview of our Blue Sky Law, requiring, first, the obtaining of a permit.

(No. 19—March 3, 1921.)

SUBJECT—State Lands—Sale and Purchase of State Lands and the Date Thereof.

STATUTES AND LAWS—Constitution, Article 10, Section 11; Session Laws, 1915, Chapter 5.

INQUIRY.

- 1st. How much land may one person purchase?
- 2nd. What constitutes a purchase of State Land?
- 3rd. What is the date of purchase?

OPINION.

Article 10, Section 11, of the Constitution of the State of Arizona provides that no individual, corporation or association shall be allowed to purchase more than 160 acres of agricultural land, or more than 640 acres of grazing land.

Section 58 of the State Land Code provides that no individual, corporation or association shall be allowed to pur-

chase more than 640 acres of grazing land or more than 160 acres of land susceptible of immediate use for agricultural purposes, and no sales, leases or sub-leases of the state lands shall be made to persons who are not citizens of the United States, or who have not declared their intention to become such, nor to corporations or associations not qualified to transact business in the State of Arizona.

These appear to be the only statutory or constitutional written provisions.

At the time of Statehood, our State became the owner of a considerable body of land which experience and development for the past eight or ten years has taught us has value and worth we were at first very much inclined, as a public, to overlook. The just and proper administration and conservation of this wealth has become to the state a problem of the first magnitude. It is quite probable that in 1915, when our land code was enacted, we, as a State and people, did not appreciate nearly so emphatically as we do now the great importance of this heritage and for that reason the, then, law did not clearly set forth as well as might have been, the detailed administration of the land.

However, one thing is clear, namely, the intent and purpose of the ownership of the land and the administration thereof must be for the benefit of the State and the people as a whole. Therefore, the interpretation of the letter of the law, or possibly even the lack of the letter, must be in the light of the well recognized intent and purpose.

Our State is not a business enterprise in the sense that its first and highest duty is to make a profit in dollars and cents. The first great purpose of a State sovereignty is to guarantee and promote the welfare and prosperity of its citizens. To a state, an increasing population of home builders is the greatest index to success,—the greater the home building population the greater becomes the state,—and every energy and resource of the state should be directed toward the encouragement and promotion of increasing the population of home owners and home builders. Naturally, this cannot be accomplished by making the rich richer, or by adding property and wealth to those who already have an abundance. It can only be accomplished to the benefit of the State by assisting those who by virtue of circumstances and environment over which they have no control, are unable to overcome the many obstacles to becoming a home owning resident.

Every normal man has, inborn, a desire to own and possess a tract of land on which to build a house and actually live a normal life. Our law must foster and en-

courage this, but beyond the point of helping a person to get a starting point, the individual must thereafter shift for himself. This state is interested in aiding those in need, but not to the point of aiding one in his acquisitive desires in contradistinction to his needs. With this in view, then, one who has already once required a tract, be it 640 acres grazing or 160 acres agricultural, has had what the state offers and has exhausted his rights to any further aid along the line of purchasing State lands. One cannot purchase both 640 acres grazing and 160 acres agricultural. He may purchase one or the other but not both. Conversely, our laws do allow one to purchase up to that amount and one should be allowed to buy from time to time until he has bought the full amount allowed.

Similarly, our state land laws should not be interpreted to encourage speculation in state land. One must not be allowed to indiscriminately grab any considerable portion of State land under the guise of contracts to purchase, and then be permitted to sell or assign his contract to purchase. Therefore, a purchase under our laws must be interpreted as not only the actual buying and paying for the land and obtaining a deed, but also to include the acquisition of any interest under a contract to purchase; in other words, one who has entered into a contract to purchase either 160 acres of agricultural land or 640 acres of grazing land has been given his opportunity and would appear to have exhausted his rights to other or further purchases. Otherwise he could sell his contract rights at a profit and thus proceed to accumulate wealth to the detriment of those to come now and later on, who, as real pioneers and workers, will or do need bona fide homes.

One contracting to purchase state land ordinarily would not be entitled to again contract for or purchase additional State land, and the same interpretation would apply to an assignee of a contract, he having placed himself in a condition to purchase land, or anyone else who has put himself lawfully within the means of acquiring State land. Once having put himself in the way of acquiring State land, whether by deed, by contract to purchase, or by assignment of contract to purchase, he would thereafter be barred from further acquisition by purchase of State land beyond the amount allowed by law.

Further, in my opinion, the legal date of purchase is:

- 1st. The date of the signing of the contract to purchase.
- 2nd. The date of the assignment of the contract to purchase.
- 3rd. The date the "land is struck off at auction."

ADVANCE OPINIONS OF THE

(No. 20—March 4, 19291.)

SUBJECT—Sale of County Highway Bonds Below Par and Payment of Commission.

STATUTES AND LAWS—Section 6, Chapter 31, Session Laws 1917, Paragraphs 2468 and 5284, Revised Statutes, 1913.

INQUIRY.

1st. May the proceeds from the sale of the bonds be used to pay the brokers' commission where the bonds are sold for par and accrued interest?

2nd. Is it legal to sell County Highway bonds at par and accrued interest for non-interest bearing certificates of deposit maturing monthly, to be issued by some bank selected by the Board of Supervisors?

OPINION.

1st. Section 6, Chapter 31, Session Laws 1917, declares that the County Highway Bonds shall be sold in the same manner as other county bonds, but further provides that the proceeds of such bonds shall be placed in a special fund to be denominated the "Highway Improvement Fund," and shall be used only for the purposes for which they were authorized at such election, and such other purposes as are authorized by this Act.

Paragraph 2468 provides that the county bonds shall be sold in no case for less than par and all interest accrued on them at the date of their sale, and the proceeds of such sale shall be applied exclusively for the purposes,—et cetera.

Paragraph 5284 provides that the expenses shall be deducted from the proceeds of the sale of such bonds, but in 172 Pac. 285 the Arizona Supreme Court has interpreted paragraph 5284 to the effect that the word "expenses" does not include a brokers commission.

Unless the election authorized the use of this fund so voted, among other uses,—that of paying a commission to the brokers,—in my opinion the bond fund could not be applied to such purpose. In other words, if the bonds were sold at par and accrued interest the commission could not be paid out of the fund.

I am expressly withholding any expression of opinion as to whether the supervisors might or might not pay the commission for the sale of the bonds out of the General Fund of the County. That question is not asked.

2nd. The sale of the bonds for non-interest bearing certificates maturing monthly, on the face of it might appear to be a sufficient compliance with the law. However,

great care should be exercised in this matter to ascertain the exact nature and the value of these certificates of deposit. I would prefer not to pass final judgment at this time until the identical certificates of deposit were presented for examination.

(No. 21—March 10, 1921.)

SUBJECT—Passenger Fares.

STATUTES AND LAWS—Act of Congress February 28th, 1920. (Transportation Act.)

INQUIRY.

The Atchison Topeka and Santa Fe Railway Company has presented certain claims against the State of Arizona for transporting members of the National Guard from and to stations within the State of Arizona, during the months of October, November, December, 1920, and January, 1921, at the regular passenger rate of 4 cents per mile. Should these claims be allowed?

OPINION.

On October 2, 1913, the Arizona Corporation Commission issued its general order No. 26 requiring all railroads to furnish transportation at the rate of 2 cents per mile for all officers and men of the National Guard of Arizona who are under orders from competent authority to perform military duty. This was the rate paid to the railroads from the time of such order until the beginning of the War.

On December 28, 1917, the government of the United States took control of all of the railroads and fixed the passenger fares for officers and members of the National Guard at 4 cents per mile, and this action suspended the former order of the Arizona Corporation Commission.

On February 28th, 1920, Congress passed the Transportation Act. Subdivision (a) of Section 208 of the Transportation Act reads as follows:

“All rates, fares, and charges, and all classifications, regulations, and practices, in any wise changing, affecting, or determining, any part or the aggregate of rates, fares, or charges, or the value of the service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by State or Federal authority, re-

spectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare or charge shall be reduced, and no such classification, regulation, or practice shall be changed in such manner as to reduce any such rate, fare or charge unless such reduction or change is approved by the Commission."

The Court of Appeals of the State of New York in the case of *Public Service Commission vs. New York Central R. Co.*, 129 N. E. 455, held that until some affirmative action was taken either by the Interstate Commerce Commission or by the State that the rates in effect on September 1, 1920, remained in effect.

No order has been made by the Arizona Corporation Commission or other action taken requiring the railroads to reduce the passenger fares to 2 cents per mile subsequent to September 1, 1920, for officers and men of the Arizona National Guard. Until such action is taken the rates in effect during the time between February 28, 1920, and September 1, 1920, must remain in effect under the provisions of the Transportation Act.

We are therefore of the opinion that the claims of the Santa Fe Railway Company should be allowed at the regular passenger rate of 4 cents per mile.

(No. 22—March 11, 1921.)

SUBJECT—Commission on Sale of Bonds.

STATUTES AND LAWS—Paragraphs 2420 and 5113, Revised Statutes of Arizona, 1913, Civil Code; also Chapter 31, Session Laws of Arizona, 1917.

INQUIRY.

May the Board of Supervisors of a county lawfully pay commission for the sale of bonds out of the General Fund of the county?

OPINION.

Section 2420, Revised Statutes of Arizona, 1913, Civil Code, provides that the Board of Supervisors may create and make payments from county funds, if they deem necessary, for the proper transaction of the business of the county.

Section 5113 provides, among other things, that road bonds must be sold in the manner prescribed by the Board of Supervisors, and for not less than par.

Section 6, of Chapter 31, Session Laws of Arizona, 1917, provides that all bonds shall be sold by the Board of Supervisors in the same manner as other county bonds, and that the proceeds of such bonds shall be placed in a special fund, to be denominated the "Highway Improvement Fund."

As the money derived from the sale of the bonds goes to the credit of the Highway Improvement Fund, it would naturally follow that the expense of holding the bond election and the expense of lithographing and printing the bonds and all other expenses connected therewith and with the sale of the bonds would be a proper charge against the county. We can see no reason why the Board of Supervisors cannot employ some person to aid and assist in selling the bonds, and that such employee, agent or broker could be paid compensation for such services, either a fixed sum or a sum equal to a certain per cent of the gross amount received from the sale of the bonds, provided the amount paid was reasonable under all the circumstances. Of course, no compensation could in any event be paid to the party or parties purchasing the bonds or to any agent or any buyer or buyers of the bonds, as that would be selling the bonds for less than par.

Church vs. Hadley, 39 L. R. A. (N. S.) 248; *Bay City Lumberman's State Bank*, 160 S. W. 425.

The case of *Maxey vs. Board of Supervisors of Yuma County, et al*, 19 Ariz. 488, while not exactly in point tends to support the conclusion above stated.

We are therefore of the opinion that the Board of Supervisors are authorized to pay any necessary expenses incurred in connection with the sale of the road bonds.

(No. 23, March 17, 1921.)

SUBJECT—School Funds Apportionment to Counties.

STATUTES AND LAWS—Article XI, Section 8, Constitution.

INQUIRY.

Shall the apportionment of school funds among the various counties be made on the basis of the number of children residing in the county?

OPINION.

Article XI, Section 8 of the Constitution declares the school funds shall be apportioned annually to the various

counties of the State in proportion to the number of pupils of school age residing therein. The basis of apportionment is thereby made upon two factors, pupils and residence.

In the past, I understand there has been some tendency to interpret the words "pupils" as synonymous with the word "children," and therefore the apportionment may have been made on the basis of the number of children residing in the county.

In the ordinary accepted meaning of the two words, pupils and children, there is a great difference. Unfortunately, not all children are pupils. The approved definition of the word pupil and, in my opinion, the one intended in the constitution, is a child of school age who is under the care of a teacher. With this definition of the word pupil, the clause in the constitution would be interpreted as follows:

The school fund shall be apportioned annually to the various counties of the State in proportion to the number of children of school age residing therein, who are *in the care of a teacher*.

Therefore, in my opinion, the basis of computation and apportionment is made upon two factors, to-wit, residence and the number of children of school age who are in the care of a teacher.

(No. 24—March 25, 1921.)

SUBJECT—Maintaining Schools, and Forfeiture of Share of State and County School Moneys.

STATUTES AND LAWS—Sections 2750 and 2821, of the Revised Statutes of Arizona, 1913, Civil Code.

INQUIRY.

Can the Board of Trustees of any school district close any school at the end of seven months without forfeiting share of state and county moneys?

OPINION.

Section 2821 of the Revised Statutes of Arizona, 1913, Civil Code, provides, among other things:

"And on and after July first, 1913, no school district, except one newly formed, is entitled to receive any apportionment of state or county school moneys, which has not maintained a public school for at least seven months during the next preceding school year."

Under the provisions of this section above quoted, a school district would not forfeit its right to its share of state and county moneys if it kept such school open for not less than seven months during the school year.

Section 2750 provides that all schools shall be maintained for a period of not less than eight months during any school year. This is mandatory, and the Board of Trustees should make every effort possible to keep all schools open for not less than eight months during the school year. Their oath of office requires them to do this.

(No. 25—March 25, 1921.)

SUBJECT—Offices, and Officers Holding Several Offices.

STATUTES AND LAWS—Paragraphs 4367, 4368, 4372, and 4406, of the Revised Statutes of Arizona, 1913, Civil Code, and H. B. 179, Fifth Arizona State Legislature.

INQUIRY.

May one person hold the several offices of State Superintendent of Health, Registrar of Vital Statistics, Director of Tuberculosis, Child Welfare Work, Public Health, Nurses and registration of Nurses, and Venereal Disease Control, and be paid salary for each office?

OPINION.

He may.

(No. 26—April 8, 1921.)

SUBJECT—Appropriations.

STATUTES AND LAWS—Section 1 of Chapter 152, Session Laws of Arizona, 1919, as Amended by Senate Bill 69, Regular Session Fifth Legislature, 1921.

INQUIRIES.

The income derived from the Permanent School Fund and transferred to the State Common School Fund amounted to the sum of \$136,673.06. The income from the School Lands within the Northern Forest Reserve and received from the United States of America, and transferred to the State Common School Fund, amounted to the sum of \$58,775.83.

There was appropriated for the State Common School Fund by Section 450, Chapter 174, Laws of 1919, for each

year ending June 30, 1920, and June 30, 1921, the sum of \$125,000.00.

There was appropriated for each year for the State Common School Fund by Chapter 30, Laws of 1919, the sum of \$750,000.00.

May said sums of \$136,673.06 and \$58,775.83 be expended out of the State Common School Fund in addition to the above amounts appropriated by the Legislature?

On December 31, 1919 the State's Treasurer also made the following transfers, to-wit:

From the University Land Fund, \$6,034.39; from the Agricultural and Mechanical Colleges Land Fund, \$3,738.21; from the School of Mines Land Fund, \$4,282.90, making a total of \$14,055.50 to the Maintenance Fund of the University of Arizona, from the Penitentiary Land Fund to the Maintenance Fund of the State Prison, \$2,248.45; from the Asylum for the Insane Land Fund to the Maintenance Fund of the Asylum for the Insane, \$2,447.38; from the Normal School Land Fund to the Maintenance Fund of the Northern Arizona Normal School, \$2,570.63, and to the Maintenance Fund of the Tempe Normal School, \$2,570.62; from the State Charitable Penal and Reformatory Institutions Land Fund to the Maintenance Fund of the State Industrial School, \$2,000.00; and to the Maintenance Fund of the Pioneers' Home, \$206.40.

May these moneys be used in addition to the various amounts appropriated for the Maintenance of the above named institutions by Chapter 174, Laws of 1919?

On December 31, 1919, the State Treasurer transferred to the General Fund the following amounts:

From the Legislative, Executive and Judicial Building Land Fund \$1,857.03, and from the Schools and Asylums for the Deaf, Dumb and Blind Fund, \$2,539.69.

May these amounts be made available for the maintenance of the Capitol building and for the education of the deaf, dumb and blind in addition to the General Fund appropriations made for them by Chapter 174, Laws of 1919?

OPINION.

Section 24 Enabling Act: "That in addition to Sections 16 and 36 heretofore reserved for the Territory of Arizona, Sections 2 and 32 in any Township in said proposed State not otherwise appropriated at the date of the passage of this Act are hereby granted to said State for the support of the common schools * * *" and provide

further, that the grants of Sections 2, 16, 32 and 36 to said State, within National Forests now existing or proclaimed, shall not vest the title to said Sections in said State until the part of said National Forests embracing any of said Sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its Common School Fund, such proportion of the gross proceeds of all the National Forests within said state as the area of lands hereby granted to said State for school purposes which are situated within said Forest Reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments, being appropriated and made available annually from any money in the Treasury not otherwise appropriated."

Section 8 of Article 2, Arizona Constitution: "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."

Sections 1 and 2 of Chapter 152, Session Laws of Arizona, as amended by Senate Bill 69, Regular Session Fifth Legislature, 1921, reads as follows:

"Section 1. At the beginning of each fiscal year there shall remain to the credit of each fund, and available for expenditure for the ensuing fiscal year, all of the unexpended balance remaining in said fund, except in such cases where the purpose for which the fund was created has been accomplished.

There shall be distributed among the various specific funds the total amount specifically appropriated for each fund for the fiscal year, a special fund being created for each particular object, purpose or use for which funds are appropriated. The amount so appropriated shall be credited to the specific fund and shall thereupon become available for expenditure.

Revenues and sources of income which are not specific in amount but which are designated as to be applied to or for specific uses, funds or purposes, shall not be deemed available for expenditure nor become

the basis for contract or liability except to the amount thereof actually paid into the State Treasury, and after the receipt thereof. Such revenue and income shall then be available for expenditures in addition to balances left over and specific statutory appropriations, unless otherwise declared in the act creating an appropriation.

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

This bill contains the emergency clause, and went into effect on March 19, 1921, when the bill was approved by the Governor.

We are of the opinion that the sums of \$136,673.06 and \$58,775.63 above mentioned, can be expended out of the common school fund in addition to the amounts appropriated by the Legislature.

The moneys received from rentals and interest, and belonging to the University Land Fund, and other special funds above mentioned, are available for use in addition to the sums of money appropriated by the Legislature for such institutions and balances left over at the beginning of the fiscal year.

The \$1,857.03 and \$2,539.69 transferred by the former State Treasurer to the General Fund from the Legislature, Executive and Judicial Buildings Land Fund, and from the Schools and Asylums for the Deaf, Dumb and Blind Fund, can be retransferred from the general fund to said special funds. This is a matter of bookkeeping and accountancy, and such transfers are within the discretion of the State Auditor and State Treasurer.

If such sums of money are considered or treated as moneys derived from rentals and interest, then such sums of money would belong to the respective special funds, and in such case it would be the duty of the Auditor and Treasurer to retransfer the same to the respective special funds.

When the said sums of money have been retransferred from the general fund to the several special funds, then such amounts, together with all appropriations made by the Legislature, in addition to the amount remaining to the credit of each fund at the beginning of the fiscal year, would be available for use for which the said special funds were authorized and created.

As provided by Section 1 of Senate Bill 69, above quoted, no rentals or interest would be available for use until the same is actually paid into the state treasury,

and after the same is paid into the state treasury, then the same would be available for use, in addition to balances left over at the beginning of each fiscal year, together with specific appropriations.

(No. 27—April 9, 1921.)

SUBJECT—School Poll Tax and Collection Thereof.

STATUTES AND LAWS—Paragraphs 5044, 5048 and 5049 of the Revised Statutes of Arizona, 1913, Civil Code.

INQUIRY.

What is the duty of the Board of Regents of the University of Arizona regarding the furnishing of the list of employees and the payment of school poll taxes?

OPINION.

Section 5044 provides as follows:

“5044. Each male inhabitant in this state, whether a citizen of the United States or an alien, over twenty-one and under sixty years of age, except members of volunteer fire departments, national guard, paupers, insane persons and Indians not taxed, shall be liable to pay such school tax, and shall pay the same to the school tax collector upon demand between the first day of February and the third Monday in December of each year; provided, however, that in case of his neglect to pay such school tax within the time specified, or the failure of the school tax collector to demand or collect the same during that time, he shall be liable to pay such school tax at any time thereafter during the balance of the year.”

Under the provisions of this section of the statute, all University employees are liable to pay the annual school poll tax. It is the duty of the county assessor to collect such school poll tax.

Paragraph 5048 provides as follows:

“5048. Any person or persons, company or corporation, having in his, her, their or its employ any male person or persons liable to pay school tax who have not paid the same shall on demand being made to the school tax collector, furnish him an accurate and full list of the names of all such persons, and shall thereupon pay the same, taking his separate receipts therefor, which receipts shall constitute and become a legal tender, a claim and set-off in amount

of their full face value, in the discharge of any obligation or any manner of indebtedness existing at the time, or which may at any time thereafter exist and be owing to any person or persons by the person or persons, company or corporation paying the same."

Paragraph 5049 provides as follows:

"5049. Any person or persons, company or corporation, who shall refuse to comply on demand being made to furnish the list of names as provided in the preceding section, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than double the amount of the tax for which such persons would be liable to pay under the provisions of this chapter."

In my opinion the Bursar of the University should furnish the list of employees in order to relieve himself of the charge of a misdemeanor, leaving the county assessor to collect the tax as best he may.

(No. 28, April 9, 1921.)

SUBJECT—Automobile License; Construction of Statutes.

STATUTES AND LAWS—Paragraph 5133, Revised Statutes, 1913; Chapter 172, 1919; Chapter 62, 1919; House Bill 158, 1921.

INQUIRY.

Does the concluding sentence of Subdivision 1 of Section 1 of House Bill 158, 1921, reading:

"The license hereunder granted when the same is applied for and granted on or after July first of each year, shall be at the rate of one-half the annual fee charged for such motor vehicle provided herein,"

repeal Chapter 172 of the Session Laws of Arizona, 1919?

OPINION.

House Bill No. 158, Fifth Session Arizona Legislature, in part, is an act to amend Paragraph 5133, Chapter 8, Title 50, Revised Statutes of Arizona, 1913, Civil Code, as amended by Chapter 62, Session Laws of Arizona, 1919. Subdivision 1 of Section 5133 as contained in House Bill 158 is in the same language as Subdivision 1 of Section 5133, as set forth in Chapter 62, Session Laws of Arizona, 1919, with the exception of providing for filing statements with the county assessor and payment of license fees for trucks. The last sentence of said Section as set forth in the above query was not amended by House Bill 158. Said

Chapter 62, Session Laws of Arizona, 1919, was approved on March 17, 1919.

