

Biennial Report
of the
ATTORNEY GENERAL
of the
STATE OF COLORADO



Years 1949-1950

JOHN W. METZGER
Attorney General

Publication Approved by James A. Noonan, Controller

ATTORNEYS GENERAL OF COLORADO
From the Organization of the State

A. J. Sampson.....	1877-1878
Charles W. Wright.....	1879-1880
Charles H. Toll.....	1881-1882
David F. Urmy.....	1883-1884
Theodore H. Thomas.....	1885-1886
Alvin Marsh.....	1887-1888
Samuel W. Jones.....	1889-1890
Joseph H. Maupin.....	1891-1892
Eugene Engley.....	1893-1894
Byron L. Carr.....	1895-1898
David M. Campbell.....	1899-1900
Charles C. Post.....	1901-1902
Nathan C. Miller.....	1903-1906
William H. Dickson.....	1907-1908
John T. Barnett.....	1909-1910
Benjamin Griffith.....	1911-1912
Fred Farrar.....	1913-1916
Leslie E. Hubbard.....	1917-1918
Victor E. Keyes.....	1919-1922
Russell W. Fleming.....	1923
Wayne C. Williams.....	1924
William L. Boatright.....	1925-1928
Robert E. Winbourn.....	1929-1930
John S. Underwood.....	1930
Clarence L. Ireland.....	1931-1932
Paul P. Prosser.....	1933-1936
Byron G. Rogers.....	1936-1940
Gail L. Ireland.....	1941-1944
H. Lawrence Hinkley.....	1945-1948
John W. Metzger.....	1949-1950

REGISTER OF DEPARTMENT OF LAW
1949-1950

DIVISION OF LEGAL AFFAIRS

JOHN W. METZGER, Attorney General

¹JOSEPH E. NEWMAN, Deputy Attorney General

²ALLEN MOORE, Deputy Attorney General

FRANK A. WACHOB, First Assistant

Assistant Attorneys General

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VINCENT CRISTIANO

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PAUL M. HUPP

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WENDELL P. SAYERS

SIDNEY A. JOHNSON

C. M. SOMERVILLE

JOHN LA GUARDIA

BEN F. STAPLETON, JR.

⁵GEORGE K. THOMAS

ANN G. LANDY

Administrative Secretary

⁶JOSEPHINE J. BARROWS

WILMA F. CROSKEY

EDITH HEZMALHALCH

ELIZABETH V. KITTO

MARY D. POPE

Stenographers

¹Resigned as Deputy. Appointed Assistant 8/1/49

²Appointed Assistant 5/21/49, and Deputy 8/1/49

³Appointed 5/1/50

⁴Resigned 4/1/49

⁵Resigned 3/31/59

⁶Certified to office 11/21/49

LEGISLATIVE REFERENCE OFFICE

ALLEN MOORE, Director

CLAIR T. SIPPEL, Administrative Secretary

DIVISION OF SECURITIES

JOHN W. METZGER, Ex-Officio Commissioner of Securities

CURTIS WHITE, Commissioner

RICHARD B. FOLEY, Assistant Commissioner

INHERITANCE TAX DEPARTMENT

HARRY H. RUSTON, Inheritance Tax Commissioner

CATHERINE H. COURSEY, Administrative Assistant

DAVID CREGER, Inheritance Tax Analyst

MICHAEL O'HARA, Auditor

FRED G. HUNT III, Appraiser

JOHN R. P. WHEELER, Appraiser

ANN COGAN, Clerk

MRS. VERA B. DeCOU, Clerk

MRS. MARY SPENCER, Clerk

MRS. ELNORA VEITENGRUBER, Clerk

**BIENNIAL REPORT
OF
STATE OF COLORADO
OF THE
ATTORNEY GENERAL**

SCHEDULE I

January 10, 1951.

To His Excellency,
WALTER W. JOHNSON,
Governor of Colorado.

Sir :

In compliance with statutes relating thereto, I herewith submit the Biennial Report of the Attorney General for 1949-1950.

JOHN W. METZGER,
Attorney General.