The Legislature in 1919 enacted Chapter 172, Session Laws of Arizona, 1919, which Act amended the Section quoted in the above query by providing for the collection of license fees quarter yearly, which Act went into effect on March 26, 1919.

The question is whether or not House Bill 158 repeals said Chapter 172 of the Session Laws of Arizona, 1919, or whether the re-enactment of the said sentence quoted in the above query carried with it the amendment made by said Chapter 172, Session Laws of Arizona, 1919.

In the case of *Territory vs. Ruval*, 9th Arizona 415, the Supreme Court of this State held that when a statute is amended by an act providing that the original statute shall be amended "so as to read as follows," repeating the original and adding to it new provisions, not in conflict with the original provisions, the repeated provisions are not a new enactment, but remain in force from the time of their original enactment. As the sentence quoted in the query was repeated in House Bill 158, under the authority of this case, said sentence is not a new enactment but remains in force from the time of its original enactment.

In the case of *Reeves vs Gay*, 18 S. E. (Ga.) 61, the court said:

"Section 1455 of the Code authorized elections upon 'the fence question' to be held at such times as the ordinary might appoint. The act of September 5, 1883, so amended this section as to require that these elections should be held on the first Wednesday in July following the filing with the ordinary of a petition for an election. Then came the act of November 12, 1889, the title of which is as follows: "An act to alter and amend section 1455 of the Code of Georgia of 1882, so as to prescribe the qualifications of voters in the several militia districts of the counties of this state, at any elections held in said districts for the purpose of establishing a stock law for said district, and for other purposes.' The only purpose of this act was to prescribe the qualifications of voters in elections upon the question of 'fence or no fence.' This was accomplished by enacting that after the words 'in said district,' in the forty-fifth line of the section, there should be inserted certain words prescribing what the qualifications of voters should be. The act then declares how, as a result of this amendment, the section shall read, and proceeds to copy the section,

retaining the words declaring that the election shall take place 'at such time as said ordinary shall appoint' just as they stood in the original section. Bearing in mind the amendment to the section made by the act of 1883, it is obvious that no such reading would result from the amendment really made by the act of 1889. The fact is the act of 1883 was simply overlooked. Nothing in the title of the act of 1889 indicates in any manner whatever an intention to repeal, modify, or amend the act of 1883, and nothing in the body of the act of 1889 directly or expressly indicates any such intention. The whole difficulty arises from the fact that, because of overlooking the act of 1883, the act of 1889 was made to declare that the amendment it introduced into the section would produce a certain reading of the section which, in fact, it did not produce. We hold, without misgiving or doubt, that the act of 1883 was not thus repealed. In the first place, it is manifest that the legislature, by the act of 1889, did not intend to repeal it; and, secondly, if they had so intended, the intention was not constitutionally accomplished, because, in so far as the act of 1889 could be construed as having this effect, it most clearly contains matter different from what is expressed in its title. Accordingly, we rule that, even after the passage of the latter act, the section of the Code in question stood, as to the time of holding elections, not as it did originally, but as it did after being amended by the act of 1883. If the foregoing is sound, it follows, without argument, that the act of November 26, 1890, 'to amend the fence laws of this state, and to repeal section 1449 of the Code,' does not repeal the act of 1883, or affect section 1455 of the Code as thereby amended. The act of 1890 must be understood as referring to the section as it stood when the latter act was passed, and we have already shown that the section then had ingrafted upon it, unaffected by the act of 1889, the amendment made by the act of 1883. Under this section, therefore, the only day upon which an election of the kind therein provided for could be lawfully held was the first Wednesday in July. An election held on any other day was necessarily void. So held the justice of the peace before whom this case originated; so held the judge of the superior court; and so we hold. This settles the matter finally."

Section 3 of House Bill 158 reads as follows:

"All acts and parts of acts in conflict with the

provisions of this act are hereby repealed.”

There is nothing in the Title to House Bill 158, indicating any intention to repeal Chapter 172, Session Laws of Arizona, 1919, and there is nothing in the body of the act which indicates any such intention.

We are, therefore, of the opinion that said Chapter 172, Session Laws of Arizona, 1919, is still in force and effect and operates as an amendment of paragraph 5133, Chapter 8, Title 50, Revised Statutes of Arizona, 1913, Civil Code, as amended by Chapter 62, Session Laws of Arizona, 1919, and as further re-enacted by said House Bill 158.

(No. 29—April 9, 1921.)

SUBJECT—Automobiles; Construction of Statutes.

STATUTES AND LAWS—Paragraph 5135, Revised Statutes, 1913, House Bill 158, 1921; and Section 14, Article IV, Arizona Constitution.

QUERY.

Does Section 2 of House Bill 158, Fifth Session Arizona Legislature repeal Subdivisions or Sections 1, 3, 4 and 5 of Paragraph 5135, Revised Statutes of Arizona, 1913, Civil Code?

OPINION.

House Bill 158, Fifth Session Arizona Legislature, in part, is an act to amend Section 2, Paragraph 5135, Chapter 8, Title 50, Revised Statutes of Arizona, 1913, Civil Code, providing for the use of public highways by motor vehicles.

Subdivision, or Section 1 of said Paragraph 5135 in House Bill 158 is in the same words and language of Section 2 of said Paragraph 5135, Revised Statutes of Arizona, 1913, Civil Code, and then follows in said Section 2 of House Bill 158, Subdivisions or Sections 2, 3 and 4, the latter three Sections being additional and new provisions.

Section 14 of Article IV of the Arizona Constitution reads as follows:

“No act or section thereof shall be revised or amended by mere reference to the title of such act, but the act or section as amended shall be set forth and published at full length.”

The question is whether or not a subdivision or section of a paragraph of the Statutes of Arizona is a “Section”

within the meaning of the provisions of said Section 14 of Article IV of the Arizona Constitution.

"It has been held that where a section is divided into numbered clauses or paragraphs, each such clause or paragraph may be treated as a section for purposes of amendment; that is, that it will be sufficient to set forth the particular clause or paragraph amended without setting out all the clauses or paragraphs of the section."

Paragraph 235, Lewis' Sutherland Statutory construction.

Section 11 of Article III of the Nebraska Constitution reads as follows:

"No law shall be amended unless the new act contains the section or sections so amended, and the sections so amended shall be repealed."

In the case of *State vs. City of Kearney*, 49 Neb. 325, at page 331, the court said:

"In amending statutes it is necessary that all parts of the amended law should be set forth in the new act, and the old statute so amended repealed. The Constitution requires that the section as amended shall be set out. This court has more than once held that the word 'section,' as employed in the constitutional provision above quoted, refers to a subdivision of a legislative enactment, and that a law to amend a certain subdivision of a section which contains the subdivision so amended is not inimical to said clause of the constitution." (Citing cases).

Section 3 of House Bill 158 reads as follows:

"All acts and parts of acts in conflict with the provisions of this act are hereby repealed."

The Provisions of House Bill 158 are not in conflict with the provisions of Subdivisions or Sections 1, 3, 4 and 5 of Paragraph 5135, Revised Statutes of Arizona, 1913, Civil Code, and there is nothing in the title or body of House Bill 158 indicating any intention of the Legislature to repeal said Subdivisions or Sections 1, 3, 4 and 5 of said Paragraph 5135.

Section 2 of House Bill 158 reads as follows: That paragraph 5135, etc., be amended, instead of following the title to the bill reading that Section 2 of Paragraph 5135 be amended. These words "Section 2" were omitted by mistake or inadvertence. Then the bill repeats Subdivision or Section 2 of Paragraph 5135 and adds three new sections or subdivisions. The body of the bill being broader than the title, in such case the title would govern,

and this shows that it was the intention of the legislature to only add three new sections to said Section 2 of Paragraph 5135.

We are of the opinion that such Subdivisions or Sections of a paragraph of the Arizona Statutes can be considered and treated as "Sections" under the provisions of Section 14 of Article IV of the Arizona Constitution, and that said Subdivisions or Sections 1, 3, 4 and 5 of Paragraph 5135, Revised Statutes of Arizona, 1913, Civil Code, were not repealed by House Bill 158, Fifth Session Arizona Legislature.

(No. 30—April 11, 1921.)

SUBJECT—State Funds and Payment Thereof; County and District Fairs.

STATUTES AND LAW:—Chapter 82, Session Laws of Arizona, 1917. Article IX, Sections 1 and 7; Article 2, Section XII, Constitution.

INQUIRY.

May public money be paid to an organization conducting a County Fair?

OPINION.

Payment of money under this law, under Chapter 82, Session Laws, 1917, appears to be expenditures of money for a public purpose within the meaning of Article IX, Sections 1 and 7, not violative of Article 2, Section XII, State Constitution.

Before this money is paid, it is necessary to have a certified copy of the resolution entered upon the minutes of the organization, declaring that no dividends shall ever be declared or paid upon the stock of the organization, and that in the event of the dissolution of the organization, all sums of money appropriated and expended in aid of a fair shall be repaid before any assets of the organization shall be distributed, all of this in accordance with said Chapter 82, Session Laws 1917.

Furthermore, when this part of this law has been complied with, such warrant as may be drawn is drawn in favor of the Board of Supervisors, and not to the particular organization under whose auspices the fair is conducted.

Such money as may be payable under this statute must be exclusively for a county or district fair, and not in aid of any individual association or corporation.

(No. 31—April 13, 1921.)

SUBJECT—Appropriations, Failure to Make, State Immigration Commissioner.

STATUTES AND LAWS—Senate Bill 108, Fifth Arizona State Legislature.

INQUIRY.

In view of the fact that there was no appropriation made in House Bill 179 for the support and maintenance of the office of the State Immigration Commissioner, does this prevent the continuation of the activities of said office?

OPINION.

The office of State Immigration Commissioner was created by Senate Bill 108, Fifth Arizona State Legislature, which act was approved on March 9, 1921, and contained the emergency clause.

Section 6 of said act reads as follows:

“Section 6. There is hereby appropriated annually out of any money in the General Fund a sufficient sum of money to carry out the provisions of this act, provided that the expenditures in any one fiscal year, under the authority of this act, shall not exceed Five Thousand Dollars.”

It was not necessary to make any appropriation in the general appropriation bill for the support of this office, as the appropriation for the salaries and expenses connected with the administration of this office was made in the act establishing the office.

(No. 32—April 13, 1921.)

SUBJECT—Appropriation, Failure to Make, Arizona Resources Board.

STATUTES AND LAWS—Chapter 84, Session Laws of Arizona, 1919; House Bill 179, Fifth Arizona State Legislature.

INQUIRY.

In view of the fact that there was no appropriation made in House Bill 179 for the support and maintenance of the Arizona Resources Board, does this prevent the continuation of the activities of said Board?

OPINION.

The Arizona Resources Board was created by Chapter 84, Session Laws of Arizona, 1919. Section 8 of said act provides for an annual continuing appropriation of the sum

of \$10,000.00, or so much thereof as may be necessary for the carrying out of the provisions of said act;—payment of \$10.00 per diem of each of the five members of the said Board, payment of the salary of the Secretary thereof, and payment of all necessary expenses incurred in the carrying out of the provisions of said act.

We are of the opinion that the Arizona Resources Board will continue to exist and operate, and that all wages, salaries and other expenses connected therewith will be paid by the State Treasurer upon warrants drawn by the State Auditor, to the extent of \$10,000.00 annually, until said Chapter 84, above mentioned, is repealed.

The fact that the Fifth Arizona State Legislature did not make any appropriation for the Arizona Resources Board in House Bill 179, would not affect the matter.

(No. 33—April 29, 1921.)

SUBJECT—Appropriations; Unused Portion.

STATUTES AND LAWS—Section 4640 of the Revised Statutes of Arizona, 1913, Civil Code.

INQUIRY.

How is the unused portion of the appropriation for the Arizona Pioneers' Historical Society, for the fiscal year ending June 30, 1920, to be disposed of?

OPINION.

On June 30, 1920, there remained the sum of \$72.23 of the appropriation of \$1,325.00 for the Arizona Pioneers' Historical Society, for the fiscal year ending June 30, 1920.

Under the provisions of Section 4640 of the Revised Statutes of Arizona, 1913, Civil Code, this unused portion of such appropriation was placed in the General Fund. Subdivision 6 of Section 1 of Chapter 174, Session Laws of Arizona, 1919, appropriated for the Arizona Pioneers' Historical Society the sum of \$1,325.00 for each of the years ending June 30, 1920, and June 30, 1921. This does not mean the sum of \$2,650.00 for the two year period, but the appropriation was for each year separately.

We are of the opinion that the said sum of \$72.23 could not be used by the Arizona Pioneers' Historical Society during the fiscal year ending June 30, 1921, but that the same went into the General Fund on June 30, 1920.

(No. 34—April 19, 1921.)

SUBJECT—Game Laws; Limitation of Prosecutions.

STATUTES AND LAWS—Sections 681 and 829, Revised Statutes of Arizona, 1913, Penal Code.

INQUIRY.

What is the limitation for the commencement of prosecutions for violation of the provisions of Title 18, Revised Statutes of Arizona, 1913, Penal Code, with reference to the preservation of game and fish?

OPINION.

Section 681 reads as follows:

“Prosecutions under this title may be commenced within one month from the date of violation of any of the provisions of this title, either by complaint or information.”

Section 829 reads as follows:

“An indictment for any misdemeanor must be found, or an information filed within one year from its commission.”

We are of the opinion that any prosecutions for any misdemeanors for violation of any of the provisions of Title 18 of the Penal Code may be commenced at any time within one year from the time when the offense was committed.

Section 681 provides that prosecutions *may* be commenced within thirty days, but said section does not use the word “shall”.

Most of the provisions of said Title 18 are contained in Senate Bill No. 42, Special Session, First State Legislature, which act is found commencing on page 19 of the last part of the 1913 Arizona Session Laws. This act was approved by a majority of the votes cast at the General Election, held on November 5, 1912, and went into effect on December 5, 1912. This act contains the clause “all acts and parts of acts in conflict with the provisions of this act are hereby repealed.” There is nothing in the title of this act which would indicate that it was the intention of the Legislature to repeal any other law, and we are of the opinion that the passage of this act did not change, alter or effect any of the provisions of Section 829 of the Penal Code, authorizing prosecutions for misdemeanors at any time within one year from the date of the commission of the offense.

(No. 35—April 22, 1921.)

SUBJECT—State Immigration Commissioner.

STATUTES AND LAWS—Chapter 49, Page 64, Session Laws of Arizona, 1917; Chapter 74, Session Laws of Arizona, 1919.

OPINION.

Referring to our opinion of the 13th instant, in re “Appropriations; Failure to Make; State Immigration Commissioner” a State Commissioner of Immigration was created by Chapter 49, Session Laws of Arizona, 1917, which officer was authorized to expend the sum of \$1,000.00, for the purposes in said act provided, and was to perform the duties of his office without receiving any compensation for his services.

Under the provisions of Chapter 74, Session Laws of Arizona, 1919, there was appropriated the sum of \$1,000.00, for the purposes in said act provided, which money was to be expended upon requisitions approved by the State Immigration Commissioner.

It appears that this office ceased upon the performance of the duties specified in these acts.

Paragraph 5553, Revised Statutes of Arizona, 1913, Civil Code, is 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.”

Senate Bill 108, Fifth Arizona State Legislature, which went into effect on March 9, 1921, repealed the earlier laws of the State of Arizona, providing for a State Immigration Commissioner, if any such were in force and effect.

(No. 36—April 25, 1921.)

SUBJECT—Marriage Licenses; Affidavit for.

STATUTES AND LAWS—House Bill No. 59, Fifth Arizona State Legislature, Session Laws, 1921.

INQUIRY.

Under the provisions of House Bill 59, Fifth Arizona State Legislature, Session Laws, 1921, may the Clerks of the

Superior Courts require both parties to a marriage to take and subscribe to an oath as to the matters contained in said bill before the issuance of a marriage license?

OPINION.

Upon the suggestion of Hon. Lloyd C. Henning, Clerk of the Superior Court of Navajo County and President Superior Court Clerks' Association, we have prepared this opinion.

House Bill 59 did not contain the emergency clause, and will not go into effect until ninety days after the adjournment of the Legislature.

This bill provides that the Clerk of the Superior Court shall require the persons desirous of marrying and applying for a marriage license to take and subscribe to an oath as to their names, ages, residence, race, and relationship between the parties, if any.

We are of the opinion that, under the provisions of this act, the Clerk of the Superior Court shall require such affidavit from both of the parties to the marriage before he issues such marriage license.

Based upon the tentative forms submitted by Mr. Henning, we have prepared the following forms of affidavits:

AFFIDAVIT FOR MARRIAGE LICENSE.

IN THE MATTER OF THE APPLICATION OF

.....
and

FOR A LICENSE TO MARRY.

(MALE)

STATE OF ARIZONA,)
) ss.
County of))

....., being first duly sworn upon his oath, does declare, depose and certify:

That is his true name; that his age is years; that he is a resident of; that he is of the race; and that he is not related to

except

Subscribed and sworn to before me this the
day of, A. D. 192.....

.....Clerk Superior Court,
..... County, Arizona.

(FEMALE)

STATE OF ARIZONA,)
County of) ss.

....., being
first duly sworn upon her oath, does declare, depose and
certify:

That is her true
name; that her age is years; that she is a resi-
dent of
.....; that she is of the race;
and that she is not related to
except

Subscribed and sworn to before me this the
day of, A. D. 192.....

.....Clerk Superior Court,
..... County, Arizona.

Of course, any Clerk of the Superior Court may adopt
and use the above forms, or he may use any other form which
embodies the provisions of said House Bill 59.

(No. 37—April 21, 1921.)

SUBJECT—Employment of Special Counsel by Counties.

STATUTES AND LAWS—2418, Sub-divisions (15) and (23) Revised Stat-
utes of Arizona, 1913.

INQUIRY.

May the Board of Supervisors of a county employ special

counsel to prosecute or defend cases for or against the county?

OPINION.

This inquiry is answered affirmatively by our Supreme Court in the case of the *County of Santa Cruz vs. Barnes*, 9 Ariz., page 42, in which case the court, among other things, said:

“It is and should be the law that the Supervisors of the county, on motion of, or with the consent of the District Attorney, have the power, when they find it necessary or advisable, to employ counsel in addition to the District Attorney, to protect the interests of the county not only in the conduct of, but in the preparation for, any litigation to which the county may be a party.”

(No. 38—April 22, 1921.)

SUBJECT—Bond; County Highway; Interest on Deposit.

STATUTES AND LAWS—Chapter 31, Laws 1917.

INQUIRY.

In case County Highway Bonds are deposited by the County Treasurer, what application should be made of the interest derived from such deposit?

OPINION.

The facts of this case are substantially as follows:

Pima County highway bonds amounting to \$1,500,000.00 were sold at par plus accrued interest, and the funds thereof placed with the County Treasurer of Pima County, who deposited the same in a bank at the rate of 5½% interest, pursuant to which, some \$70,000.00 interest accrued on such deposit. This interest was by the Treasurer credited to the Highway Improvement Fund Interest Account.

The County Highway Commission claim that this should be credited to the Highway Improvement Fund.

Subdivision 6, Chapter 31, Laws of 1917, provides that the proceeds of such bonds shall be placed in a special fund denominated “Highway Improvement Fund.”

Section 7 of this act provides that such money shall be paid out by the Treasurer of the County.

Section 2561 of the Revised Statutes of 1913 makes the County Treasurer the Custodian of this fund.

Section 2584 of the Revised Statutes of 1913 prohibits the Treasurer from loaning such fund, except as provided by laws relating to the deposit of public moneys.

Chapter 43, Title 44, of the Revised Statutes of 1913, provides the manner in which the County Treasurer may deposit these funds.

The presumption in this case must be that these funds were deposited pursuant to the provisions of this chapter.

There is nothing in this chapter indicating that the funds so deposited retain their identity, and we are unable to find any provision of the law directing how the interest derived from such deposits shall be credited or applied.

Sections 98, 4640 and 4641, and Section 2 of Act 152, Session Laws of 1919, indicate that moneys coming into the hands of the Treasurer not expressly applied or appropriated by specific provisions of the law, should go into the General Fund.

In the absence of any express statutory provision, we are of the opinion that interest derived from deposits under the provisions of Chapter 48, Title 44, of the Revised Statutes, would be placed in the General Fund, and we understand this is the practice with reference to funds loaned by the State of Arizona.

We are of the opinion that it should not have been credited to the Highway Improvement Fund as a part of the proceeds derived from the sale of the bonds.

(No. 39—April 30, 1921.)

SUBJECT—School Tax, Levy of Tax for.

STATUTES AND LAWS—Chapter XVIII, Title XI, Revised Statutes of Arizona, 1913, Civil Code; Chapter 45, Session Laws of Arizona, 1917; Senate Bill 83, Fifth Arizona State Legislature, 1921.

INQUIRY.

Must the Board of Supervisors levy a tax to cover the estimate of the County Superintendent of Schools? May the Board of Supervisors be compelled by a writ of mandamus to levy such tax if they refuse?

OPINION.

The County Superintendent of Schools in making up an estimate of funds necessary for school purposes must make such estimate in accordance with the provisions of Chapter XVIII, Title XI, Revised Statutes of Arizona, 1913, Civil

Code, and Chapter 45 Revised Statutes of Arizona, 1917. If such estimate is made subsequent to June 9, 1921, then the County Superintendent of Schools must also make such estimate in accordance with the provisions of Senate Bill 83, Fifth Arizona State Legislature, 1921, which will go into effect on that date.

If the estimate made by the County Superintendent of Schools of the amount of money needed for schools of any county is made in accordance with the statutes of this State, then the Board of Supervisors *shall* levy a tax sufficient to cover such estimate, after deducting the amount received from the State of Arizona, and from other sources, and if any board of supervisors refuses to levy such tax, we are of the opinion that such board of supervisors may be compelled by writ of mandamus to do so. However, we believe that if such estimate is properly made and presented, that no board of supervisors will refuse to levy such tax.

In case of any default in such matter by any board of supervisors, the matter should be called to the attention of the County Attorney, who undoubtedly will take all necessary steps to see that the law is properly enforced.

(No. 40—May 2, 1921.)

SUBJECT—Warrants—Interest on.

STATUTES AND LAWS—House Bill 35, Fifth Arizona State Legislature, 1921.

INQUIRY.

Under the provisions of House Bill 35, where payment is refused because of lack of funds, does a warrant drawn before the time this bill goes into effect, come under the provisions of this Act? From what time does it begin to draw interest—the date refused, or the date the bill goes into effect?

OPINION.

House Bill 35 does not contain the emergency clause, and will go into effect on June 9, 1921.

We are of the opinion that any warrant drawn by a County School Superintendent, if presented to the County Treasurer when there are no funds in his hands to the credit of the school district against which the warrant is drawn, shall be endorsed "No Funds" by the County Treasurer. Such warrant shall draw interest from the time of such endorsement until the County Treasurer shall give notice that he has money to pay the same. Upon the issuance of such notice, the interest shall stop.

Of course, no warrant could, under the provisions of this bill, *draw interest* until the Act goes into effect.

We are of the opinion that the Act covers any unpaid warrant, whether the warrant was drawn before the bill goes into effect, or after such time.

(No. 41—May 2, 1921.)

SUBJECT—Salary Warrant—Meaning of.
STATUTES AND LAWS—House Bill 35, Fifth Arizona State Legislature, 1921.

INQUIRY.

What does the expression "Salary Warrant," as used in House Bill 35, mean? Can a warrant for janitor's salary draw eight per cent. (8%) interest?

OPINION.

A salary warrant, as used in House Bill 35, is any warrant drawn by the County Superintendent of Schools in payment for personal services rendered by any person who is regularly employed.

If a school janitor is regularly employed, his salary warrant would draw eight per cent. (8%) interest from the date it was presented to the County Treasurer in case there were not sufficient funds in the account upon which the warrant was drawn to pay the same.

House Bill 35 does not contain the emergency clause, and will go into effect on June 9, 1921. Of course, no warrant would draw interest until the same was presented to the County Treasurer subsequent to the time said act goes into effect.

(No. 42—May 6, 1921.)

SUBJECT—Approval of Claims for Expenditures Made by the State Highway Department.

STATUTES AND LAWS—Chapter VII, Title 50, Revised Statutes of Arizona, 1913; Chapter 64, Session Laws of Arizona, 1919, and Chapter 69, Session Laws of Arizona, 1917.

INQUIRY.

Is it necessary for the Board of Control to approve claims

for expenditures made by the State Highway Department, from the twenty-five per cent of the State road tax fund?

OPINION.

The office of State Engineer was created by Chapter 66, First Special Session of the Arizona Legislature, 1912. Section 7 of that Act, being Paragraph 5123, Revised Statutes, 1913, provides that claims shall be approved by the State Engineer and the Board of Control; also see Chapter 69, Session Laws of Arizona, 1917.

Under the provisions of Chapter 54, Session Laws of Arizona, 1919, the Board of Directors of State Institutions succeeded to all the rights, powers and duties in connection with the State Highway Department that were formerly exercised by the Board of Control and the Commission of State Institutions.

We are of the opinion that claims for expenditure made by the State Highway Department from the twenty-five per cent of the State road tax fund, must be approved by the Board of Directors of State Institutions before warrants for the payment of the same can be drawn by the State Auditor.

(No. 43—May 5, 1921.)

SUBJECT—School Bonds, Proceeds From Sale of.
STATUTES AND LAWS—Sections 2742, and 5278, Revised Statutes of Arizona, 1913, Civil Code.

INQUIRY.

Should the entire proceeds derived from the sale of school bonds, which proceeds include the face value of the bonds and accrued interest to date of sale, be credited to the Building Fund of the school district issuing the bonds?

To what fund should the expenses of selling the bonds be charged?

OPINION.

Section 2742 provides, among other things, that bonds "must be sold in the manner prescribed by the Board of Supervisors for not less than par, and the proceeds of the sale thereof must be deposited in the County Treasury to the credit of the Building Fund of the school district."

The word "par," as used in this statute, has been defined to mean face value of the bond, together with the accrued interest on the bond at the time of sale. 19 R. C. L. Mun. Corp.

Par. 315. *Smith vs. State*, 99 Miss. 859, 56 So. 179, 35 L. R. A. (N. S.) 789.

Nogales School District No. 1, in the year 1907, voted a bond issue of \$85,000.00. These bonds were sold in December, 1920, for, to-wit: \$90,800.00—\$5,800.00 thereof being the accrued interest upon said bonds to the date of sale.

We are of the opinion that the entire sum of \$90,800.00 should be credited to the Building Fund of School District No. 1, and that the interest due, and to become due, upon these bonds should be raised by taxation under the provisions of Section 5278, Revised Statutes of Arizona, 1913, Civil Code.

The \$1,000.00 and \$4,900.00 for attorneys' fees and brokerage for procuring a purchaser of these bonds, should be charged to the expense account of said School District No. 1. If the same were advanced by the Board of Supervisors from the general fund of the county, then such general fund should be reimbursed for the amount advanced from the expense fund for said school district.

If there are not sufficient funds in the expense account of said School District No. 1, then a tax should be levied against the property of said school district to take care of said expense.

The entire county, of course, should not be taxed to pay the expenses of a particular school district.

(No. 44—May 5, 1921.)

SUBJECT—Appropriations.

STATUTES AND LAWS—Senate Bill 69, Fifth Arizona State Legislature, 1921.

INQUIRY.

Are the unexpended balances remaining on June 30, 1921, from appropriations made for specific purposes by the Legislature in 1919, available for use subsequent to June 30, 1921?

OPINION.

The first paragraph of Section 1 of Senate Bill 69, Fifth Arizona State Legislature, 1921, is as follows:

“At the beginning of each fiscal year there shall remain to the credit of each fund, and available for expenditure for the ensuing fiscal year, all of the unexpended balance remaining in said fund, except in such cases

where the purpose for which the fund was created has been accomplished.”

The 1919 Legislature made the following appropriations, viz.: for the Colorado River Bridge, \$40,000.00; for Sacaton-Florence Power Line, \$50,000.00; for approaches of Lee's Ferry, \$10,000.00; for Oak Creek Bridge, \$10,000.00; and for Williams-Clarkdale Road, \$25,000.00.

We are of the opinion that the unexpended balances of the appropriations mentioned in the preceding paragraph are available for use, subsequent to June 30, 1921, and do not revert to the general fund of the State, provided that the terms and provisions of the various acts of the 1919 Legislature, making such appropriations, have been complied with, and the purposes respectively for which such appropriations were made have not been accomplished.

(No. 45—May 2, 1921.)

SUBJECT—Appropriations; Funds; Apportionment; Forest Reserve Fund; School Funds.

STATUTES AND LAWS—Section 24, Enabling Act, Sections 4654 and 4655, Revised Statutes of Arizona, 1913. (Chapter 51, Session Laws, 1907.)

INQUIRY.

What proportion of the Forest Reserve Fund, derived from the sale of timber, goes to the schools? May the Board of Supervisors of a county vary this proportion as they see fit?

OPINION.

The Forest Reserve Fund, derived from rentals of school lands in forest reserves, under the provisions of Section 24 of the Enabling Act, is placed in the county school fund of the State and is distributed for school purposes, together with appropriations made by the Legislature, to the various counties.

The Forest Reserve Fund, derived from the sale of timber, is distributed to the various counties in proportion to the number of acres in the forest reserves in the several counties in the State to be used for school and road purposes.

Section 4654, Revised Statutes of Arizona, 1913, Civil Code, is, as follows:

“Whenever any sum or sums of money shall be received by the State of Arizona from the United States by virtue of the provisions of an act of congress entitled ‘An Act making appropriations for the department of agri-

culture for the fiscal year ending June 30, 1907', approved June 30, 1906—(providing that ten per centum of all moneys received from forest reserves during any fiscal year, including the year ending June 30, 1906, shall be paid by the secretary of the treasury to the state or territory in which said reserve is located, to be expended as the legislature thereof may prescribe for the benefit of the public schools and roads of the counties in which the forest reserve is situated)—or of any other act or acts of congress amendatory thereof, it shall be the duty of the state auditor to forthwith ascertain the amount apportionable to each county, according to the forest reserve acreage contained in each county, and as in said acts of congress provided, and to apportion said money among the several counties entitled thereto accordingly, and to draw and transmit his warrants therefor to the treasurers of said counties respectively.”

Section 4655, Revised Statutes of Arizona, 1913, Civil Code, is, as follows :

“It shall be the duty of any county treasurer receiving money under the provisions of the preceding section, to immediately notify the clerk of the board of supervisors and the county school superintendent of the county, of the amount so received, and thereafter said money shall be disbursed for the benefit of the public schools and public roads of said county, in such manner as the board of supervisors may direct.”

The case of *Everett School District No. 24, Snohomish County, Wash., vs. Pearson, County Treasurer, et al.*, 261 Fed. Rep. 631, was an action brought by a school district against the county treasurer and the county commissioners to compel them to use one-half of the forest reserve fund derived from the sale of timber for school purposes. The court held that the school district could maintain such suit against the county treasurer and the county commissioners to compel them to use one-half of such fund for school purposes. In the opinion, the court said :

“(3) It is contended by the plaintiff that the history of congressional grants is conclusive that each fund should receive an equal share. In the consideration of the act in issue, aside from the congressional policy gleaned from the legislative history which should be considered (*United States v. Sweet, Adm'r*, (decided Jan. 28, 1918) 245 U. S. 563, 38 Sup. Ct. 193, 62 L. Ed. 473), it would seem that the general rule applicable to the construction of gifts, wills, and deeds should apply, where it is established that when bequests, gifts, or grants are made to

two or more persons, each is presumed to take an equal share, in the absence of limitations to the contrary.

(4) The power which was given by the State Legislature, *supra*, to the board of county commissioners to expend the moneys for the benefit of the public schools and the public roads, was only a power to expend the funds in the manner authorized by the laws of the state relating to roads and schools. There are many ways in which money available may be expended for roads or for schools. The money having been paid to the county treasurer for roads and schools, he had no authority to disperse the fund in any other proportion than directed by the act of Congress, which language was repeated by the State Legislature; and the defendants, being the custodians of the trust funds, are liable for any misappropriation, and must account to the fund for the sums diverted. The evident purpose of the Congress, by the act, *supra*, was to have the schools and roads participate in the funds in equal shares."

We are of the opinion that the Forest Reserve Fund derived from the sale of timber must be divided by the Board of Supervisors equally between the schools of the county and the county roads, and that the County Treasurer is without any authority to pay out more than one-half of such fund for road purposes and that the County Treasurer must pay out one-half of such fund for school purposes; and that the Board of Supervisors and County Treasurer can be held responsible for any misapplication of such fund.

The Board of Supervisors, of any county, have no discretion in the matter, but must divide such fund equally between the schools and the roads, as provided in the act of Congress creating such fund. If this equal division of such Forest Reserve Fund between the schools and roads of any county is not being made, the County Superintendent of Schools should call the matter to the attention of the County Attorney, who would take such steps and institute such proceedings as may be necessary to enforce this law.

(No. 46—May 12, 1921.)

SUBJECT—Warrants, Countersigning of.
STATUTES AND LAWS—Section 72, Revised Statutes, 1913.

INQUIRY.

Under the provisions of Section 72, Revised Statutes, 1913, requiring the Governor to countersign all warrants, does

the Governor's stamp signature, with his initials, constitute a sufficient signature to such warrant?

Section 72, Revised Statutes, 1913, requires the Governor to countersign all warrants issued by the State Auditor. The purpose of such signature is to authenticate the warrant.

Webster defines the words "to sign" as the act of affixing signature to, or ratifying by hand or seal; to subscribe in one's own handwriting; and, further defines the word "signature" as a sign, stamp, or mark, impressed; especially the name of any person written with his own hand, employed to signify that the writing which precedes accords with his wishes or intentions.

This definition received judicial sanction in the case of Appeal of Knox Estate, 18th Atl. 1021; 131 Pa. 220; 6 L. R. A. 353; 17 Am. St. Rep. 798. In this case the signature by the first name was held sufficient.

In many cases it has been held that the "mark" is sufficient, where the signer cannot write. Seals have been used for centuries to authenticate signatures, and the stamp is a seal and, when accompanied by the initials, constitutes a sufficient signature.

The act of countersigning is to add authenticity to what has been previously signed, denotes the complete execution of the paper, and it follows that a signature sufficient in the first instance would be adequate when used for the purpose of countersigning.

It is our opinion, therefore, that the stamp of the Governor's name upon the warrant, accompanied by the act of the Governor in initialing the same, constitutes a full and complete countersign upon such warrant.

(No. 47—May 21, 1921.)

SUBJECT—Elections; School Bonds; Qualifications of Voters.
 STATUTES AND LAWS—Article VII, Section 13, Constitution; Sections 2736 and 2879, 5552, 5268, and 2901, Revised Statutes of Arizona, 1913, Civil Code; Chapter 21, Session Laws of Arizona, 1919.

INQUIRY.

What are the qualifications of voters at school bond elections?

OPINION.

Article VII, Section 13, Constitution, is as follows:

"Section 13. 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 subdivision thereof affected by such question."

Section 2736, as amended by Chapter 21, Session Laws of Arizona, 1919, provides that at all school bond elections the question of whether bonds of the district shall be issued shall be submitted to the bona fide taxpayers of the district, and only such persons may vote at such election as have paid in their 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 are in all other respects qualified electors for the purpose of voting at regular school elections.

Section 2879 provides that all citizens of the United States who have resided in Arizona for one year next preceding the election, and thirty days in the county and precinct, and who are able to read the Constitution of the United States in the English language, and who are able to write their names, are qualified electors.

In addition to the qualifications of voters provided for in Sections 2879 and 2730, a voter at a school bond election must also be a taxpayer on property, real or personal, situate within the school district, and must have paid State or county taxes during the twelve months preceding the election, other than poll, road or school taxes. The word "property" includes both real and personal property. Section 4, Paragraph 5552, Revised Statutes of Arizona, 1913, Civil Code.

Where a husband and wife own community property, real or personal, situate within the school district, upon which State or County taxes have been paid during the preceding twelve months, both the husband and wife are taxpayers, and are entitled to vote at a school bond election held under the provisions of Section 2736, even if the tax receipt is issued in the name of the husband only, provided they are also qualified electors.

A person who is a taxpayer and is a qualified elector would not be entitled to vote at a school bond election unless he has paid taxes during the preceding year.

It would make no difference who paid the taxes so long as the tax receipt is issued in the name of the person offering to vote at a school bond election, no matter in whose name the tax receipt is issued, provided such grantee is also a qualified elector in such school district.

Where a school bond election is held, we are of the opinion that the expression "paid during the preceding year" means that the tax paid must be paid during the twelve months preceding the election, and the taxpayer would be en-

titled to vote if such tax is paid prior to the time the taxpayer offers to vote at such school bond election.

It is not necessary under the practice here that a qualified elector be registered to entitle such person to vote at a school bond election, but such person must possess the necessary qualifications of a voter, as provided in Sections 2879 and 2730, and be entitled to be registered. If any person is challenged upon the ground that he is not qualified, then in such case such person offering to vote at such school bond election may make affidavit that he is a qualified elector and taxpayer, and in that event the vote of such person must be received.

We understand that the school bond election referred to in this opinion is for an issue of bonds where the amount of the proposed bonds, together with all other indebtedness of the school district would be less than four per cent of the assessed valuation of the property within the school district. Where the amount of a proposed issue of bonds, together with all other debts of the school district would exceed four per cent of the assessed valuation of the property within the school district, then such proposed bonds would be issued under the provisions of Chapter 2 of Title 52, Revised Statutes of Arizona, 1913, Civil Code.

As the amount of the proposed issue of bonds, together with other debts of the school district, does not exceed four per cent of the assessed valuation of the property of the school district, and the election is held under the provisions of Section 2736, no person is entitled to vote at such school bond election unless he is a qualified voter and has paid taxes during the preceding year.

(No. 48—June 1, 1921.)

SUBJECT—Statutes; Enacting Clause; Absence of From Bill.
STATUTES AND LAWS—Section 24, Article IV, Arizona Constitution.
Senate Bills Nos. 43, 104 and 167; Session, 1921.

INQUIRY.

Is a bill which does not contain the enacting clause, passed by the Arizona Legislature, for that reason unconstitutional?

OPINION.

Senate Bills Nos. 43, 104 and 167, passed by the Fifth Arizona Legislature, 1921, did not contain any enacting

clause. Section 24, Article IV of the Arizona Constitution is as follows:

“Section 24. The enacting clause of every bill enacted by the Legislature is as follows: ‘Be It Enacted By the Legislature of the State of Arizona,’ or when the initiative is used: ‘Be It Enacted By the People of the State of Arizona.’”

In the case of *Commonwealth of Kentucky vs. Illinois Central Railroad Company*, 170 S. W. 171, L. R. A. 1915 B, p. 1060, it was held that a statute without an enacting clause is void where the Constitution provides a form of law which includes such clause. This case review the decisions of various states upon the question as to whether a law is valid that does not contain the enacting clause, provided for in a State Constitution. In the opinion the court said:

“It is certain that neither this Court nor the Legislature—creatures of the Constitution, and sworn to uphold it—can afford to ignore or deal lightly with any section of it. Neither can we say, as for one hundred years this Court has steadfastly refused to say, that constitutional provisions are directory, or that the section in question is nothing more than a suggestion of form for drafting a bill. If we do so hold as to that section, then we may as to another, and another, and of every other section in it, with the result that none of it will amount to more than a suggestion to people, courts, legislatures, and executives, having no binding or mandatory effect upon any of them, so that they may proceed or not, as they please, without let or hindrance. Such a state of affairs is anarchy,—nothing less. The people by their Constitution have set these limitations within which their representatives, officers, and servants must act. The very fact that the limitations are set forth in specific terms is sufficient evidence of their importance. No creature of the Constitution has power to question its authority, or to hold inoperative any section or provision of it. As legislation is needed, whether remedial or restrictive, the general assembly should act. When their acts are within the constitutional limitations, they become the law of the commonwealth. There is no other power of enactment. If from a bill an essential is omitted, they alone can supply it. The court can neither amend nor enact. The bill in question is not complete; it does not meet the plain constitutional demand. Without an enacting clause it is void.”

A large number of authorities are cited in the foot note, commencing on page 1060, L. R. A., 1915 B, holding that

under a constitutional provision requiring enacting clauses, the requirement of such a clause is mandatory.

A few of the courts have held that where there is a substantial compliance with the constitutional requirements the statute is valid. In the bills passed by the Arizona Legislature, above mentioned, there was no attempt to comply with the constitutional requirements, with reference to an enacting clause.

The case of *Girardeau vs. Riley*, 52 Mo. 424, held that the provisions of the Constitution of Missouri (Art. IV., Par. 26), declaring that the style of the laws shall be: "Be It Enacted by the General Assembly of the State of Missouri, as follows:" is directory and not mandatory, and an act regularly passed by the Legislature may be valid when this clause is omitted. The court said:

"The question is not one of construction, for the language of the Constitution is clear and explicit, but simply one of application. * * * The enacting clause is certainly not of the essence of the law. It furnishes no aid in its construction, and its provisions are as clear and intelligible without it, as they are with it. It is not material in indicating by what authority the law was enacted, for being passed in due form by both houses of the Legislature, and properly approved by the Governor, with no allegations of suspicion attached to it, it comes before the courts bearing sufficient evidence that it is really and truly a law."

Missouri appears to be the only State adopting the view set forth in the foregoing quotations.

In the case of *State vs. Osborne*, 14 Ariz. 185, in considering a provision of the Arizona Constitution, the Supreme Court of this State said:

"We hold that such provision is mandatory, and any act of the legislature attempting to fix another and different time for holding a general election of State, County and precinct officers is, with respect to the time fixed, in conflict with the Constitution of this State, and must necessarily give way. The sovereign voice is mandatory. It has fixed the time. No other power than that of the sovereign who fixed it can make a change. It is certainly not allowable for this court to set aside the obligation of such constitutional provision as directory merely."

Section 32 of Article II of the Arizona Constitution is as follows:

"The provisions of this Constitution are mandatory,

unless by express conditions they are declared to be otherwise."

As the Arizona Constitution has provided that the enacting clause of every bill enacted by the Legislature shall be: "Be It Enacted By the Legislature of the State of Arizona,," it would not be within the power of any court or other authority to set aside such constitutional provision and hold that it was directory merely, and not mandatory.

We are of the opinion that by reason of the omission of the enacting clause from said Senate Bills Nos. 43, 104 and 167, that each and every one of said bills are unconstitutional and void and of no force and effect.

(No. 49—June 10, 1921.)

SUBJECT—Corporation Commission; Power to revoke private contract of public utility.

INQUIRY.

May the Arizona Corporation Commission revoke a contract entered into between the Pacific Gas & Electric Company, of Arizona, and the Richfield Oil Company, of California, for the purchase of oil, on the ground that since the execution of said contract the price of oil has declined?

OPINION.

It appears that on the 27th day of October, 1920, the Pacific Gas & Electric Company, an Arizona public utility, entered into a contract with the Richfield Oil Company of California for a period of one year, beginning on the 15th day of November, 1920, for not less than three thousand barrels nor more than six thousand barrels of oil per month. Said oil to be delivered f.o.b. tank cars, Taft, California, at an agreed price of 55c per barrel in excess of the published schedule price offered by the Standard Oil Company to the purchasers in the Midway Sunset Field of California for oil of a like gravity to that delivered Arizona at the time of delivery.

We are advised that oil can be secured from the Mid-Continent field for much less than the price fixed in this contract, and that the Pacific Gas & Electric Company could furnish electricity to its patrons at a lower rate if it were permitted to avoid this contract and secure oil at a lower price.

It does not appear that there was connivance or fraud in the making of the contract under consideration, or that the price therein fixed was or is unreasonable in the State of California, it appearing that the price fixed in this contract

is based upon the price paid by the Standard Oil Company of California for oil which, for the purpose of this opinion, is assumed to be a reasonable price in California.

It further appears that this contract is to be executed in the State of California, and for that reason the Richfield Oil Company does not come within the jurisdiction of the Arizona Corporation Commission.

In the absence of a showing that this contract was entered into with a fraudulent design to maintain a high cost of production of electricity in the State of Arizona, with a view of a secret profit therefrom, this contract was and is binding upon the Pacific Gas & Electric Company; and the Arizona Corporation Commission would not have the power to vacate or avoid the said contract, if said contract had been fully complied with by the Richfield Oil Company.

(No. 50—June 30, 1921.)

SUBJECT—Referendum.

STATUTES AND LAWS—H. B. 83, Session Laws 1921, Constitution, Article IV.

INQUIRY.