REPORT OF THE DIVISION OF SECURITIES

for the period

January 1, 1949, to December 31, 1950

	1949	1950
Receipts from fees.....	\$ 5,973.00	\$ 7,047.50
Expenditures	13,470.51	13,907.13
Original prospectuses filed	56	95
Renewal prospectuses filed	46	47
Supplemental prospectuses filed	8	17
Dealers' registrations in effect at end of each year	151	162
Salesmen's registrations in effect at end of each year.....	326	359

The decline in the offering of new issues of securities by well-established companies, noted in the report of this Division for the years 1947-1948, has continued. Likewise, offerings of securities by promotional enterprises have continued to increase, as predicted in the preceding report. This increase was particularly evident during the year 1950 and is evidenced in part by a comparison with the number of dealers' and salesmen's registrations in effect at the close of the year 1946, the first full year of business following the

termination of World War II. At the end of that year, 90 dealers' and 164 salesmen's registrations were in effect. As noted above, 162 dealers' registrations and 359 salesmen's registrations were in effect at the close of the year 1950, increases of 80% and 119% respectively. This substantial increase in the number of persons engaged in the securities business is accounted for largely by new promotional ventures engaged in offering shares of stock for sale to the public. Attention is again called to the fact that the Colorado statutes relating to the issuance and sale of securities are inadequate and antiquated.

Civil suits seeking injunctions prohibiting the further sale of securities were filed against Spectro Manufacturing & Sales, Inc., Business Title Guaranty Co., Kirk Uranium Corporation and e'Tobyn Oil Company. Injunctions were obtained by consent in each suit. The dealer's registration of Colorado Placers, Inc., was revoked after a formal hearing, and an appeal to the District Court from the order of revocation subsequently was dismissed. A conviction was obtained against one George Kelly on charges of confidence game arising out of the sale of securities. This conviction was upheld on appeal to the Colorado Supreme Court. Acknowledgment is given to the Attorney General and to his assistant, Mr. Donald C. McKinlay, for the capable assistance rendered to this department in the foregoing litigation.

The personnel of the department consists of Curtis White, Securities Commissioner; Richard B. Foley, Assistant Securities Commissioner, and Rhoda Son, secretary.

LEGISLATIVE REFERENCE OFFICE

The Legislative Reference office was established by an act of the General Assembly approved May 6, 1927. The office has two primary functions: legislative reference work and bill drafting for members of the Colorado General Assembly and the Governor.

Legislative Reference Work—The office maintains a legislative informational service for members of the General Assembly, state departments and agencies, and the public. The purpose of this service is to make available studies and information on legislative subjects and the laws of other states. A small but select legislative library is maintained. Office facilities are also available for special reports prepared at the request of individual legislators and legislative standing, special and interim committees.

Bill Drafting: Assistance in bill drafting and advice on matters of legislative procedure and forms of bills, resolutions and amendments are given. Since the establishment of the office approximately ninety per cent of all legislation introduced in the various General Assemblies has gone through the office at one time or another. The office, however, avoids offering recommendations as to the desirability of any proposed legislation.

SCHEDULE II

LIST OF ALL CASES, PENDING, AND DISPOSED OF, IN ALL COURTS 1949-1950

CASES IN THE SUPREME COURT OF THE UNITED STATES

- Nos. 17 and 18. *Julius A. Wolf, Petitioner, vs. The People of the State of Colorado*. On writ of certiorari. State of New York petitioned to intervene as amicus curiae. Certiorari denied.

CASES IN THE UNITED STATES CIRCUIT COURT OF APPEALS

- No. 255. *Colorado Interstate Gas Company, et al. vs. Federal Power Commission, et al.* Gas refunds.

CASES IN THE UNITED STATES DISTRICT COURT

- No. 136. *The United States of America vs. Robert L. Wilkinson, Assessor of Kit Carson County, et al.* Land Board matter.
- No. 1928. *Jacques Adler, et al. vs. Ralph Nicholas, Collector of Internal Revenue for the District of Colorado, et al.* Federal and state sales tax liability.
- No. 2646 *The United States of America vs. 170.169 Acres of Land, More or Less in Arapahoe County.* Condemnation proceedings.
- No. 2701. *United States of America vs. Certain Roads and Highways.* Petition in condemnation. No interest.
- No. 2776. *Bernard M. Shotkin, et al. vs. W. F. Perkins, et al.* Sales tax.
- No. 2782. *The United States of America vs. Northern Colorado Water Conservancy District, et al.* Water rights.
- No. 2848. *The United States of America vs. Certain Water Rights Appurtenant to Certain Lands.* Condemnation proceedings.
- No. 2865. *The United States of America vs. 37.63 Acres of Land, More or Less, Situate in the City and County of Denver, et al.* Condemnation proceedings.
- No. 2997. *Spears Free Clinic and Hospital for Poor Children, et al. vs. Cleere, et al.* Damages.
- No. 3005. *The United States of America vs. 3.55 Acres of Land, More or Less, Situate in County of Yuma, et al.* Easement for an electrical transmission line.

- No. 3036. *The United States of America vs. Certain Lands Situate in Weld and Boulder Counties, et al.* Condemnation suit involving rights of University of Colorado.
- No. 8669. *In the Matter of the Denver and Rio Grande Western R. R. Co.* Reorganization of a railroad.
- *United States of America vs. 0.367 of an Acre of Land, More or Less, Situate in the City and County of Denver, et al.* Condemnation.
- *The United States of America vs. 3.369 Acres of Land, More or Less, Situate in the City and County of Denver, et al.* Condemnation.
- *The United States of America vs. 37.63 Acres of Land, More or Less, Situate in the City and County of Denver, et al.* Condemnation proceedings.
- *The United States of America vs. 776.42 Acres of Land, More or Less, Situate in the County of Arapahoe.* Condemnation.
- *The United States of America vs. 1,617.19 Acres of Land, More or Less, Situate in the County of Arapahoe, et al.* Condemnation.

**CIVIL CASES IN THE SUPREME COURT
OF THE STATE OF COLORADO**

- No. 16044. *People, ex rel. Attorney General, vs. Samuel Leonard Berenbein, et al.* Original proceedings in disbarment.
- No. 16077. *Aaron H. Lipset v. John B. Davis, et al.* Medical Board matter.
- No. 16085. *Ruth Barrett Smith, et al. v. The United States National Bank of Denver et al.* Construction of a trust.
- No. 16087. *Eleanor Swift, et al., v. Hon. Osmer E. Smith, et al.* Highway matter.
- No. 16200. *William F. Okerberg v. The People.* Habeas Corpus. Inmate of Colorado State Hospital.
- No. 16204. *Spears Free Clinic and Hospital for Poor Children, Inc. v. The State Board of Health of Colorado, et al.* Sanitarium license.
- No. 16215. *People ex rel. Zimmerman v. Milo Flanders.* Contempt of court in holding himself as an attorney.
- No. 16228. *Denver Building and Construction Trades Council, International Association of Bridge, Structural and Ornamental Iron Workers Local No. 24, et al.* Constitutionality of the Labor Peace Act.
- No. 16264. *Sylvia Lou Orebaugh v. The People in the interest of Karen Kay Orebaugh.* Concerning dependency of a child.
- No. 16272. *Roy Best, Warden of the Colorado State Penitentiary, v. People ex rel. Kenneth Florom.* Habeas corpus.

- No. 16273. *People ex rel. John W. Metzger v. The District Court of the City and County of Denver, et al.* Writ of prohibition.
- No. 16274. *People ex rel. John W. Metzger v. The District Court of the City and County of Denver.* Writ of prohibition.
- No. 16275. *People ex rel. John W. Metzger v. The District Court of the City and County of Denver, et al.* Writ of prohibition.
- No. 16286. *Western Surety Company v. The People.* Civil action on bond.
- No. 16323. *Peter A. Jovanovich and John S. Chucovich, et al. v. The People.* Construction of a will.
- No. 16334. *People, ex rel. Metzger v. The District Court in and for the County of El Paso and State of Colorado, ex-rel. Miller.* Resentencing matter.
- No. 16348. *George Hardin vs. The People.* Certiorari.
- No. 16372. *W. F. Perkins, Director of Revenue v. King Soopers, Inc.* Unfair practices.
- No. 16414. *Manuel Aragon, a Justice of the Peace in and for the County of Alamosa v. The People, ex rel. Ruben Medina, et al.* Violation of Fish and Game laws.
- No. 16419. *Lyda Ray, Administratrix of the Estate of Guy C. Lyman, v. State of Colorado.* Claim for delinquent income taxes.
- No. 16449. *The People ex rel. Zimmerman v. Lewis Herder.* Claim for care of inmate of Colorado State Hospital.
- No. 16462. *Robert C. Crowley, Administrator of the Estate of James A. Rulla, Deceased, v. The People.* Estate matter.
- No. 16486. *George F. Kirk v. Roy Best.* Re-sentencing.
- No. 16503. *Clifton Henry v. Harold A. McArthur, et al.* Habeas corpus.
- No. 16517. *Martin Trujillo v. The People.* Non-support of illegitimate child.
- No. 16524. *Diana V. Rice Hickman v. Otto H. Dreyer, et al.* Water matter.
- No. 16548. *Robert G. Bosworth, W. W. Grant, et al. v. George J. Baker.* Civil Service Amendment.
- *People, ex rel. Metzger v. The District Court of the City and County of Denver, et al.* Resentencing, writ of prohibition.
- *The People of the State of Colorado ex rel. Attorney General v. E. Clifford Heald.* Disbarment proceedings.
- *The People of the State of Colorado ex rel. Attorney General v. Alexander T. Stewart.* Disbarment proceedings.
- *The People ex rel. John W. Metzger, Attorney General v. Mark U. Watrous.* Quo Warranto.
- *Henry Marsolaís v. Steve De Angelis.* Extradition matter.