What is the effect of the filing of the voters' referendum petition against H. B. 83, Session Laws 1921?

OPINION.

In my opinion, the attempted voters' referendum filed against H. B. 83, Session Laws, 1921, is inoperative, and the election called for in said Bill should be called according thereto.

To allow the voters referendum to be operative in this case means that in November, 1922, one year from this Fall, voters would vote for or against the question of whether the election should be held this Fall. Obviously, such an issue would be absurd.

To allow the referendum to be operative in this case means that five per cent of the voters could on any occasion delay and deprive the Legislature of its constitutional right to refer matters to voters. In other words, should the Legislature have recourse to its constitutional right to submit issues to the vote of the people, five per cent of the voters could file a voters' referendum and thus in effect prevent the matter being submitted to a vote, and thus five per cent of the voters could defeat and delay the whole Legislature and de-

prive it of its constitutional right to submit issues to the voters. Five per cent of the voters could prevent the main issue being presented to the voters. This office will not knowingly adopt an interpretation that will lead to such results.

The object and purpose of a referendum is to submit a question to the voters for their decision. The *right* to a referendum should not be used as a sword to prevent and defeat the *purpose* of a referendum.

The Constitution has created and guaranteed the referendum principle. This right is complete, plenary and unrestricted. The legislative referendum is not subject by the Constitution to a superior right for a voters' referendum filed by five per cent of the voters. The Legislative referendum and the voters' referendum are each complete and full within their own sphere. It would appear in violation of the spirit, intent and purpose of our Constitution to invoke the voters' referendum to delay, hinder or defeat the legislative referendum. It is not in keeping with the spirit of our Constitution that the referendum *principle* should be to hamper the referendum *purpose*. The principle invoked in the referendum issue seems very plain and simple. It appears fundamental that a referendum filed by five per cent of the voters cannot be used to defeat, delay or hinder a referendum ordered by the Legislature, the representative of all the people. The ultimate object of either referendum is to place the decision of a question into the hands of the voters. The voters' referendum filed by five per cent of the voters should not be used to prevent questions being submitted by the Legislature directly to the voters.

(No. 51—Jun 30, 1921.)

SUBJECT—Automobile Licenses.

STATUTES AND LAWS—Chapter 62, Laws of 1919.

INQUIRY.

Is an automobile salesman, owning his own car, entitled to use the dealer's license plate on the car owned by the salesman, and may an automobile salesman, owning his own car, use the license plate assigned to a dealer for whom he is selling cars?

OPINION.

It is our opinion that an automobile salesman, owning his own car, must procure a license for that car, independent of the dealer's license.

He may also, in addition to that, procure a dealer's license as a dealer, should the facts justify the same.

It is our opinion that an automobile salesman, owning his own car, may not lawfully use the license plate on said car, which said license plate has been assigned to a dealer for whom the salesman is selling cars. The law very clearly requires that every owner of a motor vehicle must procure a license.

(No. 52—July 6, 1921.)

SUBJECT—Interest on Delinquent Taxes; Application of.
STATUTES AND LAWS—4916, 4897, 4895, Revised Statutes, 1913; Chapter 22 Laws, 1915; Chapter 9, Second Special Session, 1915; S. B. 115, Laws 1921.

INQUIRY.

In a case of delinquent taxes, upon which ten per cent interest has been collected and which delinquent taxes so collected include state, county and special tax, should the interest so collected be credited to the taxes thus collected or to the general county fund?

OPINION.

It is our opinion that each tax that can be identified, whether state, county, municipal or special, must be deemed to bear interest, and that the ten per cent interest provided by law must be deemed to have accrued proportionately upon each element of the tax collected, unless the contrary clearly appears in the law creating the tax, and for that reason the interest money so collected should be distributed proportionately to each element of the gross tax. The special tax bears interest and should receive credit for all interest collected on account thereof.

(No. 53—June 8, 1921)

SUBJECT—License Tax on Sale of Gasoline.
STATUTES AND LAWS—H. B. 25, Chapter 116, Session Laws, 1921.

INQUIRY.

Does the tax on gasoline, provided for in H. B. No. 25, Fifth Legislature, apply to gasoline purchased by federal and state officials?

OPINION.

Section 2 of this law provides that all dealers and distributors of gasoline shall render a statement to the Secretary of State of all gasoline sold and distributed by them in the State of Arizona, and pay a license of one cent (1c) per gallon on all gasoline sold or distributed, as shown by such statement, which tax shall be added to the sales price of the dealer as herein defined.

Section 8 makes a violation of this law a misdemeanor, and Section 9 provides for the recovery of such license tax from the dealer. There does not appear to be any exception in the law with reference to any purchaser of gasoline whatsoever.

It is, therefore, our opinion that the license tax herein provided does apply to all purchasers of gasoline made on behalf of the state and federal governments.

•

OPINIONS OF THE ATTORNEY GENERAL

(No. 53½—July 15, 1921.)

SUBJECT—Investment Companies.

STATUTES AND LAWS—Chapter 9, Title IX, Revised Statutes of Arizona, 1913; Chapter 33, Session Laws of Arizona, 1921.

INQUIRY.

Is a corporation organized and doing a brokerage business an investment company for the reason that it sells and negotiates stocks, bonds and securities of other corporations?

OPINION.

Construed literally, Section 2259 of the Revised Statutes of Arizona, 1913, provides that every corporation, co-partnership, company or association, other than banks and corporations not organized for profit, which sells and negotiates for the sale of stocks, bonds or other securities except State and municipal securities to any person in the State of Arizona is a domestic investment company.

Under such a construction, the company described in the inquiry would be an investment company.

However, if we look to the substance and purpose of the entire chapter, we find a number of details which indicate that it was the intention of the Legislature to define an investment company as one selling its own stock or bonds issued by it, and we believe that such has been the general construction of this chapter.

Chapter 33 of the Session Laws of 1921 is wholly inconsistent with any other construction of Chapter 9 aforesaid, for the reason that under such a construction there would be practically no corporation except banks who would not be investment companies, and therefore exempt from the provisions of Chapter 33.

It is our opinion therefore that an investment company under the provisions of Chapter 9, Title IX of the Revised Statutes of 1913 is a company selling or seeking to sell stocks or bonds which it has issued, and that a brokerage company dealing in stocks and bonds generally is not an investment company within the meaning of Chapter 9, Title IX, aforesaid, and that such company is subject to control pursuant to the provisions of Chapter 33 of the Session Laws of 1921, and not otherwise, insofar as the brokerage business is concerned.

(No. 54—July 20, 1921.)

SUBJECT—Foreign Corporations.

STATUTES AND LAWS—Chapter 58, Session Laws 1915, and Section 2230, Revised Statutes, 1913.

INQUIRY.

Does a foreign corporation which has qualified to do business in this State constitute a resident of the State of Arizona within the scope and meaning of the provisions of Chapter 58, Session Laws, 1915, which provides that agents must be residents of the State?

OPINION.

Chapter 58, Regular Session Laws, 1915, provides that no insurance may be written or placed in this State by a foreign insurance company, unless it is done through its duly and regularly appointed agent resident of this State.

It has been held in the case of *Coco Cola Company vs. Allison*, 113 S. W. 308; 52 Texas, Civ. App. 54, that a statute requiring a foreign corporation to procure a permit to transact business in the State, and providing that upon obtaining such permit it shall enjoy the privileges conferred on domestic corporations, does not fix the domicile of a foreign corporation in the State granting such permit, but merely places a foreign corporation holding such permit on the same footing as domestic corporations in matters of business.

In case *In Re Standard Oak Veneer Company*, 173rd Federal 103, the Court held that a corporation can have no legal existence outside the boundary sovereignty by which it is created, and must dwell in the place of its creation, though its residence in one state creates no insuperable objection to its power to transact business in another, provided the laws of such other state permit it. See also 12 R. C. L., Section 3.

It is our opinion that the Legislature, in using the word "resident," contemplated a policy which required residence in fact, and that the foreign corporation is not a resident of this State either in law or in fact, and for that reason would not be qualified to become an agent under the provisions of Chapter 58, Session Laws, 1915.

(No. 55—July 20, 1921.)

SUBJECT—License Taxes of Insurance Companies and Their Agents.

STATUTES AND LAWS—Paragraph 3593, Revised Statutes, 1913, subdivision 20; Nos. 1831, 3396, 3404 and 3414.

INQUIRY.

Where an insurance company has paid its taxes, provided in Section 3404 of the Revised Statutes of 1913, and

also the taxes of each agent, as provided in Section 3414, are the agents of such company liable for occupational taxes under Sections 3593 and 1831 of the Revised Statutes?

OPINION.

Section 3404, Revised Statutes, 1913, as amended, the 1913 Session Laws, page 85, and Session Laws of 1919, page 97, provide for an annual tax upon insurance companies, and Section 3414 provides for the licensing of agents of insurance companies, which licenses are issued by the Corporation Commission.

Section 3396 provides the general fees for qualifying under the laws of the State of Arizona, which applies to insurance companies the same as to any other corporation.

Section 3404 provides that the taxes therein provided shall be payment in full of all demands and all taxes on said company or license for conducting said business in this State, other than provided for in Section 3496 and Section 3414 of the last statutes.

It is our opinion that there is a distinction between a tax upon an insurance company and its permit or license for conducting business in the State on the one hand and occupational taxes of insurance agents, and that while the tax paid under provision Section 3404 constitutes a whole of settlement of all liability of the insurance company to the State of Arizona for all taxes on the company and of its license to do business in the State, that such a payment does not in the least excuse local agents from paying on occupational tax, which is personal, to such agents.

Section 1831, subdivision 20, and Section 3593 of the Revised Statutes of 1913, provide respectively that cities and counties may levy an occupational tax upon insurance agents doing business within their respective jurisdictions. This is a tax levied upon the individual by reason of his occupation and is payable by such individual.

It follows, therefore, that there is no conflict between these provisions and that the city and county have a right to levy and collect occupational taxes upon insurance agents.

(No. 56—July 26, 1921.)

SUBJECT—Corporation Commission.

STATUTES AND LAWS—Chapter 154, Session Laws, 1921, at Paragraph 3181, Revised Statutes, 1913.

INQUIRY.

Since Chapter 154 of the Session Laws of 1921 provides that foreign corporations may loan money in Arizona pro-

vided that they shall file a statement in writing, appointing each member of the Corporation Commission statutory agent, should a charge be made for filing such appointment?

OPINION.

Chapter 154 of the Session Laws of 1921 provides that foreign corporations may loan money in the State of Arizona without being licensed to do so, provided such corporation shall "file a statement in writing by its president, secretary, treasurer, or general manager, that it constitutes and appoints each member of the Arizona Corporation Commission as its agent, et cetera."

It is our opinion that the statement above referred to is intended to be, and should be, in form of power of attorney, irrevocable in form, appointing each member of the Corporation agent and attorney in fact, upon whom all notices and processes, including service of summons, may be served, and all such power of attorney should be duly acknowledged.

The Corporation Commission should charge a fee of \$5.00 for filing such power of attorney, it being our opinion that it is equivalent to and that it constitutes an appointment of a statutory agent within the meaning of the provisions of Paragraph 3181 of the Revised Statutes of 1913.

(No. 57—August 1, 1921.)

SUBJECT—Power of Cities to Increase Taxes Above the Ten Per Cent Limit.

STATUTES AND LAWS—Section 4842-A. of Chapter 52 of the Session Laws of Arizona, 1921.

INQUIRY.

Has the Tax Commission power to authorize the City of Prescott to levy a tax in excess of a ten per cent increase over last year's taxes for the purpose of paying a deficit occasioned by repairing water mains?

OPINION.

Section 4842-A., sub-section D., expressly provides that the taxes for any city, county or town shall not be increased over last year's taxes in a sum that would exceed ten per cent of the last year's taxes. This provision is common to the laws of this State, and has been in effect for a number of years.

Paragraph C. of Section 4842-A. authorizes the Tax Commission on certain emergencies to authorize counties to levy a tax in excess of the ten per cent limit. Cities and towns are not included in this paragraph, and there is no express pro-

vision of the law authorizing the Tax Commission to grant the application of the City of Prescott to make this tax in excess of the ten per cent limit. It is our opinion, therefore, that such tax would be illegal.

(No. 58—August 3, 1921.)

SUBJECT—Session Laws and Statutes; Distribution of by Secretary of State.

STATUTES AND LAWS—Chapter 7, Title 1, Revised Statutes, 1913, Section 24, page 181 of Laws of 1921.

INQUIRY.

Has the Secretary of State the authority to distribute to county and State officers any printed copies of the Session Laws of 1921 in excess of the number specifically authorized to be distributed by the provisions of Section 60 of the Revised Statutes of 1913?

OPINION.

Since the enactment of Section 60 of the Laws of 1913, additional State and county offices have been created, which offices are not included in the provisions of Section 60, and it follows that if Section 60 is literally construed, a number of State and county officers cannot be furnished with copies of the State statutes and laws.

The policy of the law in this respect cannot clearly be gathered from the said provision of Section 60, for the reason that at all times since its re-enactment in 1913, and so far as we know, at all times since its original enactment in 1901, the statute has been regarded as directory, and as merely fixing a minimum number of the statutes which must be distributed.

It has been the opinion of our predecessors, and it is the opinion of this office that it was the intention of the Legislature that all public officers of the State and counties, and each Justice of the Peace should be provided with an adequate number of copies of the statutes and Session Laws.

The Secretary of State has been authorized to cause such laws to be printed, and he has been made the custodian thereof, and therefore it is his duty to make such distributions of such laws; and while he must furnish the copies to the officials designated in Section 60, it is our opinion that Section 60 does not constitute any limitation upon the number of copies which he, in his discretion, may furnish to the State officers, the county officers and the Justices of the Peace.

That the cost of the publication of the Session Laws of 1921 has been paid by special appropriations is shown in Section 24, Chapter 181, Session Laws of 1921.

It is our opinion that the books so distributed by the Secretary of State shall be distributed without cost.

In determining the number of books to be distributed to each officer, it is our opinion that the law, having made the Secretary of State the custodian of these books, and it also having specifically provided that the title to the books issued remain in the State of Arizona, and that the books constitute part of the public property of the State of Arizona, and are simply held by public officers in trust for the State of Arizona, that it is the duty as well as the prerogative of the Secretary of State to issue to each of the said officers such copies as he, in his discretion, determines to be useful and needed by the said office, and that the same shall be issued upon such terms and conditions as the Secretary of State shall reasonably require, these conditions being with reference to the number of books furnished and the methods of keeping and accounting for them.

(No. 59—August 6, 1921.)

SUBJECT—Levy of State Taxes.

STATUTES AND LAWS—Paragraphs 4835, and 4538 of the Revised Statutes of 1913; Paragraph 4839 of the Revised Statutes of 1913, as amended by Chapter 52, Laws 1921, and Chapter 181, Session Laws, 1921, subdivisions 54, 54a and 54b.

INQUIRY.

Has the State Tax Commission authority to omit from the State tax levy, items apportioned by the Legislature?

OPINION.

Paragraph 4538, Revised Statutes, 1913, constitutes an annual appropriation of \$15,000.00 for carrying out provisions of Chapter 42 of the Revised Statutes, concerning the State Fair.

Chapter 181, subdivision 54, Session Laws, 1921, constitutes an appropriation of \$37,500.00 per annum to be placed to the credit of the State Fair Maintenance fund, and subsection (a) thereof provides an additional appropriation equal to the annual receipts turned into the State Treasurer by the Arizona State Fair Commission for the years ending June 30, 1921 and 1922, to be placed to the credit of the State Fair Maintenance Fund.

Also subsection (b) of said subdivision constitutes an appropriation of \$20,000.00 to be placed to the credit of the State Fair Repair and Improvement Fund.

Section 4839 of the Revised Statutes of 1913, as amended in Chapter 52, Laws of 1921, provides that there shall be levied annually such sums of money as the Legislature may provide and deem to be sufficient, with other sources of revenue, to defray the necessary and ordinary expenses of the State for each fiscal year, and in applying this paragraph, we take it that the will of the Legislature for the purposes of taxation must be determined from the appropriations made by the Legislature and that appropriations by the Legislature constitute a lawful provision made by it within the meaning of this paragraph, and that it is the duty of those officers charged with levying taxes to levy sufficient to cover the appropriations made by the Legislature.

Section 4835 provides that the State Board of Equalization must establish the rate of taxes which is to be levied and collected within each county for state purposes, and in making such rate the Board of Equalization must look to the provisions of Section 4839, as amended, and to the appropriations made by the Legislature for the purpose of determining such tax rate.

We do not know of any law by which the State Tax Commission, in fixing such tax rate, has any power or authority to assume that an appropriation made by the Legislature may be ignored, and it is our opinion that the Commission must be governed in establishing such rate by the will of the Legislature, so far as the same may be determined from the acts and appropriations of the Legislature.

(No. 60—August 10, 1921.)

SUBJECT—Ten Per Cent Levy for County School Reserve Fund.

STATUTES AND LAWS—Section 2817, Revised Statutes, 1913, as amended by Chapter 158, Session Laws, 1921.

INQUIRY.

In estimating the ten per cent tax provided in the Third Paragraph of Subsection (c) of Section 2817, Revised Statutes, 1913, as amended, should such ten per cent be estimated upon the net sum needed to be raised by taxes for the ensuing year, or should it be estimated upon the total estimated cost of maintaining the schools in the county for the ensuing year?

OPINION.

The paragraph above referred to provides that the County Superintendent "shall add to the amount so obtained, ten per

cent of his estimate for the maintenance of the common and high schools of the county."

The controlling language of this paragraph, in so far as the inquiry is concerned, is found in the words "his estimate for the maintenance of the schools."

It is our opinion that the word "maintenance" as here used, includes the total expense of upkeep and operating the schools for the ensuing year, and that the County Superintendent, in making his estimates, must calculate the total cost of maintaining the schools, and that this is the estimate referred to in this paragraph.

It is our opinion, therefore, that for the purpose of maintaining the County School Reserve Fund, the County Superintendent has the power to add to the other sums to be raised by taxation for school purposes, a sum amounting to ten per cent of the total estimated cost of maintaining all public schools in the county for the ensuing school year.

(No. 61—August 10, 1921.)

SUBJECT—Eligibility of Alien to Hold Office.

STATUTES AND LAWS—Paragraph 154, 2619, and 2623 of the Revised Statutes of Arizona, 1913.

INQUIRY.

May a civil engineer, having declared his intention to become a citizen of the United States, be employed by the county as an assistant to the County Engineer with other civil engineers in the construction of roads, provided for by bond issue?

OPINION.

Paragraph 2619 of the Revised Statutes of Arizona for 1913 creates the office of County Engineer, provides the method of his appointment and specifies that he shall qualify in the same manner as elective officers.

Paragraph 2023 of the Revised Statutes of Arizona of 1913, provides for the appointment of assistants by the County Engineer.

Paragraph 154 of the Revised Statutes of 1913, provides that every officer must be of the age of twenty-one years and a citizen of the United States, and of this State.

We are of the opinion that an assistant county engineer is an officer of the county in which he is appointed and that he must possess the same qualifications as to citizenship as the county engineer, *i. e.*, he must be of the age of twenty-one years and a citizen of the United States and of this State.

(No. 62—August 11, 1921.)

SUBJECT—Reciprocity Certificate to Practice Osteopathy.

STATUTES AND LAWS—Paragraph 4738 of the Revised Statutes of Arizona of 1901, and Paragraph 4739 of such statutes, as amended by Chapter 119 of the Session Laws of the Fifth Legislature of Arizona, 1919.

INQUIRY.

Have osteopaths a right to enjoy the privilege of reciprocity under the provisions of Paragraph 4739 of the Revised Statutes of Arizona as amended by Chapter 119 of the Session Laws of Arizona for 1921, provided the applicant presents a certificate to practice osteopathy granted upon examination by a Medical Board such as the one in Arizona?

OPINION.

We are of the opinion that the practice of osteopathy is the practice of medicine as the term "practice of medicine" is defined in Paragraph 4738 of the Revised Statutes of Arizona for 1913.

We are further of the opinion that where an applicant presents to the Board of Medical Examiners a certificate or license to practice osteopathy, granted to him upon and after examination by any state or territory of the United States or the District of Columbia, where the requirements for the granting of such certificate or license are at least equal to those in force in Arizona at the time, or by the National Board of Medical Examiners, and accompanies such certificate or license by a further certificate issued by the Medical Officer or Board issuing the certificate or license first named, or by a certificate issued by the Medical Officer or Board of the jurisdiction wherein the applicant last practiced, that the applicant at the time of the issuance of the last named certificate was an ethical practitioner and has practiced osteopathy for at least three years immediately prior to the issuance of said certificate, he is entitled to enjoy the privileges of reciprocity as provided for in Paragraph 4739 of the Revised Statutes of Arizona of 1913, as amended by Chapter 119 of the Session Laws of Arizona of 1921.

(No. 63—August 17, 1921.)

SUBJECT—Arizona Tax Anticipation Bonds. Construction of Contract.

INQUIRY.

Has the Loan Commission power to avoid the provisions of the agreement entered into by the Loan Commission of the

State of Arizona and the Bankers' Trust Company of Denver, and others, dated March 12, 1921?

OPINION.

Upon its face, the proposal made by the Bankers' Trust Company, and others, was in effect, that the bankers would purchase at least \$1,000,000 of State of Arizona Tax Anticipation bonds bearing interest at the rate of $6\frac{1}{2}\%$ per annum.

This offer appears to have been unconditional.

Attached to this offer, and a part of it, is the condition that these bankers receive a commission of $1\frac{1}{2}\%$ of the par value to be paid them as a commission. Another condition of their proposal is an option on all similar securities at the same price that the Commission may issue at any time within twelve months from the first delivery of the bonds.

It is our opinion that their unconditional offer to take at least \$1,000,000 of such bonds constitutes a sufficient consideration for all of the options and conditions set forth in their proposal.

According to their proposal, all such bonds must bear interest at $6\frac{1}{2}\%$ per annum, for which they agree to pay par and accrued interest.

This applies to all bonds which may be issued by the Commission in the nature of Tax Anticipation Bonds.

It appears that these bankers have an option on all such bonds at that price, to-wit: par plus accrued interest, which may be issued by the Commission at any time within twelve months from the date of delivery of the first bonds under this proposal.

It is our opinion, therefore, that this proposal, having been accepted by the Commission on March 12, 1921, constitutes a valid and binding agreement.