**CRIMINAL CASES IN THE SUPREME COURT OF THE
STATE OF COLORADO**

No.	Title	Crime
15967	Eugene Atkinson v. The People.....	Robbery.
16017	Maurice Romeo Chasse v. The People.....	Confidence game.
16046	Hugh T. Carter, Jr., v. The People.....	Murder in the first degree.
16065	Harold Thurman, et al., v. The People.....	Theft of livestock and conspiracy.
16080	Wesley Rosell Lindsay v. The People.....	False affidavit.
16083	Robert R. Reigan and Lawrence A. Kimsey v. The People.....	Conspiracy to commit a crime.
16125	Ronald Frederick Smith v. The People.....	Murder.
16136	Dr. R. P. Chesney, et al., v. The People.....	Conspiracy to commit confidence game.
16137	Sinclair St. Louis v. The People.....	Causing a death while driving under influence of liquor, et al.
16161	The People of the State of Colorado v. Wesley Rosell Lindsay.....	Confidence game, false and bogus checks.
16164	David Albert Downey v. The People.....	Murder in the first degree.
16171	Joe George Casados v. The People.....	Grand larceny.
16176	Chester Warren, also known as Chet Warren, v. The People.....	Indecent liberties.
16195	Leonard Brown v. The People.....	Rape.
16203	John F. Berger, Jr., v. The People.....	Murder.
16206	Julio Ruben Garcia v. The People.....	Larceny of livestock.
16211	Mike Slocum v. The People.....	Rape.
16212	James Kelley v. The People.....	Burglary.
16227	George Kelly v. The People.....	Confidence game.
16236	People v. L. G. Culbertson.....	Confidence game.
16237	Elbert R. Smith v. The People.....	Abortion.
16291	Louis Struna and Albert J. Ambrozic v. The People.....	Rape.
16342	Merl O. Parker v. The People.....	Rape.
16344	Leon D. Munsell, alias L. Munsell, et al., v. The People.....	Confidence game, short check.
16365	Leland A. Kennedy v. The People.....	Driving under the influence of liquor
16370	Joseph Francis White, Sr., v. The People.....	Driving under the influence of liquor
16395	John C. Sparr, alias Joe Sparr, v. The People...	Embezzlement and conversion.
16438	Otoneil Martinez v. The People.....	Murder.
16444	Robert Lewis v. The People.....	Indecent liberties with a child.
16446	Zoe Newcomb v. The People.....	Driving under the influence of liquor
16466	Beulah Ann Read v. The People.....	Voluntary manslaughter.
16492	Joe Gallegos and Adelaído Serrano v. The People.....	Larceny.
16516	Clinton Brown v. The People.....	Aggravated robbery.
16519	Joe Sam Walker v. The People.....	Murder.
16536	Carl Campbell and Harold Avery v. The People.....	Aggravated robbery.
16546	Richard H. Champion v. The People.....	Assault.
16551	D. F. Hartson, also known as Donald F. Hartson v. The People.....	Embezzlement.
16557	Albert Rhine and James Kautz v. The People..	Rape.
16560	Ezra H. Cross v. The People.....	Indecent liberties with a child.
16574	Max Weinberg v. The People.....	Embezzlement.
16575	Afton L. Herbst vs. The People.....	Confidence game.
16577	Jack Bernard v. The People.....	Aggravated robbery.
16578	Roscoe Sexton v. The People.....	Habitual criminal, aggravated robbery.
16593	Joseph Leo Heit v. The People.....	Driving an automobile while intoxicated.
16606	Clyde Herman v. The People.....	Larceny of livestock.
16615	Carl Albin Kallinback, Jr., v. The People....	Causing death while driving under the influence of liquor.
16620	Fred A. Lombardi v. The People.....	Burglary and grand larceny.
.....	Byron Wolff v. The People.....	Burglary and habitual criminal.
.....	The People v. Arthur R. Cox.....	Causing death while driving under the influence of liquor.
.....	Beulah Ann Read v. The People.....	Murder in the second degree.

CASES IN THE DISTRICT COURTS**Adams County**

Number

5027. *Board of Commissioners of Adams County and State Highway Department v. Mathews, et al.* Condemnation proceedings.
5109. *William M. Scanlan, et al. v. M. M. Miller, et al.* Quiet title.
5194. *Milton Huddleston v. George B. Folsom, et al.* Quiet title.
5253. *W. L. Setchell v. James H. Morse, et al.* Quiet title.
5416. *Alice E. Camenisch, et al. v. Michelletti Stefano, et al.* Quiet title.
5421. *Jessie D. Dillon, et al. v. Union Savings and Loan Association, et al.* Quiet title.
5443. *Board of County Commissioners of the County of Adams and the State Highway Department v. Anna Potts, et al.* Condemnation suit.
5565. *Kenneth H. Miller, et al. v. State of Colorado, et al.* Quiet title.
5597. *Fred Horton v. Fred K. Schaeffer, et al.* Quiet title.
5659. *Eugene Earl Davis, et al. v. W. H. Gusha, et al.* Quiet title.
- *Mary Videtich, et al. v. Caroly Heffley, et al.* Quiet title.
- *Charles E. Holcomb v. Northern Colorado Irrigation Company.* Quiet title.
- *Rose Lucas v. Frederick P. Cranston, et al.* Quiet title.
- *Bogue Construction Company v. Thomas Bakes, et al.* Quiet title.
- *Richard P. Bates, et al. v. Arthur L. Lomax, et al.* Quiet title.
- *Gertrude V. Hall v. Oliver Burk, et al.* Quiet title.

Alamosa County

2282. *People ex rel. Medina, et al. v. Manuel Aragon, Justice of the Peace.* Game and fish fines.

Arapahoe County

7840. *Bernice Pulliam v. Frank H. Conrad, et al.* Quiet title.
8082. *W. A. Berry, et al. v. Orval L. Sebring, et al.* Sales tax matter.
8100. *Russell H. Sevier, et al. v. W. B. Bentley, et al.* Quiet title.
8106. *Edwyn N. Roberts v. Beth Allen, et al.* Quiet title.
8107. *Otto E. Breymaier, et al. v. Caroline Wolf, et al.* Quiet title.