(No. 64—August 30, 1921.)

SUBJECT—Arizona Tax Anticipation Bonds. Validity of Option.

INQUIRY.

Is the option for future issues of Tax Anticipation Bonds, which option is contained in the proposition of the Bankers' Trust Company, and others, dated Phoenix, March 12, 1921, valid and enforceable?

OPINION.

Pursuant to the provisions of Chapter 68 of the Session Laws of Arizona for the year 1921, the Loan Commission of

the State of Arizona, on the twelfth day of March, 1921, by its resolution authorized the issuance of State of Arizona Anticipation Bonds in the sum of \$1,500,000, which bonds were in anticipation of the State taxes theretofore levied for the fiscal year commencing July 1, 1921, which resolution provided the forms of bonds and coupons, and other details in connection with the sale of such bonds, and that by said resolution the bonds were authorized to be sold at private sale for the best price obtainable.

Thereafter on the same day the Loan Commission received a bid for the said bonds from the Bankers' Trust Company of Denver, Colorado, and others, which bid was accepted.

That among other things the said bid contained the following provision: "Providing further, that you grant us an option on any securities that you may issue for the above purposes and at the above price for twelve months from the date of the first delivery of bonds to us."

With reference to the issuance of bonds and before the same can be issued, certain conditions are essential, to-wit: first, that the Legislature shall have made appropriations for the fiscal year. Second, that the taxes shall have been levied upon the taxable property of the State; and third, that the Loan Commission shall have determined that the proceeds of such taxation will not be in the treasury in time to pay the expenses provided for by such appropriations.

When these conditions exist and have been determined by the Loan Commission, the Loan Commission may authorize the issuance of the bonds contemplated by the said act. It follows, therefore, that in March, 1920, the Loan Commission was without power to authorize the issuance of bonds for the following fiscal year, to-wit, 1921, as the conditions precedent to the resolution could not then exist.

Upon the aforesaid conditions precedent being found to exist, the Loan Commission can authorize the issuance of such bonds by a resolution which shall provide the manner, terms and conditions of the sale thereof.

It is our view of this law that the provisions thereof must be substantially complied with, and that it was the intent of the Legislature, as disclosed by the provisions of Section 40 of said law, that the manner, terms and conditions of the sale of the bonds shall be determined at the time each Resolution of Issuance is adopted, and that it was not contemplated in the law that the manner, terms and conditions of the sale of bonds could be determined in advance of the resolution authorizing the issuance thereof.

The option above referred to, if valid, constitutes an executory contract for the sale of the bonds you now propose

to authorize by resolution, and if such option be valid, then you are now precluded from fixing the manner, terms and conditions of the sale of such bonds.

It is our opinion that the Commission is without authority to enter into any contract which would deprive it of this right, or preclude it from the exercise of this duty of incorporating in each Resolution the terms and conditions of the sale of such bonds independently of previous resolutions. The aforesaid option, if valid, deprives the Loan Commission of the right to fix the manner, terms and conditions of the sale of the proposed issue, and to that extent we believe the said option is void.

(No. 65—September 30, 1921.)

SUBJECT—Corporation Commission—Traveling Expenses Outside State—
What Constitutes Traveling Expenses Which Should Be Paid
by the State.

STATUTES AND LAWS—Article XV of the Constitution, Section 1-4-18:
Revised Statutes, Sections 2284, 2285, 2287.

INQUIRY.

May the members of the Corporation Commission receive compensation for their traveling expenses outside the State of Arizona?

OPINION.

The Constitution as well as the Statutes provides that each Commissioner shall be allowed actual necessary expenses while away from home in the "discharge of the duties of his office." Article XV, Section 18, and Revised Statutes, 1913, 2287.

These provisions are not limited to the boundaries of the State and, therefore, we are of the opinion that such expenses may be allowed beyond the borders of this State in all cases where the Commissioner has incurred such expenses in the "discharge of the duties of his office."

What constitutes the "discharge of the duties of his office" beyond the boundary of the State is a question dependent upon the circumstances of each case, and it is not practical at this time to undertake to catalog the possible contingencies upon which such services might be performed.

It is sufficient for this opinion to say that the Commissioner has a right to his actual necessary expenses when away from home in the "discharge of the duties of his office."

Under Section 4 of Article XV of the Constitution the several members of the Corporation Commission, as well as the Corporation Commission itself, have the powers of a court for the investigation of business coming before them, and their jurisdiction extends throughout the State.

We are of the opinion that such jurisdiction does not extend beyond the borders of the State except for the purpose of taking depositions.

We are of the opinion that a presumption would exist that all expenses incurred by a Commissioner outside the City of Phoenix, but inside the State of Arizona, returned by the Commissioner and allowed by the Commission, are expenses necessarily incurred in the discharge of the Commissioner's business. However, we are of the opinion that no such presumption applies to accounts for expenses outside the State of Arizona, and that for such accounts the Commissioner should be able to point to statutory authority for the transaction of his particular business outside the State, for which expenses were incurred.

It is our opinion, therefore, that there are instances in which the traveling expenses of a member of the Corporation Commission outside the State may be paid, but that such cases are limited strictly to instances where the statutes expressly, or by necessary implication, authorize him to perform such acts beyond the border of the State of Arizona.

(No. 66—October 6, 1921.)

SUBJECT—Compensation for Injuries to Workmen. Notice to Attorney General of Personal Injuries.

STATUTES AND LAWS—Chapter 7, Title XIV, A. R. S. 1913, Civil Code. Paragraphs 3172-3173.

INQUIRY.

A workman mails letter to Attorney General advising him of personal injuries received. The question is, what is the duty of the Attorney General in the premises?

OPINION.

The only reference to giving such a notice is in Paragraph 3172, A. R. S. 1913, Civil Code, which requires that "every workman seeking compensation under the provisions of this chapter, where the same is not fatal or does not render him incompetent to give the notice, shall, within two

weeks after the day of the accident, give notice in writing to the employer, or his representative employing such workman, or to the foreman or other employee of the employer under whom he was working at the time of the accident, and before the workman has voluntarily left the service of the employer and during his disability. The notice shall state:

- (1) The name and address of such workman;
- (2) The date and place of the accident;
- (3) And state in simple words the cause thereof;
- (4) The nature and degree of the injury sustained;
- (5) And that compensation is claimed under this chapter.

The notice may be written and served personally by the workman or by any one in his behalf on any person named above in this section, *or by mail*, postpaid, to such person, addressed to the office, place of business or residence of the person notified. No want or defect or inaccuracy of the notice shall be a bar to the right of the workman to claim and receive compensation under this chapter, or to maintain any proceeding to secure the same, unless the employer proves that he has been seriously prejudiced by such lack of notice. No compensation shall be claimed or allowed so long as such notice is not given. If the workman is killed, or otherwise rendered incompetent to give the notice, the same is not hereby required, nor is any notice required to be given by the personal representative of such deceased person. *It shall be the duty of any one giving a notice as in this section provided, to mail a duplicate copy to the Attorney General of this State."*

The notice given in the letter received does not give all the information required, but under Paragraph 3172 no advantage can be taken of the defect.

Upon receipt of the letter of notification, there is nothing for the Attorney General to do other than to note its filing, unless thereafter some question arises between the employer and the workman, or the personal representative, under this chapter, and then such question shall be determined either:

- “(1) by written agreement between the parties, or
- (2) By arbitration, or
- (3) By reference and submission to the Attorney General of this State;

and in case of a refusal or failure of the employer and workman, or such personal representative, to agree upon a settlement by either of the modes above provided, then a civil action at law, showing such refusal or failure as a reason for suit.”

(No. 67—October 11, 1921.)

SUBJECT—State Asylum; Services of Inmate.

STATUTES AND LAWS—Section 1, Chapter 64, S. L. A. 1919; Pars. 1201 and 4466, R. S. A., 1913, Civ. Code.

INQUIRY.

Is a person entitled to wages for services rendered while a patient in the State Asylum for the Insane?

FACTS.

It appears that one J. M. Bell was committed to the State Asylum February 15, 1921, by the Superior Court of Gila County, Arizona, and presumably legally so; that on July 20, 1921, he made application to the Superior Court of Maricopa County for a writ of Habeas Corpus, claiming commitment unlawful, not having been given a hearing, and no witnesses called to testify. It further appears that on July 21, 1921, after hearing had, the court found the patient now of sound mind, and ordered him discharged from custody.

During the time he was such inmate he rendered services as a carpenter, and after being released presented his bill to the Asylum for \$156.00, and we are asked if the Board of Directors of State Institutions is authorized to pay the bill?

OPINION.

There is no statute directly in point. On becoming a state the Asylum was placed under the management of the Board of Control, which board was authorized to make by-laws for the government of the Asylum. (Par. 4466, R. S. A., 1913). Afterwards the Legislature abolished the Board of Control, and created the Commission of State Institutions, giving it oversight and general control over the Hospital for the Insane, and authorizing the Board to make all necessary rules for the exercise of its powers and performance of its duties, and the securing of co-operation from all of its officers and employees. (Chapt. 89, S. L. 1917). The Legislature of 1919 repealed Chapter 89 of the Session Laws of 1917, and created the Board of Directors of State Institutions, and gave it full charge and control of the Hospital, and further provided that said Board 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. (Chapt. 64, S. L. 1919).

The Board of Directors of State Institutions have, therefore, the power to make all necessary rules and regulations to

govern the Hospital, and such management may require its inmates to do more or less work, for health or discipline, as it may deem for the best interest of the patient, and can employ and pay wages to a patient. (*Ashley vs. Holman*, 25 S. C. 394; 1 S. E. 13; 60 Am. Rep. 512).

Whether the claimant was required to do the work charged for to preserve health or discipline, or because he had the ability and inclination, does not appear. Paragraph 1201, R. S. A., 1913, provides for the estate of a patient paying the expenses of maintenance of an insane person, provided that if such person have a family in this State, no order of sale shall be had of any property not subject to execution and forced sale.

We therefore conclude:

First, that if Mr. Bell was wrongfully detained he is entitled to be paid for his services, deducting a reasonable amount for his board.

Second, if rightfully detained, and the work was required for the proper discipline and healthful exercise and employment of the patient, as the best thing to be done for his comfort and happiness, he is not entitled to be paid.

Third, if the services rendered were not primarily for health and discipline, but because of his ability and willingness, the Board would be authorized to employ and pay him, after making a reduction for his maintenance during detention, provided that if the patient has a family in this state, only so much shall be retained as is not subject to execution.

(No. 68—October 11, 1921.)

SUBJECT—Fees and Duties of Secretary of State.

STATUTES AND LAWS—Par. 57, (subd. 2 and 3) and Par. 3180, R. S. A. 1913, Civ. Code; Secs. 68, 69, and 117, Chapt. 5, pp. 39 and 55, S. L. 2d special Session, 2d Legislature (1915); Sec. 1, Chapt. 46, p. 60, S. L., 3d Legislature (1917).

INQUIRY.

First: Should the Secretary of State charge for affixing seal and signature to Patents for land sold by State?

Second: Is he required to keep record of claims and description of land thus conveyed?

OPINION.

In regard to the first inquiry, we answer, no.

As to the second inquiry we say, no, not beyond making an entry of the official act of the Governor in the Register required by Subd. 2, Par. 57, R. S. A. 1913.

Said subdivision 2 of Paragraph 57 requires the Secretary of State "To keep a register of, and attest the official acts of the Governor," and subdivision 3 of the same paragraph requires him "to affix the great seal, with his attestation, to commissions, pardons, and other public instruments, to which the official signature of the Governor is required."

Paragraph 3180 provides that the Secretary shall receive "for fixing certificate or great seal of the State, one dollar," and "for each commission or other document signed by the Governor and attested by the Secretary of State (pardons and military commissions excepted), \$2.50; but Section 68, Chapter 5, p. 39, S. L. Second Special Session of the Second Legislature (1915) provides that "upon the filing of the certificate of purchase, together with evidence of full payment of principal and interest, for any tract of land sold, the Commissioner (of lands) shall issue to the purchaser a patent therefor, which shall be under the seal of the State of Arizona, signed by the Governor and countersigned by the Secretary of State * * *," and Section 117 of the same chapter provides that the Commissioner shall charge, for issuing such patent, \$5.00. The law requiring the Commissioner to charge \$5.00 for issuing patent and that it should be signed by the Governor with the great seal of the State and signature of the Secretary of State affixed, was passed subsequent to the passage of the Fee Bill requiring the Secretary of State to receive fees for his services, and the amendment made to said Section 117 by the Third Legislature, Chapt. 46, p. 60, made no changes as to fee for patent.

We are, therefore, of the opinion that the Legislature intended the \$5.00 to be paid the Commissioner to be in full for issuing the patent, and not in addition to the fees allowed the Secretary of State.

As to the Secretary of State keeping a record of the claims and description of the lands for which the State issues patents, the last clause in Section 69, Chapter 5, p. 39, Second Special Session, Second Legislature (1915), requires that "a record of all patents issued shall be kept in the office of the Commissioner," and we find no provision, either in the Land Code or elsewhere in the statutes, requiring the Secretary of State to keep such a record, other than to enter upon his Register the action of the Governor.

We, therefore, conclude that the Secretary should collect no fee for a patent, and that though it may be a commendable practice to keep a record of the lands conveyed by a patent, the law does not require the Secretary to do more than to enter upon the Register referred to, the action of the Governor.

(No. 69—October 11, 1921.)

SUBJECT—Sheriff's Fees.

STATUTES AND LAWS—Paragraph 3199, A. R. S. 1913.

INQUIRY.

Shall the jury fees of seventy-five cents taxed for the Sheriff, be taxed for every case, or confined only to cases tried by a jury?

OPINION.

Inasmuch as fees are to be presumed paid for services rendered, there could be no service rendered in a case where a jury had not been used. Therefor, it is my opinion that the fee in this instance shall be taxed only in those cases where a jury is used, and shall not be taxed in every case whether a jury is used or not.

(No. 70—October 11, 1921.)

SUBJECT—Billiard Tables and Pool Tables. License Tax on Billiard Tables.

STATUTES AND LAWS—Paragraph 3590, . R. S., 1913.

INQUIRY.

1. Does the term "billiard table" as used in Paragraph 3590, A. R. S., 1913, include pool tables?
2. Is the quarterly tax therein provided due from the proprietor, regardless of the number of tables, or is it a tax for each table used?

OPINION.

1. From the beginning of the organization of the government in Arizona from 1864 down to date, Paragraph 3590 has remained unchanged with regard to the use of the words "billiard table," so that the present meaning of the phrase is the same as at the time the statute was originally passed. It is quite possible that at that time pool was a relatively unknown game in this territory, but billiards was, and still is, not only a well known but a popular recreation, and the meaning of the term "billiard table" is well defined and a matter of common knowledge.

An examination of the authorities on this question will reveal some apparent conflict, but a more careful examination of the authorities will reveal that this conflict is more apparent than real, and when the decided cases are carefully read, and the statutes involved are determined in the light of their purpose, there is little doubt but that the courts con-

fine the phrase "billiard table" exclusively to tables for the playing of the game known as billiards for license purpose, and that, therefore, there is no authority for collecting a license on pool tables; and it is my opinion that the license provided for in Paragraph 3590 should be confined to billiard tables and tables whereon the game of billiards is played, and that there is at present, under Paragraph 3590, no authority for the collection of a license tax from pool tables.

However, I am advised that the Honorable S. L. Pattee, Judge of the Superior Court of Pima County, has recently rendered an opinion contrary to this and in effect declaring that the words "billiard table" included pool table. I am not advised his reasons for so ruling, but presume that it is based upon the argument that pool is sometimes called pocket billiards, and his ruling, in effect is that the license tax shall be paid for either a billiard table or a pool table, but I am constrained to believe that this opinion is not technically correct, and I must differ with the Honorable Judge.

In my opinion, there is as much difference between billiards and pocket billiards, as there is between billiards and pool. Our statute says "billiards." The statute does not say "billiards and pocket billiards," nor does it say "all form of billiards." It just says "billiards," and in my opinion the term "billiards" does not include variations from the term. Quoting from the case of *Flowing Wells vs. Culim*, 11 Ariz. 425:

"The Court has no authority to extend a law beyond the fair and reasonable meaning of its terms because of some policy of the law, or because the Legislature did not use the proper words to express its meaning."

2. It will be observed in a careful reading of Paragraph 3590 that the subject of the sentence is "Each proprietor" shall pay a license tax. The law does not say that each proprietor shall pay a license tax for "each billiard table." It is limited to the proprietor paying the license tax. In other words, the proprietor or keeper of one or more billiard tables shall pay a license tax of \$10.00.

It is, therefore, my opinion that the tax is against the proprietor, regardless of the number of tables in operation.

(No. 71—October 18, 1921.)

SUBJECT—Practice of Medicine: Reciprocity Certificates.
 STATUTES AND LAWS—Par. 4739, R. S. A., 1913, Civ. Code; Chapt. 66, S. L. Third Legislature (1917); Chapt. 119, S. L. Fifth Legislature, (1921).

INQUIRY.

We are asked to place our construction upon the clause

in the ninth paragraph of Sec. 1, Chapt. 119, S. L. Fifth Legislature (1921), reading as follows:

"And shall present and file with the Board a certificate or license (or satisfactory evidence of the possession of such) to practice medicine or surgery, which certificate, or license, has been issued *upon and after examination* to said applicant by any state or territory of the United States, the District of Columbia, where the requirements for the granting of such certificate or license are *at least equal to those in force in Arizona at that time,*"

the words underscored being specially referred to, and the inquiry having special reference to applicant who has graduated from a medical college of another state before Arizona, or the other state, had a medical examining board, and who secured a license to practice in such other state by registering the diploma from such college.

OPINION.

After examining and comparing the provisions of Par. 4739, R. S. A., 1913, Civ. Code, with the amendment thereof made by the Third Legislature (1917), Chapt. 66, and the further amendment thereof by the Fifth Legislature, (1921) Chapt. 119, we are of the opinion that the Board of Medical Examiners can reasonably presume that when a state or territory has issued a certificate or license to practice, it has been so issued upon and after having made such an examination as they deemed sufficient; and when such certificate or license shall have been presented to the Board by an applicant for a reciprocity certificate, said Board will be warranted in issuing such reciprocity certificate, providing the certificate or license to practice was issued by a state or territory having requirements at least equal to those in force in Arizona at that time, of which fact the Medical Examining Board is the judge.

It may be of interest to the Board of Examiners to review the several acts of the Legislature relating to the practice of medicine.

The clause quoted in the Inquiry is an amendment to Par. 4739, R. S. A., 1913, Civ. Code. Said Par. 4739 provides for three forms of certificates to be issued by the Board of Medical Examiners to applicants, namely:

"1st, authorizing holder to practice medicine and surgery;

2nd, authorizing holder to practice osteopathy;
3rd, authorizing holder to practice any other system or mode of treating the sick or afflicted not referred to in this section."

In said Par. 4739 there was no provision made for reciprocity certificates. The applicant was to file his diploma, and with it a sworn statement "that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination * * *."

The Third Legislature, (1917) Chapt. 66, Sec. 1, amended said Par. 4739, providing for the issuing of four forms of certificates, viz:

- 1st, to practice medicine and surgery;
- 2nd, to practice osteopathy;
- 3rd, to practice any other system or mode of treating the sick or afflicted not referred to in this section;
- 4th, a reciprocity certificate, under the provisions in said act specified.

The Board was authorized to enter into contracts of reciprocity with other states for the issuance of a certificate to practice, based upon a certificate issued prior to March 4, 1907, and upon a license issued prior to August 1, 1901; but all applicants for a certificate were required to be personally examined by the Board as to their qualifications.

The Fifth Legislature (1921), Chapt. 119, again amended said Par. 4739, reducing the number of kinds of certificates to three, as follows:

- 1st, to practice medicine and surgery;
- 2nd, to practice osteopathy;
- 3rd, a reciprocity certificate under the provisions therein specified.

To obtain the first certificate the applicant must, among other things, file a diploma issued by some legally chartered medicine school, the requirements of which shall have been, at the time of granting such diploma, in no particular less than those prescribed by the Association of American Medical Colleges for that year.

To obtain the second one, he must, in place of the diploma last referred to, file a diploma from a legally chartered college of osteopathy, etc.; and

To obtain the third one, he must file a diploma from a legally chartered college of the system or mode of treatment which the applicant claims or intends to follow, and in addition, all applicants must be personally examined by the Board as to their qualifications, excepting an applicant for a certificate to practice medicine and surgery shall be granted a reciprocity certificate *without such examination*, if he, in addi-

tion to filing testimonials of good moral character, and the diploma, shall present and file with the Board a certificate or license to practice medicine or surgery, which certificate or license has been issued upon and after examination to said applicant by any state or territory of the United States or District of Columbia, where the requirements for the granting of such certificate or license are at least equal to those in force in Arizona at that time, etc.

At first there was no provision made for reciprocity certificates; then provision was made, but all applicants for a certificate were required to be examined by the Board as to their qualifications; and, lastly, a more liberal policy was adopted, providing that applicants shall be granted certificates of reciprocity without examination, upon filing with the Board, in addition to certain other requirements, a certificate or license to practice that has been issued *upon and after examination* by any state or territory where the requirements for the granting of such certificate or license *are at least equal to those in force in Arizona at that time.*

The italicized words are our own and not copied from the laws.

(No. 72—October 14, 1921.)

SUBJECT—Suffrage in Arizona.

STATUTES AND LAWS—Section 2, Article VII, Constitution of Arizona; Par. 2879, Chapt. 3, Title 12, Revised Statutes of Arizona, 1913, Civil Code.

INQUIRY.

Can aliens vote in Arizona who have merely declared their intention to become citizens of the United States?

OPINION.

No, they must be citizens of the United States, as shown by the following references:

Section 2, Article VII, of the Constitution of Arizona, as originally adopted, reads as follows:

“No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, except school elections, as provided in Section 8 of this Article, unless such person be a male citizen of the United States of the age of twenty-one years or over and shall have resided in the State one year immediately preceding such election.

“No person under guardianship, non compos mentis

or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election, unless restored to civil rights."

It will be seen by the foregoing that an elector must be a male citizen. Said Section 2, Article VII of the Constitution, was amended at the general election held November 5, 1912, so as to read as follows:

"No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one 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.

"The rights of citizens of 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, to vote and to 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.

"No person under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election, unless restored to civil rights."

It will be seen from the foregoing that the Constitution as amended admits females to both vote and hold office.

Paragraph 2879, Revised Statutes of Arizona, 1913, Civil Code, reads as follows:

"Every citizen of the United States, and every citizen of Mexico who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretaro on the 30th day of May, 1848, and the Gadsden treaty of 1854, of the age of twenty-one years or over, who shall have become a resident of the State one year next preceding the election, and of the county and precinct in which he claims the right to vote, thirty days, and who, not being prevented by physical disability from so doing, is able to read the Constitution of the United States in the English language in such manner as to show that he is neither prompted nor reciting from memory, and to write his name, shall be deemed to be an elector of the State of Arizona and shall

be entitled to register for the purpose of voting at all elections which are now or may be hereafter authorized by law, but idiots, insane persons, and persons non compos mentis or under guardianship, shall not be qualified to register for any election, nor shall any person convicted of treason or felony be qualified to register for any election unless restored to civil rights."

(No. 73—October 21, 1921.)

SUBJECT—Tax Anticipation Bonds.
STATUTES AND LAWS—Chapt. 68, S. L. 1921.

INQUIRY.

May Tax Anticipation Bonds be issued for any specific fund exclusive of other funds?

OPINION.

Chapter 68, S. L. 1921 (S. B. 126) provides for the issuance of Tax Anticipation Bonds. Section 5 of said Act provides that the proceeds from the sale of such bonds "shall be used solely for the purposes for which such taxes are levied."

Section 6 of said Act provides that when such Tax Anticipation Bonds are issued and sold the tax levy which such bonds anticipate, when collected, "shall be used solely for the purpose of paying such bonds."

Therefore, the money received from the sale of such bonds must be distributed among the various funds in the manner provided by law for the distribution of tax money as received by the Treasurer, and that the actual tax money, when received, shall not be distributed, but shall be applied to the payment of such bonds.

It follows, therefore, that the distribution of the money from Tax Anticipation Bonds, among the different funds, is made upon the receipt of the proceeds of the bonds, and not upon the receipt of the actual tax money.

We are, therefore, of the opinion that it would not be lawful to anticipate the collection of taxes for any specific fund, and that a bond issued for the purpose of anticipating the money due a specific fund would not be in accord with the letter or spirit of the provisions of this statute, and would be unauthorized and void.

(No. 74—October 22, 1921.)

SUBJECT—Judicial Offices.

STATUTES AND LAWS—Article VI, Section 11, Constitution of Arizona.

INQUIRY.

May a Superior Judge hold the office of school trustee?

OPINION.

We are of the opinion that the office of school trustee is a public office and also a matter of public employment, within the meaning of the provisions of Section 11, Article VI of the Constitution of the State of Arizona, and that in neither aspect can such office or employment be deemed judicial in its nature, and that a Superior Court Judge is for that reason disqualified from acting as a school trustee.

This opinion is supported by the opinion of our Supreme Court in the case of *State vs. Osborn*, 14 Arizona, page 185.

(No. 75—October 21, 1921.)

SUBJECT—Validity of Chapt. 102, S. B. 167, S. L. 1921.

STATUTES AND LAWS—Chapt. 102, S. L. 1921, and Sec. 103, R. S. A., 1913; Art. IV, Sec. 24, Constitution of Ariz.

INQUIRY.

May the State Treasurer pay 8% on registered warrants, as provided by Chapt. 102, S. L. 1921?

OPINION.

Section 103 R. S. A. 1913, provides for interest on registered warrants at the rate of 5% per annum.

The Legislature of 1921 attempted to amend this section, by enacting S. B. 167 (Chapt. 102, S. L. 1921).

In enacting such statute the Legislature omitted the enacting clause, and for that reason it is our opinion that this enactment is void and that Section 103 of the R. S. A. of 1913 is still in force and effect.

This opinion is in accord with our Opinion No. 48, dated June 3, 1921, published in our Opinions at page 57.

We are, therefore, of the opinion that 5% is the maximum amount of interest that may be paid on registered warrants.

(No. 76—October 21, 1921.)

SUBJECT—Fees of Clerk of Superior Court.

STATUTES AND LAWS—Paragraphs 3182, 3192 and 3197, R. S. A. 1913, Civil Code; Sections 1 and 2, Chapter 41, Regular Session, Second Legislature, 1915; Section 1, Chapter 161, Session Laws, Fourth Legislature, 1919.

INQUIRY.

Is the Clerk of a Superior Court authorized to charge a fee of One Dollar for issuing Writ of Execution on a judgment in the same Court?

OPINION.

We are of the opinion that the Clerk is not authorized to make such a charge, unless the suit was commenced prior to the 24th day of September, 1912.

Prior to said date, the fee system prevailed in Arizona, but the Legislature of 1912 provided that "the plaintiff in any civil action commenced in any Superior Court shall at the time of filing his complaint, pay to the Clerk of such Court the sum of ten dollars. The defendant in any such action shall, at the time of filing his answer, pay to the Clerk the sum of five dollars. Each defendant appearing by different counsel than his co-defendant or defendants and answering separately shall make such payment." (Paragraph 3182, R. S. A. 1913.)

Said Legislature also provided that "the sums herein provided to be paid, shall be in full payment of all fees of said clerks and in lieu of the fees heretofore provided by law to be paid, except for certified copies of papers on file, for transcript of minute entries or other records on appeal to the Supreme Court of the United States, for which the fees now allowed by law shall be charged in addition to the sums herein provided to be paid; provided, that in all cases commenced prior to the 24th day of September, 1912, the same fees shall be charged as provided by law at the time of the commencement of such case." (Paragraph 2192, R. S. A. 1913).

The Second Legislature (1915) at its regular session amended said Paragraph 3192, and also Paragraph 3197, but not affecting the matter in question. (Chapter 41, page 79, Regular Session, Second Legislature (1915).)

The Fourth Legislature (1919), Chapter 161, amended said Paragraph 3182, so as to read as follows:

"3182. At the commencement of each action or proceeding, except as otherwise provided by law, the plaintiff shall pay to the Clerk of the Superior Court the

sum of Ten (\$10.00) Dollars, and the Defendant, on his appearance, shall pay to said clerk the sum of Five (\$5.00) Dollars, each defendant appearing by counsel other than his co-defendant or defendants, and answering separately, shall also make such payment of Five (\$5.00) Dollars (which includes all fees to be paid up to the entry of judgment). On the entry of judgment in favor of the Plaintiff he shall pay to said clerk an additional sum of Five (\$5.00) Dollars, provided, however, that where the property or money value of any such judgment exceeds the sum of Three Thousand (\$3,000.00) Dollars, said Plaintiff shall pay to said Clerk an additional fee of Five (\$5.00) Dollars.

"On the entry of judgment in favor of the defendant, he shall pay to said Clerk the sum of Ten (\$10.00) Dollars, provided, however, that where the property or money value of any such judgment exceeds the sum of Three Thousand (\$3,000.00) Dollars, said Defendant shall pay to said Clerk an additional fee of Five (\$5.00) Dollars."

The foregoing amendment expressly provides that the ten dollar and five dollar deposits shall include all fees to be paid up to the entry of judgment.

We are of the opinion that the requirement in that Section of further payments after the entry of judgment, is intended to be in full for all services rendered in the case by the Clerk, on and after entering judgment.

(No. 77—October 25, 1921.)

SUBJECT—Minors in Pool Halls.

STATUTES AND LAWS—Paragraphs 255, 256, R. S. A. 1913, Penal Code.

INQUIRY.

Have we any State law regulating minors visiting pool rooms?

OPINION.

Paragraph 255 provides the words "dependent person," means any person under the age of eighteen years, (13a) "who being under eighteen years of age habitually visits, without parent or guardian, any billiard room or pool room."

Paragraph 256 provides "any person who shall by any act, cause, encourage or contribute to the dependency or delinquency of a child, as these terms with reference to children are defined by the preceding section, or who shall for any

cause be responsible therefor, shall be guilty of a misdemeanor, et cetera."

In our opinion there is sufficient authority under our criminal laws to prosecute, where children are allowed to habitually visit billiard or pool rooms without parent or guardian.

(No.78—October 27, 1921.)

SUBJECT—Election—School Trustee—Ballot.
STATUTES AND LAWS—Section 3, Chapter 72, Page 145, Session Laws, 1921.

INQUIRY.

1. May a ballot cast for school trustee be counted when the name was not placed there by petition, but was written in by the voter?
2. When a ballot contains more than one name, how may a voter designate the person intended to be voted for?

OPINION.

Prior to the session of the Fifth Legislature, 1921, we had no direct statute on the subject, but at said session Paragraph 2728½ was adopted, which reads as follows:

"2728½. In all school districts having an average daily attendance of eighty (80) children of school age, petitions shall be filed with the clerk of the school trustees, or in union high school districts with the clerk of the board of education, containing the names of qualified electors of the district to the number of ten per cent of the number of electors as shown by the poll list of the last election of school trustees. Such petition shall be filed at least ten days prior to the election. The clerk of the board of trustees or board of education shall cause to be prepared ballots, and cause the names of all persons whose petitions have been filed, to appear thereon."

1. It is our opinion that the provisions of said paragraph do not prohibit an elector from writing in the name of a person not printed on the ballot.

2. We are also of the opinion that the voter may draw a line through the names appearing on the ballot of candidates that he does not vote for, or put a cross opposite the name of the person intended to be voted for. Anything done by the elector that clearly shows to the election board who he intended to vote for, is sufficient.

(No. 79—November 1, 1921.)

SUBJECT—Military Training in Schools.

STATUTES AND LAWS—Chapt. 59, S. L. 1917; Chapt. 94, S. L. 1919.

INQUIRY.

Where a high school student has two credits for attending military training, but is still in school, is he required to take military training, and if so, must he take it without receiving credit for it?

OPINION.

In my opinion such a student is required to continue taking the military training.

Section 1, Chapter 59, Session Laws 1917, provides, "the male students," et cetera, "shall be organized," et cetera. This term appears to be comprehensive in including all male students. No exception is made in either the 1917 or 1919 Laws that would appear to include the case in point.

This position is further strengthened by the 1919 amendment at Chapter 94, Section 10, which provides that Section 16 of Chapter 59 of the 1917 Laws shall read "to each cadet who satisfactorily performs the assigned work in military training, shall be allowed credit equivalent to one-half of one academic unit per year, but the total credit allowed shall not exceed two such units."

In other words, all students shall take military training, regardless of whether they have their two units credit or not, but in no event shall they receive more than the two units credit, even though they continue to perform military work.

It is also my opinion that after a man has attended military training for four years and receives his two units credit, he must continue taking the military training without receiving additional credit.

(No. 80—November 2, 1921.)

SUBJECT—Taxes; Costs of a Dismissed Tax Suit.

STATUTES AND LAWS—Pars. 377, 636, 646, 3204, 3216, and 4924, R. S. A. 1913.

Where a tax suit has been dismissed on motion of County Attorney, is the County liable for the five dollar deposit made by the defendant with the clerk?

OPINION.

The following paragraphs in the Revised Statutes of Arizona for 1913, Civil Code, bear upon the subject:

ADVANCE OPINIONS OF THE

377: "No clerk of a court of record shall be bound to do any act or render any service connected with the duties of his office, *other than for the county or state*, until his fees for the same, as prescribed by law, are paid or tendered."

636. "No fees or costs shall be charged against or collected from either party to any suit, action or other proceeding in which the state or any county thereof, or any officer, board or commission acting in his or its official capacity, is a party. *Nothing in this section shall apply to actions brought for the collection of delinquent taxes.*"

646: "Neither the state, nor any county thereof, nor any state board or commission or state officer in his official capacity, nor any executor, administrator or guardian, appointed under the laws of this state, nor any trustee in bankruptcy, shall be required in any case to give security for costs."

3204: "In all cases, civil and criminal, the costs shall be taxed against the losing party."

3216: "The officers mentioned in this title are not in any case, *except for the state or county*, to perform any official services unless upon the prepayment of the fees prescribed for such services, except as in the succeeding section provided: * * *." Note.—The next paragraph refers to habeas corpus proceedings.

4924: "Fees shall be charged for services rendered in the *collection of delinquent taxes* under the provisions of this act as follows:

"By the county treasurer for collection, four per cent of all sums collected after the second Monday of December, and for making the 'back tax book,' fifteen cents for each tract of land or town lot, separately assessed, to be taxed as costs and collected from the party redeeming such tract or town lot.

"By the superior court clerk, the sheriff, and the printer, such fees as are allowed by law for like services in civil cases, which shall be taxed as costs in the case: *Provided, that in no case shall the state or county be liable for any such costs, except printing, nor shall the county board of supervisors allow any claim for any costs incurred by the provisions of this act, except printing in cases where no sale is made.* In such cases the printing shall be a legal charge against the county. All fees collected by any county officer under the provisions of this act shall be by him paid to the county treasurer for the benefit of the general fund of the county, taking the county treasurer's receipt therefor in duplicate, one

of which he shall retain; the other must be filed with the clerk of the board of supervisors." (Italics ours.)

Upon considering the foregoing we are of the opinion that the county is not liable for the five dollar deposit made by defendant with the Clerk of the Court.

(No. 81—November 5, 1921.)

SUBJECT—Education—Apportionment of State School Funds.

STATUTES AND LAWS—Secs. 8, 9 and 10, Art. XI, Constitution of Arizona; Pars. 2705, 2815 and 2816, R. S. A. 1913, Civil Code; Sec. 1, Chapt. 158, p. 393, SL. 1921.

INQUIRY.

May the State Superintendent of Public Instruction apportion State School Funds at any other time than the second Monday in January and May of each year?

OPINION.

That portion of the Constitution of Arizona referring to the subject reads as follows:

Sec. 8, Article XI: "A permanent State School fund for the use of the common schools shall be derived from the sale of public school lands or other public lands specified in the Enabling Act approved June 20, 1910; from all estates or distributive shares of estates that may escheat to the State; from all unclaimed shares and dividends of any corporation incorporated under the laws of Arizona; and from all gifts, devises or bequests made to the State for general educational purposes.

"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."

Sec. 9, Article XI: "The amount of this apportionment shall become a part of the county school fund, and the Legislature shall enact such laws as will provide for increasing the county fund sufficiently to maintain all the public schools of the county for a minimum term of six months in every school year. The laws of the State shall enable cities and towns to maintain free high schools, industrial schools and commercial schools."

Sec. 10, Article XI: "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 approved June 20, 1910, or other legislative enactment of the United States, for the use and benefit of the respective State educational institutions. In addition to such income the Legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of all State educational institutions, and shall make such special appropriations as shall provide for their development and improvement."

Paragraph 2705, R. S. A. 1913, Civil Code, sets forth the duties of the Superintendent of Public Instruction, and by Section 3 of said Paragraph 2705, he is "To apportion, subject to the supervision of the State Board of Education, to the several counties, on the Second Monday in January and May of each year, the amount of money to which each county may be entitled under the provisions of this title, according to the number of persons between the ages of six and twenty-one years, as shown by the last census of the several counties, and to furnish such County Treasurer and County Superintendent with an abstract of such apportionment. He shall also certify such apportionment to the State Auditor and upon such certificate the Auditor shall forthwith draw his warrant on the State Treasurer in favor of the County Treasurer of each county for the amount due said county."

Paragraph 2815 originally provided for making annually a levy and collection of taxes to raise the amount therein stated to be paid into the State Treasury as a special fund for school purposes, et cetera, and

Paragraph 2816 originally read as follows:

"All school moneys due each county of the state shall be paid over by the State Treasurer on the second Monday of January and May, or as soon thereafter as the County Treasurer may apply for the same, on a warrant of the State Auditor, drawn in conformity with the apportionment of the State Board of Education."

After repeated changes, the Legislature of 1921, by Section 1, Chapter 158, page 393, amended said Paragraph 2815 so as to read as follows:

"There shall be levied and collected annually, in the manner in which other state taxes are levied and collected, by a levy made by the officials provided by law a sufficient tax to raise a sum which shall not be less than Twenty-five (\$25.00) Dollars per capita on all children in average daily attendance in the common and high schools of the state, as shown by the records of the State Superintendent of Public Instruction for the preceding year, such levy to be made on the taxable property within

the state, and paid into the State Treasury as a special fund for school purposes, as hereinafter provided.

"It shall be the duty of the State Treasurer to receive and hold, as a special fund, all public school moneys paid into the State Treasury, and to pay them over on warrants drawn on the State Auditor in accordance with the law. All moneys so raised shall be placed to the credit of the STATE SCHOOL FUND."

And Paragraph 2816 was amended so as to read as follows:

"After making the necessary allowance for the payment of all amounts now made payable from the State School Fund by the laws of the State, the State Board of Education shall apportion the remainder to the several counties of the state pro rating the same on the average daily attendance in the common and high schools in each county as shown by the records of the State Superintendent of Public Instruction for the preceding year, the same to be paid to the County Treasurer on a warrant of the State Auditor drawn in conformity with the apportionment of the State Board of Education, which amount shall be credited to the County School Fund on the books of the County Treasurer."

It will be noticed that paragraph 2705 provided for an apportionment by the Superintendent under the supervision of the Board on the second Monday in January and May of each year, and that Paragraph 2816, as amended, now provides that the State Board of Education shall, "after making the necessary allowances for the payment of all amounts now made payable from the State School Fund by the laws of the State, the State Board of Education shall apportion the remainder to the several counties," et cetera, which in effect repeals that much of Paragraph 2705 as conflicts with 2816, makes it the duty of the State Board of Education to make the apportionment and does not designate when or how often it shall or may be made.

The Constitution requiring an apportionment annually, without saying whether a school year or a calendar year, nor designating the time of the year, doubtless led the Legislature to understand that it was left to that body to fix it more definitely, and they did by making it twice a year and on particular days. The last Legislature doubtless looked on the Constitutional provision in the same way and again changed the time and manner of making the apportionment by not saying how often or when and by transferring the duty from the Superintendent to the Board.

This same Legislature (1921) amended Paragraph 2697, which enumerates the powers and duties of the State Board

of Education and gives the Board, among others, the power to make rules and regulations for its own government and for the government of its executive officers, and also to perform legislative functions not inconsistent with the law.

Although the provisions of our Constitution are mandatory, unless by express words they are declared to be otherwise, we are not prohibited from making a reasonable interpretation of a not very clear or decisive provision, and especially when it is to the interest of the people to place such a reasonable meaning upon it.

It now appears that some of the school districts do not have sufficient funds to meet their expenses, thus placing the schools therein in a precarious condition. It also appears that there are funds in the State Treasury to the credit of the State Common School Fund.

The real question, therefore, is: May the State Board of Education apportion the School Fund more frequently than once a year?

We believe that a reasonable construction of the words, "shall be apportioned annually," does not limit the apportionment to once a year, but means there must be at least one apportionment annually.

Therefore, we are of the opinion that the State Board of Education must make an apportionment annually, and may, if they have the funds, make them more frequently, when in their judgment they deem it advisable, and for the best interest of the schools so to do.

(No. 82—November 4, 1921.)

SUBJECT—Demands Against County—Delinquent Taxes.

STATUTES AND LAWS—Pars. 2436 and 2462, R. S. A. 1913, Civil Code.

INQUIRY.

May a Board of Supervisors allow a demand in favor of a person when such person is delinquent in payment of taxes assessed against his property?

OPINION.

We are inclined to the opinion it may.

Paragraphs 2436 and 2462, Revised Statutes of Arizona, 1913, Civil Code, bear upon this subject and read as follows:

2436. "No demand on any county treasury shall be allowed by the board of supervisors in favor of any person in any manner indebted to the county without first deducting such indebtedness, nor in favor of any officer

whose accounts shall not have been rendered and approved, or who shall have neglected or refused to make his official returns, or report in writing, as required by law, or in favor of any officer who shall wilfully neglect or refuse to perform any of the duties of his office. The board of supervisors shall have power to examine, orally or otherwise, on oath, the persons presenting any demand on the treasury, or the agent or attorney of such person, or any other person, in order to ascertain any facts necessary or proper for them to know in order to determine their allowance or disallowance of such demand."

2462. "All warrants issued by the board of supervisors of any county shall be receivable in payment of all debts to such county, and all taxes assessed against property in such county. Upon the tender of any such warrant in payment of any such debt or tax, the county treasurer shall, if the warrant be less than the amount of such debt or tax, and be accompanied by a sufficient sum of money to make up the full amount of such debt or tax, credit the amount of such warrant upon such debt or tax; if the amount of such warrant be greater than the amount of such debt or tax, he shall mark such debt or tax paid, and endorse the amount thereof upon the back of such warrant as a partial payment thereof, provided that only the person named as payee in any such warrant shall be entitled to use the same in payment of such debt or tax."

It is a general rule of law that taxes are not debts in the ordinary sense of that word; they do not result from contractual obligations; they are contributions required for the support of the Government and are not ordinarily subject to set off between taxpayer and municipality.

Paragraph 2436 seems to apply to a person who is indebted to the county, and to a person who is an officer whose accounts shall not have been rendered and approved, or which officer shall have neglected or refused to make his official returns or report in writing, as required, and to a person who is an officer who shall wilfully neglect or refuse to perform any of the duties of his office.

It will be seen that no mention whatever is made of taxes. It is in each instance a person. When taxes become delinquent, an action *quasi in rem* is brought to fix a lien upon the specific property. No personal judgment can be had. *Territory v. Cooper Queen Consolidated Mining Company*, 13 Ariz. 215.

If a judgment be obtained, it is against the property rather than the individual, and should the property not bring

an amount sufficient to pay the judgment, the judgment for the uncollected balance does not stand against the individual. The tax is really against the property and not the individual. It is not a debt of the individual but is a lien upon the specific property taxed.

Paragraph 2436 refers to a debt due the county by the person presenting the demand, and all the other references in the paragraph are to a person who has failed to do any one of the things therein mentioned.

Paragraph 2462 authorizes county warrants to be used in the payment of debts due the county and all taxes assessed against property in the county. The general rule is that the term "taxes" is used in the sense of money—an exaction to be alone discharged in money, but the foregoing paragraph makes an exception to the rule. Said last mentioned paragraph permits warrants to be received in payment of debts due the county and taxes assessed against property of the county; thus apparently recognizing that there is a difference between debts and taxes, and that taxes are not debts, and allows county warrants to be used in the payment of both debts and taxes.

Taxes or delinquent taxes not being a debt of the person presenting a demand to the Board of Supervisors for allowance, we think it does not come within the provisions of Paragraph 2436, and therefore, if a proper claim or demand, should be allowed by the Board of Supervisors.

(No. 83—November 10, 1921.)

SUBJECT—County Highway Commissions—Salary of Members.
STATUTES AND LAWS—Chapt. 31, S. L. 1917; Chapt. 121, S. L. 1919.

INQUIRY.

Are members of the County Highway Commission entitled to their expenses, in addition to the salary of Ten Dollars per day, while actually engaged as Commissioners?

OPINION.

In the act of the Legislature of Arizona, Section 13, Chapter 31, 1917, it was provided that:

"The members of the Highway Commission shall serve without any compensation whatever. The actual and necessary traveling and other incidental expenses of the members of said Commission, actually and necessarily incurred in the discharge of his duties and all other ex-

penses incurred, either by the Board of Supervisors or by said Commission, under the provisions of this Act, shall be paid out of the general funds of the county until there shall be sufficient money in the Highway Improvement Fund derived from the sale of bonds with which to pay the same, whereupon the general fund of said county shall be reimbursed from the Highway Improvement Fund for the amount so expended, and thereafter all expenses of said Commission shall be paid out of said Highway Improvement Fund."

The Legislature of 1919, in Chapter 121, amended Section 2 of said Chapter 31 of the Session Laws of Arizona, 1917, and provided therein that:

"Said Commissioners shall receive a salary of Ten Dollars (\$10.00) per day for the days they are actually engaged in the work of the Commission, and such Commissioners shall receive no further or additional compensation than as herein provided."

There is no other reference made to salary, compensation, or expenses.

It is evident that the Legislature of 1917 did not include expenses in the word "compensation" when providing that the members of the Commission should serve "without any compensation whatever," for in that Act provision was made for paying members the actual and necessary traveling and other incidental expenses, actually and necessarily incurred in the discharge of their duties.

The Act of the Legislature of 1919 aforesaid makes no reference to expenses of Commissioners, and refers only to the salary to be paid them.

There is this difference between the Act of 1917 and that of 1919: The former expressly provided that the members should serve without any compensation whatever, but that their actual and necessary expenses, traveling and other incidental expenses, should be paid; while the latter provides for the payment only of a salary of Ten Dollars per day while actually engaged in the work of the Commission, and no further compensation should be paid them, but makes no mention of expenses.

We do not think that the compensation referred to was meant to include expenses. A repayment of expenses is not usually considered as compensation for services rendered.

Though Section 2, Chapter 121, Session Laws, 1919, purports only to amend Section 2 of Chapter 31, Session Laws, 1917, the effect is to also amend Section 13 of said Chapter 31 by repealing that clause saying the members should serve without compensation, and allowing them a per diem com-

pensation; but there is nothing to indicate, either in words or by inference, that the Legislature intended to repeal that part of said Section 13 which provides for allowing the members their actual and necessary expenses.

We are, therefore, of the opinion that the members of the County Highway Commission are entitled to a salary of Ten Dollars a day for the days they are actually engaged in the work of the Commission and, in addition to that, their actual and necessary traveling and other incidental expenses, actually and necessarily incurred in the discharge of their duties.

(No. 84—November 10, 1921.)

SUBJECT—Pioneers' Home—Conditions for Admittance.
STATUTES AND LAWS—Par. 4545, R. S. A. 1913, Civil Code; Chapt. 91,
page 172, Session Laws of Arizona, 1921.

INQUIRY.

Is an applicant for admittance to the Pioneers' Home eligible who has resided in this State since 1876, excepting from 1885 to 1906?

OPINION.

We are of the opinion he is not.

Prior to the last session of the Arizona Legislature, the statutes required a residence in this State of not less than 25 years. (Par. 4545, R. S. A., 1913, Civil Code).

At the last session, 1921, Chapter 91, page 172, Paragraph 4545 was amended, requiring a person to have been a citizen of the United States and of Arizona for a period of 5 years prior to his application, and to have been a resident of this State for not less than 35 years.

It appears that the applicant in question lived in Arizona from 1876 to 1885, and from 1906 to 1921; or 24 or 25 years; and that from 1885 to 1906 he lived in his native state of Iowa.

The statute does not read that the 35 years must have been continuous, but the applicant having been out of the State of Arizona for 21 years after first coming here, it would seem that he lost his residence here and did not regain it until he returned.

His entire residence in Arizona being less than 35 years, we conclude he is not eligible.

(No. 85—November 15, 1921.)

SUBJECT—Livestock—Special License for Slaughtering.

STATUTES AND LAWS—Paragraphs 3738 to 3749, both inclusive, Revised Statutes of Arizona, 1913, Civil Code; Chapter 97, Session Laws, 1921, Page 182.

INQUIRY.

Are livestock inspectors required to collect Thirty (\$30.00) Dollars when issuing a special license?

OPINION.

The law on this question is not quite as clear as it might be, but reading Paragraphs 3738 to 3749, inclusive, Revised Statutes of Arizona, 1913, Civil Code, and the amendments made by the last Legislature, Chapter 97, Session Laws of 1921, we are inclined to the opinion that no fee was intended to be paid for a special license.

We understand that the Livestock Sanitary Board have adopted that construction and have not been requiring any payment to be made for a special license.

(No. 86—November 12, 1921.)

SUBJECT—Appointment of Deputies in Counties of the Second Class.

STATUTES AND LAWS—Chapter 162, Session Laws, 1919.

INQUIRY.

Can a County Recorder of a Second Class County appoint a chief deputy and fix his salary, without the consent or approval of the Board of Supervisors?

OPINION.

Subdivision B. of Chapter 162, Session Laws of 1919, of the State of Arizona, designates the officers of counties of the second class, among whom is the County Recorder, and provides further that "each of said officers other than the Board of Supervisors shall appoint one chief deputy, at a salary not to exceed \$150.00 per month."

Section E of said Chapter provides: "All of the County officers hereinbefore named may, by and with the consent of and at salaries to be fixed by the Board of Supervisors, appoint such deputies, stenographers, clerks and assistants as may be necessary to properly conduct the affairs of their respective offices.

We find no other provisions in this Act referring to the powers of the officers of such counties to appoint deputies,

and if there are any provisions in the statutes in conflict with the provisions above quoted, it is our opinion that the same are repealed by reason of the enactment of Chapter 162, aforesaid.

Construing these two provisions above quoted, we are of the opinion that the County Recorder, in second class counties, has the power to appoint a chief deputy and fix his salary at a sum not exceeding \$150.00 per month, without the consent or approval of the Board of Supervisors.

Any additional deputies, stenographers, etc., required by such Recorder or other County official aforesaid, can only be appointed pursuant to the provisions of Subdivision E of said Chapter.

(No. 87—November 10, 1921.)

SUBJECT—Offices and Officers.

STATUTES AND LAWS—Pars. 2399 and 2730, R. S. A. 1913, Civil Code.

INQUIRY.

May a person who is a member of a Board of Supervisors also, at the same time, hold the office of School Trustee?

OPINION.

We find nothing in the Constitution or in the Statutes of Arizona prohibiting a person from holding both offices at the same time, and

Therefore, are of the opinion he may.

The only restriction applying to supervisors is found in Paragraph 2399, Revised Statutes of Arizona, 1913, Civil Code, which provides that:

“No person holding any other county office or any precinct office shall be eligible to the office of supervisor.”

A school trustee does not come within the terms of such qualifications, as he does not hold any county or precinct office, but an office of what is called in the statute a “school district.” (Paragraph 2719, Revised Statutes Arizona, 1913, Civil Code.)

Paragraph 2730, Revised Statutes of Arizona, 1913, Civil Code, provides that the qualifications of a school trustee shall be as follows:

“Every person, male or female, of the age of twenty-one 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 eligible to election to the office of trustee, and shall be entitled to vote at any school district election * * *."

(No. 88—November 18, 1921.)

SUBJECT—Approval and Disapproval of Depository Bonds by the State Examiner.

STATUTES AND LAWS—Pars. 4642, 4643, 4644, 4645, 4646, 4647, 4648, and 119, R. S. A. 1913, Civil Code.

INQUIRY.

Has the State Examiner authority to disapprove bonds given by public depositories of county moneys, which have been approved by the Board of Supervisors?

OPINION.

Paragraph 4642 provides that the County Treasurer, with the consent of the Board of Supervisors of the county, may appoint one or more banks to be depositories of county moneys.

4643 provides that a bank desiring such appointment shall "make, execute and deliver a bond, with good and sufficient sureties" to the county, et cetera.

4644 provides that the sureties upon such bond shall have all the qualifications required by law in case of official bonds, and provides that in case such bond is given by a surety company, no justification by affidavit shall be required.

4645 provides that such bond shall be approved by the County Treasurer and the Board of Supervisors of the county depositing such moneys, who shall, at the time of approving the same, certify in writing thereon that they have made diligent personal investigation as to the sufficiency of the sureties thereon, and are satisfied that such bond is amply sufficient to protect the interests of the county.

4646 provides that upon such approval it shall be the duty of the Board of Supervisors to deposit moneys in said bank.

4648 provides that in lieu of such bond the bank may deposit United States and other interest bearing bonds.

It follows, therefore, that a bank desiring to become a public depository may qualify for such appointment by giving

a bond with personal sureties, or secured by a surety company or by the deposit of federal and state and other public interest bearing bonds in lieu of a bond.

In case a bond is given with personal sureties the power and duty of investigating and approving such bond is especially vested in the County Treasurer and the Board of Supervisors by the provisions of Paragraph 4645, R. S. A. 1913.

It follows, therefore, that these officials, and none other, may approve such bonds, and it necessarily results that the State Examiner has no power or authority whatsoever to disapprove such bonds.

Referring to the powers of the State Examiner, Paragraph 119 of the Revised Statutes, among other things, provides that it shall be the duty of the State Examiner to ascertain "the character and financial standing of all present and proposed sureties on the official bonds of county officers, and he shall have full power to reject any or all such securities in accordance with the knowledge so obtained, and require new and satisfactory bonds to be filed."

It is our opinion that this has reference to official bonds, and has no connection with depository bonds referred to in said Paragraph 4645.

It is our opinion, therefore, that the State Examiner has no power to reject or approve any depository bond.

(No. 89—November 29, 1921.)

SUBJECT—Appointment and Salaries of Deputies and Assistants in Counties of the Second Class.

STATUTES AND LAWS—Chapter 162, Session Laws of 1919.

INQUIRY.

1. Has the County Attorney in counties of the second class power to appoint a chief deputy at a salary not exceeding \$150.00, without the consent of the Board of Supervisors, and may the Board of Supervisors, subsequent to such appointment, vacate such appointment or reduce the salary?

2. Has the Board of Supervisors the power, without the consent of the principal in office, to appoint other deputies or fix their salaries?

OPINION.

Subdivision (b) of Chapter 162, page 274, Session Laws of 1919, provides, among other things, that a County Attorney may appoint a chief deputy at a salary not to exceed \$150.00 per month.

It further provides that the Board of Supervisors may by resolution declare that said officer does not require the assistance of a deputy, and in such case the County Attorney shall not appoint such chief deputy.

We are of the opinion that in the absence of such resolution, the County Attorney has the power without the consent or approval of the Board of Supervisors to appoint one chief deputy at a salary not exceeding \$150.00 per month, and that subsequent to such appointment the Board of Supervisors have no power to modify the salary of such deputy or to vacate his appointment.

Answering the second inquiry, we are of the opinion that it requires the concurrent action of the County officer and the Board of Supervisors to appoint any other deputy, stenographer, clerk or assistant, and that in case of such appointment, the Board of Supervisors alone must fix the salary, and that the Board has no power without the consent of such officer to appoint a deputy for him. The actual appointing power is expressly vested in the County officer, but he can only exercise such power with the consent and approval of the Board of Supervisors, and such appointee can draw no salary unless the same is expressly fixed by the Board of Supervisors. See 196 Pac. 419.

(No. 90—December 1, 1921.)

SUBJECT—Education.

STATUTES AND LAWS—Paragraphs 2816, 2821 and 2822, Revised Statutes of Ariz., 1913, Civil Code; 1921 Session Laws, Chapter 158, page 397.

INQUIRY.

Shall the State Superintendent of Public Instruction, in estimating the amount of the State School Fund, include the estimated attendance of newly organized schools?

OPINION.

A new common school district or high school district is entitled to its pro rata of apportionment based on the probable average attendance, as provided for in Paragraph 2822, Revised Statutes of Arizona, 1913, Civil Code, as amended by 1921 Session Laws, Chapter 158, page 397; but we are inclined to the opinion that the apportionment referred to is the one provided for in Paragraph 2821, to be made by the County School Superintendent to the common and high school districts, and not to Paragraph 2816, providing for appor-

tionment of State school funds by the State Board of Education to the counties; or to Paragraph 2815 referring to State levy for common and high school education.

(No. 91—December 6, 1921.)

SUBJECT—Oaths and Official Bonds.

STATUTES AND LAWS—Par. 57, Subdivision 5, Pars. 181, 182, 189 and 3180, R. S. A., 1913, Civil Code.

INQUIRY.

1. Is it necessary for deputies, clerks and subordinate officers of the State to file an oath of office in the office of the Secretary of State?

2. If necessary to file such oaths of office, must they be recorded?

3. If required to be recorded, what fee should the Secretary of State charge for filing and recording such oaths?

4. Must official bonds of deputies, clerks and subordinate officers of the State be filed and recorded in the office of the Secretary of State?

5. If so, what, if any, fee should the Secretary of State charge for filing and recording such official bonds?

OPINION.

1. It is necessary for all deputies, clerks and subordinate officers of the State to file an oath of office in the office of the Secretary of State.

Paragraph 182 of the Revised Statutes of Arizona, 1913, Civil Code, provides that:

“Deputies, clerks and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.”

Paragraph 181 provides that:

“The official oaths of all State officers shall be filed and recorded in the office of the Secretary of State. Oaths for Notarys Public and all precinct officers shall be filed and recorded in the office of the County Recorder.”

2. The statutes referred to in the preceding answer do not require oaths of office of deputies, clerks and subordinates to be recorded; it simply requires them to be filed in the manner required of their principals; that is, in the office of the Secretary of State.

3. Not being required to be recorded, it follows that there is no fee for recording.

There is no direct or special provision for charging for filing oaths of office, but there is a general provision for "filing any other document not herein specified, \$3.00," and filing the oath could probably be included thereunder.

4. Official bonds of deputies, clerks and subordinate officers of the State are not required to be filed or recorded in the office of the Secretary of State.

Paragraph 181 provides that the official oaths of all State officers shall be filed and recorded in the office of the Secretary of State, and Paragraph 182 provides that deputies, clerks and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals; but Paragraph 189 provides that:

"Every official bond shall be, unless otherwise provided by law, filed in the office in which the official oath of office was filed, except that the bonds of deputies shall be filed with the officer appointing such deputy."

Subdivision 5 of Paragraph 57 requires the Secretary of State "to receive and record in proper books the official bonds of all State officers and keep the original on file in his office."

5. Bonds of deputies, clerks and subordinate officers of the State not being required to be filed in the office of the Secretary of State, there is no fee for the Secretary of State to charge, either for filing or recording the same.

(No. 92—December 6, 1921.)

SUBJECT—Divorces by Soldiers.

STATUTES AND LAWS—Article VII, Section 6, Constitution of the State of Arizona: Par. 3860, Revised Statutes of Arizona, 1913, Civil Code.

INQUIRY.

Has a soldier in the service of the United States and stationed in Arizona, such a residence as is contemplated by the divorce laws of this State, and upon which a court acquires jurisdiction?

OPINION.

The Constitution of the State of Arizona, Section 6, Article VII, provides that:

"No soldier, seaman or marine in the Army or Navy of the United States shall be deemed a resident of this State in consequence of his being stationed at any marine or naval place within this State."

and Paragraph 2860, Revised Statutes of Arizona, 1913, provides that:

"No suit for divorce from the bonds of matrimony shall be maintained in any court unless the plaintiff shall, at the time of filing his or her complaint, have been an actual bona fide resident of the State for one year, and shall have resided in the county where the suit is filed six months next preceding the filing of the suit."

A bona fide resident is a person who is living in the State of Arizona with the intent of making it his deliberate and voluntary residence.

The mere fact of a soldier being stationed within the State does not of itself make him a resident of the State. The general rule, with reference to soldiers, is that upon enlistment or upon being drafted, they retain their residence in the State in which they had residence at the time of enlistment or being drafted. That is to say, by enlistment in the service of the United States, soldiers do not lose their residence which they had at the time of enlistment.

A soldier who has a residence in another State, upon being brought to and stationed in this State does not by that act acquire a residence in this State, nor does he lose his residence in the State where he had residence at the time of enlistment.

Phoebus v. Byrum, 67 S. E. 349;

27 L. R. A. (N. S.), page 436;

Berry v. Willcox, 48 Am. St. Rep. 717.

We are of the opinion, however, that a soldier may voluntarily change his legal residence after enlistment, as evidenced by the purchase of a home, the acquiring of other property interests, marrying a citizen of this State, the soldier being under age and the parents moving to this State, etc.; but such change must be of such a character as to leave in the mind of the Court no doubt that the soldier is an actual bona fide citizen and legal resident of this State, and has been such for one year next preceding the time of filing his complaint.

The question of residence is one of jurisdiction to be decided by the Court where the soldier applies for divorce; and a judgment or decree in such action is final and beyond the control of the military or the executive, and may be avoided only by appeal or direct attack by the defendant in the case.

(No. 93—December 7, 1921.)

SUBJECT—Election—Candidate for Office—Qualified Elector.
 STATUTES AND LAWS—Article VII, Sections 2 and 15, Constitution of the State of Arizona; Par. 2879, R. S. A., 1913, Civil Code.

INQUIRY.

Is a person who may be elected or appointed to office

required to have been a resident of Arizona for a year prior to the date of such election or appointment?

OPINION.

Section 15, Article VII, Constitution of the State of Arizona, requires such person to be a qualified elector, and reads as follows:

"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."

Section 2 of said Article VII defines a qualified voter as follows:

"No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one 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.

"The rights of citizens of 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, to vote and to 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.

"No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights."

Paragraph 2879, R. S. A., 1913, Civil Code, also defines who is an elector and reads as follows:

"Every citizen of the United States, and every citizen of Mexico who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretaro on the 30th day of May, 1848, and the Gadsden treaty of 1854, of the age of twenty-one years or over, who shall have become a resident of the state one year next preceding the election, and of the county and precinct in which he claims the right to vote, thirty days, and who, not being prevented by physical disability from so doing, is able to read the Constitution of the United States in the English language in such

manner as to show that he is neither prompted nor reciting from memory, and to write his name, shall be deemed to be an elector of the State of Arizona, and shall be entitled to register for the purpose of voting at all elections which are now or may be hereafter authorized by law, but idiots, insane persons, and persons non compos mentis or under guardianship, shall not be qualified to register for any election, nor shall any person convicted of treason or felony be qualified to register for any election unless restored to civil rights."

From the foregoing it appears that in order to possess the right to vote, a person must have resided in this state a year preceding the day of election, and he is, therefore, not a qualified voter until the expiration of a year.

Having to reside in Arizona a year before one can vote, and a candidate for office being required to possess the qualifications of a qualified voter, we are of the opinion that such candidate for office must have resided in this State at least one year before becoming eligible for office.

(No. 94—December 14, 1921.)

SUBJECT—Volunteer Fire Departments—Financial Support from State.
STATUTES AND LAWS—Par. 3404, R. S. A., 1913, Civil Code; 1915 S. L.,
Chapt. 60, Page 87; 1919 S. L., Chapt. 97, Page 154.

INQUIRY.

Are volunteer fire departments entitled to receive financial aid from the State?

OPINION.

Cities of this State having a population of 3,000, or over, are entitled to receive 50% of all moneys collected from fire insurance companies, under Paragraph 3404 of the Revised Statutes of Arizona for 1913, Civil Code, as amended by the 1915 Session Laws, Chapter 46, Page 57, and the 1919 Session Laws, Chapter 97, Page 154.

Paragraph 3404 provides, among other things, that:

"Every company organized under the laws of any other state or foreign country shall pay to the state treasurer through the corporation commission a tax of two per centum of all premiums collected or contracted for in this state during the year ending December 31st next preceding; provided that the tax shall be collected on such premiums after deducting from the gross amount thereof the amount paid to policy holders in this state as

return premiums, and the amount paid for re-insurance on business in this state.”

The Legislature of 1915, Chapter 46, amended said Paragraph 3404, by adding:

“All fire insurance companies shall segregate and make a separate statement of all premiums for fire insurance collected or contracted for during said next preceding year for insurance upon property in each of the cities of the state having a population of 3,000 or over.”

and also by adding the following:

“Fifty per cent of all moneys collected as herein provided from fire insurance companies during each year after and including the year 1915, arising out of insurance upon property within the corporate limits of any city of the state having a population of 3,000 or over shall be by the state treasurer paid over to the governing body of said city to be used for providing or maintaining a system of fire protection for said city, or for providing a relief fund for the benefit of injured or disabled firemen, either volunteer or paid.”

(No. 95—December 28, 1921.)

SUBJECT—Contracts for Public Office.

STATUTES AND LAWS—Sections 173, 174 and 175, Revised Statutes of Arizona, 1913, and Section 73, Penal Code.

INQUIRY.

Does the law permit payment for either services or supplies to be made to a school trustee from the funds of the district?

OPINION.

Section 173 provides that:

“Members of the Legislature, State, county, city and precinct officers must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

and Section 175 provides that:

“Every such contract may be avoided in the instance of any party except the officer interested.”

Section 73, Penal Code provides that if a public officer violates the provisions of these laws he shall be guilty of a felony.

It is our opinion that the word “party” as used has reference to the parties in the contract, which in this case would be the remaining members of the trustees.

They would have power to avoid such contract and refuse payment.

If it appears that the services or supplies were rendered or furnished in good faith and the transaction is not fraudulent in any way and the other members of the Board of Trustees approve it, there is no reason why such trustee should not be paid.

Furthermore, there is some question as to whether or not the school trustee comes within the express terms of the statute. However, the principle of the law is applicable as a rule of conduct to be observed by trustees.

(No. 96—December 28, 1921.)

SUBJECT—State Highways.

STATUTES AND LAWS—Section 5117, et seq. constituting Chapter 7, Title 7, Title 50, Revised Statutes of Arizona, 1913.

INQUIRY.

Is there any law requiring counties to furnish right-of-way for State highways?

OPINION.

Under the provisions of Section 5117, Revised Statutes of Arizona, 1913:

“All highways and parts of highways, and bridges which were heretofore constructed by the territory, or the State of Arizona, or which shall be hereafter constructed or improved under the provisions of this Act, shall be State highways and bridges.”

Section 5119 provides for the office of State Engineer. This section was amended in 1921, Chapter 69.

Section 5121 provides the duties of the State Engineer, and among his other duties it was made his duty to aid the Board of Control and the Board of Supervisors of the several counties in the selection and designation of State highways and bridges.

Section 5122 provides that the Boards of Supervisors of the several counties shall act with the State Engineer in the selection of highways and bridges to be constructed under this Act.

Section 5055 defines public highways to be all roads and highways in the State of Arizona which have been located as public highways by the order of any Board of Supervisors, and all roads in public use which have been recorded as public

highways or which may be recorded by the authority of the Board of Supervisors.

Section 5057 provides the manner of locating a public highway, and among other things provides that such location shall be made by the Board of Supervisors of the county and the damages occasioned by the taking of the right-of-way is primarily to be determined by the Board of Supervisors. This has reference only to public highways as distinguished from State highways.

We find no provision in the law with regard to the payment of damages occasioned by taking property for right-of-way of a State highway, and we assume that a State highway is necessarily a public highway and that the right-of-way therefore would be acquired under the provisions of Section 5057 as amended.

We are of the opinion, therefore, that there is no duty imposed upon a county Board of Supervisors to secure a right-of-way for a State highway, as distinguished from a public highway.

(No. 97—December 29, 1921.)

SUBJECT—Agriculture and Horticulture—Cotton Pests and Expense of Eradication.

STATUTES AND LAWS—Pars. 3309 and 3311, R. S. A., 1913, Civil Code.

INQUIRY.

1. Has an inspector of the Arizona Agriculture and Horticulture Commission the right to enter upon the premises of any person for the purpose of inspecting the cotton or other agricultural and horticultural crops growing or stored thereon, to see if there are any dangerous insect pests or diseases located therein?

2. May an inspector of the Arizona Agriculture and Horticulture Commission legally enter upon the premises of another in a non-cotton zone, and though no pest has been found therein, have a field of volunteer cotton cleaned, when the owner, upon due notice, refuses to either do it himself, or to consent to it being done by the inspector?

3. If an inspector of the Agriculture and Horticulture Commission discovers a wild cotton boll weevil in a field of volunteer cotton in a non-cotton zone, and requests the owner to clean his field, and upon refusal the inspector has it done, is the owner legally liable for the expense of such work.

OPINION.

As to Inquiry No. 1, it is our opinion he may.

Paragraph 3311 of the Revised Statutes of 1913 provides as follows:

"The inspectors are hereby authorized and it is their duty whenever the occasion may arise, to enter in and upon any premises, building, or palce, where plants may be growing, or vegetables, fruits, seeds and agricultural products, or any article connected with handling, packing and shipping of the same, may be stored, for the purpose of inspecting, or causing an inspection to be made to determine whether any injurious pest is present. To this end, and otherwise to carry out the provisions of this chapter, said inspectors may open any car, box, bundle, or package with the least possible injury to property or business. * * *."

As to Inquiry No. 2, we are in some doubt as to such authority.

In the first paragraph of Paragraph 3311 of the Revised Statutes of 1913, it is provided that:

"Whenever an inspector discovers a pest which is injurious to the agricultural or horticultural interests of the state, and which it is practicable to eradicate or suppress, he may, with the advice and under the direction of the entomologist or his assistants, notify in writing the owner, owners or person or persons in charge or in possession of the premises, buildings, or places as aforesaid, that the same are infested or contain or harbor an injurious insect or other pest, and said inspector may require such person or persons in charge to eradicate, destroy or suppress such pest within a reasonable specified time by means of the most economical and effective method available. * * *."

This statute apparently contemplates a case where a pest has been discovered. We are not sure that the statute giving the Agriculture and Horticulture Commission power to make rules and regulations to aid in carrying out the purposes of the commission, covers cases where no pests have been discovered.

As to Inquiry No. 3, it is our opinion that the owner is so liable when special provisions are made, as contemplated in the third paragraph of Paragraph 3311 of the Revised Statutes of 1913, reading as follows:

"The expense incurred in connection with such action, unless voluntarily assumed by the owners of the aforesaid property, shall be charged against the state, and paid out of the fund authorized by this chapter upon

vouchers of the commission. Except that when special provisions are made for the eradication or control of specified pests, any and all such sums so paid, shall be charged against the owner or owners of the property and premises from which such nuisance has been removed or abated in pursuance of this chapter and shall be recovered by the state or county as the case may be by a civil action against such owner or owners."

However, it appears to us that when Title XXI of the Revised Statutes of 1913 was revised, cotton was not much of a product in this state, and probably not specifically in mind when Chapter 18, Session Laws, 1913, Third Special Session, was enacted. There doubtless was an attempt to cover everything in general relating to pests and their destruction, but no provision was made for the handling of plants, crops, or cotton fields where no pests have been discovered. It is doubtless desirable that in a district declared to be a non-cotton zone the Commission should have more specific authority given them in order to make provision against such pests.

We, therefore, suggest that the Commission ascertain how the subject matter is handled by other cotton growing states, and secure the drafting of laws that will meet the various occurring conditions.

(No. 98—December 29, 1921.)

SUBJECT—Offices and Officers—Official Oaths.
STATUTES AND LAWS—Par. 182, R. S. A., 1913, Civil Code.

INQUIRY.

Do stenographers employed in the office of the Governor, and the Governor's chauffeur come within the meaning of the term "deputies, clerks and subordinate officers of the state?"

OPINION.

It is the opinion of this office that neither a stenographer nor a chauffeur can be classed as a deputy, or clerk, or subordinate officer of the state, within the meaning of Paragraph 182 of the Revised Statutes of Arizona for 1913, Civil Code.

CASES IN SUPERIOR COURTS OF THE STATE OF ARIZONA

Title of Case.	Nature of Proceeding.	Disposition.
No. 7512. Aubrey Investment Co. vs. State of Arizona.	Mule Case. (Superior Court Yavapai Co.	Compromised.
No. 13648. The Phoenix Savings Bank & Trust Co. vs. Chas. W. Harris, et al.	Re Certificate of Deposit No. 3672. Superior Court Maricopa Co.	Pending.
No. 12281. Dalton Loveday vs. State of Arizona	Suit on Contract. Superior Court Maricopa Co.	Judgment in favor of Defendant.
No. 13578. Jerome Union Stage Line vs. F. A. Jones, et al.	Injunction. Superior Court Maricopa Co.	Dismissed.
No. 13671. State of Arizona vs. Glendale State Bank.	Appointment of Receiver. Superior Court Maricopa Co.	Receiver appointed.
Nos. 10756 and 10757. State of Arizona vs. Arizona Eastern R. Co.	Violation Full Crew Law. Superior Court Maricopa Co.	Favorably settled and dismissed.
No. 10127. H. O. Bostwick vs. State and Board of Education, Tempe Normal.	Damages. Superior Court Maricopa Co.	Favorably settled and dismissed.
No. 4043. State of Arizona vs. Central Bank of Willcox.	Appointment of Receiver. Superior Court Cochise Co.	Receiver appointed.
No. 4043. State of Arizona vs. Central Bank of Willcox.	Special Proceedings. Superior Court Cochise.	Pending.
Nos. 3694, 3695, 3696, 3697, 3698 and 3047B. Inspiration Consolidation Copper Company vs. Gila County.	Tax Cases. Superior Court Gila Co.	Submitted on argument. Not decided.
No. 13469. Pima, Yavapai, Cochise and Maricopa Counties vs. State Auditor and State Treasurer.	Old Railroad Bond Case. Superior Court Maricopa Co.	Pending on Appeal.
No. 3123. W. V. Wright, C. E. Mallory, et al. vs. W. F. Timmons, et al.	Injunction. Superior Court Yuma Co.	Dismissed.

Title of Case.	Nature of Proceeding.	Disposition.
C. E. Schilling vs. A. Redus.	Land Department Case. Superior Court Co- chise Co.	Pending.
No. 3872. Lydia Fike vs. Thos. E. Campbell, et al.	Land Department Case. Superior Court Cochise Co.	Dismissed.
The St. Johns Irriga- tion Co., et al. vs. Round Valley Water Storage Co.	Amicus Curiae. Superior Court Apache Co.	Pending.
No. 14005. D. A. Fraser vs. Cen- tral Bank of Phoenix., Chas. Fairfield.	Writ of Replevin. Superior Court Mari- copa Co.	Dismissed.
No. 14039. State of Arizona vs. Central Bank of Wick- enburgh.	Appointment of Re- ceiver. Superior Court Mari- copa Co.	Receiver appointed
No. 731. Antonio Ruiz, Jr., vs. Daniel J. Sparks, et al.	Quiet Title. Superior Court Gra- ham. Co.	Case against State dis- missed.
State of Arizona vs. Somerton State Bank.	Appointment of Re- ceiver. Superior Court Yuma Co.	Receiver appointed.
No. 14110. Arizona Eastern R. R. Co. vs. A. A. Betts.	Right of Way—Town of Tempe. Superior Court Mari- copa Co.	Settled out of Court.
No. 14201. State of Arizona vs. Lumbermen's Indemn- ity Exchange.	Action on Account. Superior Court Mari- copa Co.	Demurrer sustained. Pending on Appeal.
No. 5482. In the Matter of Ap- plication of Cora Stephens.	Writ of Habeas Corpus. Superior Court Mari- copa Co.	Dismissed.
In the Matter of Es- tate of George Miller, Deceased.	Revocation of Will. Superior Court Mo- have Co.	Pending.
State of Arizona vs. L. W. Kelly.	Injunction. Superior Court Yava- pai Co.	Pending.
State of Arizona vs. Jerome Union Stage Line, et al.	Injunction. Superior Court Yava- pai Co.	Pending.

Title of Case.	Nature of Proceeding.	Disposition.
No. 14425 D. E. Accomozza vs. C. W. Fairfield, State Auditor.	Mandamus. Superior Court Mari- copa Co.	Dismissed.
No. 3393. Otto R. Hansen vs. State of Arizona.	Damage Suit. Superior Court Pinal Co.	Pending.
No. 7703. Alexander Campbell vs. Board of Regents, Uni- versity of Arizona.	Damage Suit. Superior Court Pima Co.	Pending.
State of Arizona vs. Bank of Northern Ari- zona.	Appointment of Receiver. Superior Court Navajo Co.	Receiver appointed.
No. 14680-C. State ex rel W. J. Gal- braith, Atty. Genl. vs. Arizona Eastern R. R. Co.	Injunction—To Restore Train Service. Superior Court Mari- copa County.	Pending.
Estate of Joseph Penn- sylv, deceased.	Suit to Determine Heirs. Superior Court Graham Co.	Pending.
No. 14774-C. Bankers Trust Co. vs. State Loan Board.	Injunction. Superior Court Mari- copa Co.	Injunction denied.
No. 14784-A. Gordon G. Huntington vs. State Auditor.	Damage Suit. Superior Court Mari- copa Co.	Judgment favor of Plaintiff. Pending on Appeal.
No. 14829 Wm. E. Rowlands vs. State Loan Board.	Injunction. Superior Court Mari- copa Co.	Judgment favor of Defendant. Pending on Appeal.
Tom Smith vs. State of Arizona.	Game Law Case. Superior Court Navajo Co.	Decision favor Plaintiff. Pending on Appeal.
State of Arizona vs. P. T. Coleman, et al.	Foreclosure of Mort- gage. Superior Court Navajo Co.	Pending.
No. 14978. Muleshoe Cattle Co. vs. State Land Board.	Mandamus. Superior Court Mari- copa Co.	Decision favor of Plaintiff. Pending on Appeal.
State of Arizona Cor- poration Commission vs. Arizona Fire Ins. Co.	Injunction. Superior Court Mari- copa Co.	Pending.
State of Arizona vs. Enoch Wilson.	Criminal Complaint. Navajo Co.—Justice Court.	Pending.

IN THE SUPREME COURT OF THE STATE OF
ARIZONA

(*Criminal Cases*)

Title of Case.	Nature of Proceeding.	Disposition.
No. 489. Clifford Smith vs. State of Arizona.	Embezzlement. (Appeal from Superior Court Maricopa Co.)	Conviction Affirmed.
Nos. 491 and 492. (Cases Consolidated.) Pacific Gas & Electric Co. vs. State of Ari- zona.	Violation of Initiative Law known as "Elec- trical Construction Law." (Appeal from Superior Court Mari- copa Co.)	Judgment Lower Court set aside, with instruc- tions.
No. 497. Clarence Sage vs. State of Arizona.	Rape. (Appeal from Superior Court Yavapai Co.)	Conviction Affirmed.
No. 498. Harry Hurley vs. State of Arizona.	Grand Larceny. (Appeal from Superior Court Maricopa Co.)	Judgment of Lower Court reversed. New trial granted.
No. 499. Francis E. Roberts vs. State of Arizona.	(Appeal from Superior Court Maricopa Co.)	Judgment of Lower Court affirmed.
No. 500. Gus Argetakis vs. State of Arizona.	Attempt to obtain money by fraudulent devices.	Conviction Affirmed.
No. 501. Charles Moon vs. State of Arizona.	Burglary (Finger Print Case). (Appeal from Superior Court Cochise Co.)	Conviction Affirmed.
No. 502. Gasper Nevarez vs. State of Arizona.	Murder. (Appeal from Superior Court Greenlee Co.)	Conviction Affirmed.
No. 503. Marcus Sanchez vs. State of Arizona.	Failure to Provide. (Appeal from Superior Court Apache Co.)	Docketed and Dismissed.
No. 504. William C. Ross vs. State of Arizona.	Bootlegging. (Appeal from Superior Court Yavapai Co.)	Submitted on briefs, Not decided.
No. 505. State of Arizona vs. Lon Sanders.	Writ of Habeas Corpus. (Appeal from Superior Court Santa Cruz Co.)	Judgment Lower Court Affirmed.
No. 506. Nichan Martin vs. State of Arizona.	Murder. (Appeal from Superior Court Yavapai Co.)	Conviction Affirmed.
No. 508. Tomas Roman vs. State of Arizona.	Murder. (Appeal from Superior Court Maricopa Co.)	Judgment Lower Court Affirmed.

Title of Case.	Nature of Proceeding.	Disposition.
No. 509. Ricardo Lautaria vs. State of Arizona.	Murder. (Appeal from Superior Court Maricopa Co.)	Judgment Lower Court Affirmed.
No. 510. Buckley Nolan vs. State of Arizona.	Grand Larceny. (Appeal from Superior Court Santa Cruz Co.)	Dismissed.
No. 511. Lewis Walker vs. State of Arizona.	Rape. (Appeal from Superior Court Maricopa Co.)	Judgment Lower Court reversed. Remanded for new trial.
No. 512. A. C. Cook vs. State of Arizona.	Forgery. (Appeal from Superior Court Maricopa Co.)	Judgment Lower Court reversed, with instruc- tions.
No. 513. John M. Haddad and Jose Baines vs. State of Arizona.	Failure to Obey Or- der of Corporation Commission. (Appeal from Superior Court Greenlee Co.)	Judgment Lower Court affirmed as to Baines, reversed as to Haddad with instructions.
No. 515. S. G. Richardson vs. State of Arizona.	Manufacture of Intoxi- cating Liquor. (Appeal from Superior Court Yuma Co.)	Judgment Lower Court Affirmed.
N. 516. Chas. Beaver vs. State of Arizona.	Writ of Habeas Corpus. (Appeal from Superior Court Yavapai Co.)	Judgment Lower Court reversed.
No. 517. John King vs. State of Arizona.	Murder. (Appeal from Superior Court of Cochise Co.)	Conviction Affirmed.
No. 518. Jos. B. Clark vs. State of Arizona.	Grand Larceny. (Appeal from Superior Court Maricopa Co.)	Pending.
No. 520. W. H. Smith vs. State of Arizona.	Embezzlement. (Appeal from Superior Court Pima Co.)	Conviction.
No. 519. Bailey Leverton vs. State of Arizona.	(Appeal from Superior Court Apache Co.)	Pending.
No. 521. John H. Smith vs. State of Arizona.	(Appeal from Superior Court of Maricopa Co.)	Pending.
No. 522. H. E. Gray vs. John Montgomery, Sheriff.	Writ of Habeas Corpus. (Appeal from Superior Court Maricopa Co.)	Pending.
No. 523. O. F. Jenkins vs. State of Arizona.	Manufacturing Intoxi- cating Liquor. (Appeal from Superior Court Maricopa Co.)	Pending.

State of Arizona vs. Mercer Hemperley.	Transporting Intoxi- cating Liquor. (Appeal from Superior Court Coconino Co.)	Pending.
No. 525. Albert McCreary vs. State of Arizona.	(Appeal from Superior Court Maricopa Co.)	Pending.
No. 527. Geo. O. & Ruby Laub vs. State of Arizona.	(Appeal from Superior Court Maricopa Co.)	Pending.
N. 528. Wm. Croff vs. State of Arizona.	(Appeal from Superior Court Maricopa Co.)	Pending.
No. 529. Sam Mendivil vs. State of Arizona.	(Appeal from Superior Court Maricopa Co.)	Pending.
N. 531. Robert Fuller vs. State of Arizona.	(Appeal from Superior Court Yavapai Co.)	Pending.
No. 526. Theodore West vs. State of Arizona.	(Appeal from Superior Court Mohave Co.)	Pending.

IN THE SUPREME COURT OF THE STATE OF
ARIZONA

(*Civil Cases*)

Title of Case.	Nature of Proceeding.	Disposition.
No. 1799. J. H. Larson vs. H. L. Johnson.	Suit to Quiet Title. (Appeal from Superior Court Graham Co.)	Submitted on briefs. Not decided.
No. 1844. State of Arizona vs. Mattie Dart.	Damage Suit. (Appeal from Superior Court Pinal Co.)	Judgment Lower Court reversed.
No. 1839. W. F. Timmons, et al., vs. J. T. Hodges, C. E. Mallory, et al.	Injunction. (Corporation Commis- sion Case.)	Dismissed on Motion of Plaintiff.
No. 1847. James Smith vs. W. P. Mahoney.	Habeas Corpus Pro- ceeding. (Appeal from Superior Court Mohave Co.)	Reversed and prisoner discharged.
No. 1864. A. A. Worsley vs. State of Arizona.	Claim on Quantum Meruit. (Appeal from Superior Court Cochise Co.)	Judgment Lower Court Affirmed.
No. 1935. State of Arizona, et al. vs. Ada Burris.	Habeas Corpus. (Appeal from Superior Court Gila Co.)	Judgment Lower Court affirmed.
No. 1942. Industrial Commission, et al., vs James Crisman.	Injunction. (Appeal from Superior Court Maricopa Co.)	Judgment Lower Court affirmed.
No. 1964. Jerome Union Stage Line vs. Arizona Bus and Arizona Corpora- tion Commission.	Injunction. (Appeal from Superior Court Yavapai Co.)	Dismissed.
No. 1956. John L. Sweeney vs. State of Arizona.	Contest, Justice of Peace. (Appeal from Superior Court Navajo Co.)	Submitted. Not decided.
No. 2004. State of Arizona vs. Gordon G. Huntington.	Mandamus. (Appeal from Superior Court Maricopa Co.)	Pending.
No. 1998. State Land Board vs. Wm. E. Rowlands.	Injunction. (Appeal from Superior Court Maricopa Co.)	Pending.
Wm. J. Davis vs. State Land Board.	Annulment of Lease. (Appeal from Superior Court Cochise Co.)	Pending.

No. 2013. State Land Board vs. Muleshoe Cattle Co.	Mandamus proceedings. (Appeal from Superior Court Maricopa Co.)	Pending.
A. A. Worsley vs. Board of Supervisors, et al.	Mandamus. (Appeal from Superior Court Cochise Co.)	Pending.
No. 1995. John Duke vs. Yavapai Co.	Mandamus. (Appeal from Superior Court Yavapai Co.)	Pending.
No. 2014. State of Arizona vs. Lumbermen's Indemnity Co.	Action on Account. (Appeal from Superior Court Maricopa Co.)	Pending.
E. W. Stuart vs. State Water Commis- sioner, et al.	Relative to Rights to the Waters of Cave Creek. (Appeal from Superior Court Cochise Co.)	Pending.

CASES IN UNITED STATES SUPREME COURT

Title of Case.	Nature of Proceeding.	Disposition.
No. 424. Arizona Power Co. vs. State of Arizona.	Criminal Case. From Yavapai Co.	Dismissed.
No. 1720. The State of Arizona ex rel Ignatius Bur- goon vs. C. C. Watts	Tax Case. From Santa Cruz Co.	Pending.

CASES IN UNITED STATES DISTRICT COURT

Title of Case.	Nature of Proceeding.	Disposition.
In Equity No. 51. Atchison, Topeka & Santa Fe Ry. Co. vs. A. A. Betts and other members of Corpora- tion Commission.	Injunction. 3c Fare Case.	Pending. E. 53.
E. 53. Southern Pacific Co. vs. A. A. Betts, et al.	Injunction. 3c Fare Case.	Pending.
E. 96. M. C. Hinderlider vs. The Lyman Water Co.	Action on Account.	Pending.
E. 99. State of Arizona vs. Railroads.	Injunction.	Dismissed.
E. 98. Arizona Eastern, et al. vs. A. A. Betts, et al.	Injunction.	Pending.
E. 102. Atchison, Topeka & Santa Fe Ry. Co. vs. Corporation Commis- sion, et al.	Injunction.	Pending.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Title of Case.	Nature of Proceeding.	Disposition.
No. 11971. Interstate Commerce Case.	Rates, Fares and Charges, et cetera.	Decided in favor of Railroads, May 3, 1921.

BEFORE THE ARIZONA CORPORATION COMMISSION

Title of Case.	Nature of Proceeding.	Disposition.
W. S. Ingalls, Adj. Gen., vs. Apache Rail- road Co., et al.	Application for Special Rates for Troops.	Pending.

SUMMARY.

Total number of cases handled by Attorney General's Office during
the year 1921 100

No. of cases decided in favor of the State..... 41

No. of cases decided against State 14*

No. of cases still pending 45

* In 8 of the 14 cases lost, before undertaking the prosecution, we advised
would be lost; and 5 were on records made in lower court in which we
had no opportunity to appear and prepare the record on appeal.