Number

8132. *Carl F. Fulton v. Douglas A. Roller, et al.* Quiet title.
8137. *C. L. Bundy, et al., v. Myrtle M. Stodart, et al.* Quiet title.
8166. *Mandell Levy, et al. v. Charles R. Allen, et al.* Quiet title.
8169. *Frank A. Daum, et al. v. Bert M. Hendrix, et al.* Quiet title.
8182. *Homer Styes v. F. M. Royal, et al.* Quiet title. No interest.
8199. *Walter W. Hanson, et al. v. A. D. Wall, et al.* Quiet title.
8203. *Shad J. Tinsley v. Andrew P. Cull, et al.* Quiet title.
8206. *Elwyn L. Fox, et al. v. Ellen A. Howe, et al.* Quiet title.
8232. *E. P. Wade v. Catherine Birch, et al.* Quiet title.
8235. *B. M. Carter, et al. v. G. M. Lipscomb, et al.* Quiet title.
8255. *Aaron L. Van Sickle, et al. v. The Western Elaterite Roofing Co., et al.*
8265. *W. A. Malone v. Selina Allen, et al.* Quiet title. No interest.
8297. *Mandell Levy, et al. v. Charles R. Allen, et al.* Quiet title.
8335. *Reuben Maerz v. William J. Lessig, et al.* Quiet title.
8395. *State Highway Department v. Walter W. Fouts, et al.* Highway condemnation suit.
8398. *John P. Cernich, et al. v. Town of Littleton, a municipal corporation.* City ordinance.
8401. *Melvin Ericson v. Samuel W. Reece, et al.* Quiet title.
8416. *Safeway Stores, Inc., a Maryland Corporation, v. William B. Chapman, et al.* Quiet title.
8431. *State Highway Department v. Margaret Drake Bansback, et al.* Condemnation proceedings.
8432. *Frank Rehor, et al. v. Howard C. Louthan, et al.* Quiet title.
8448. *Albert Beard v. Jenette Baldwin, et al.* Quiet title.
8482. *E. P. Wade v. Jasper A. Arrowood, et al.* Quiet title.
8527. *Immanuel Evangelical Lutheran Congregation of Englewood v. Edna M. Crowe, et al.* Quiet title.
8529. *A. N. Mitchem v. City of Englewood, et al.* Quiet title.
8530. *Harry E. Cudney, et al. v. P. Magnes, et al.* Quiet title.
8546. *Cyrl M. Bratrsovsky v. L. D. Stocking, et al.* Quiet title.
8551. *William B. Carter, et al. v. E. B. Thompson, et al.* Quiet title.
8569. *J. J. Sedillo v. Lou J. Jenkins, et al.* Quiet title.
8629. *Reuben Maerz, et al. v. Carl Knudson, et al.* Quiet title.
8668. *John O. Chapin, et al. v. George Manning, et al.* Quiet title.
8704. *Ray H. Bell v. Mrs. Minnie Bartram, et al.* Quiet title.
8714. *C. L. Schyllinger v. Douglas A. Roller, et al.* Quiet title.

Number

8749. *John W. Fike v. Douglas A. Roller, et al.* Quiet title.
8754. *William R. Koolbeck, et al. v. Joseph F. Soule, et al.* Quiet title.
8796. *Frank S. Rizzuto v. Florence Siegrist Arnold, et al.* Quiet title.
8889. *Frederick A. Jones v. Harry T. Sentenn, et al.* Quiet title.
8910. *Everett B. Sasnett, et al. v. Charles H. Robinson, et al.* Quiet title.
- *Glen F. Mellencamp v. Charles R. Allen, et al.* Quiet title.
- *John W. Fike v. J. C. Hoover, et al.* Quiet title.
- *Henry Thomas v. O. H. Howe, et al.* Quiet title.
- *Meda M. McCarty, et al. v. Irma Rose Barnett, et al.* Quiet title.
- *Charles S. Gordon, et al. v. Odelia C. Lehman, et al.* Quiet title.
- *Ethyl Minock v. R. W. Knowles, et al.* Quiet title.
- *Camarann Corporation v. Mary Burd, et al.* Quiet title.
- *Linagrace Bourg. v. William C. Condit, et al.* Quiet title.
- *Gladys E. Hill v. E. T. Tomlinson, et al.* Foreclosure.
- *Carl R. Hassig v. The Denver, South Park and Pacific Railroad Company, et al.* Quiet title.
- *L. V. Henning v. Rena Hardy, et al.* Quiet title.
- *George H. Eckert, et al. v. The People.* Quiet title.
- *Carl E. Wray, et al. v. George H. Andrews, et al.* Quiet title.
- *John W. Fike v. Joseph H. Smith, et al.* Quiet title.
- *Maudena M. Pusch v. Watson S. Hawkins, et al.* Quiet title.
- *Charles R. Fetterhoff, et al. v. John D. Malcolm, et al.* Quiet title.
- *William F. Larrick v. Ernest J. Parrish, et al.* Quiet title.
- *LeRoy Giles v. Thomas Ikerd, et al.* Quiet title.
- *R. M. Johnson v. C. H. Gabriel, et al.* Quiet title.
- *Marion Baty, et al. v. William Gibbs Bailey, et al.* Quiet title.
- *Martha Dilley v. The Hendrie & Bolthoff Manufacturing and Supply Company, et al.* Quiet title.
- *John W. Fike v. John P. Klise, et al.* Quiet title.
- *John W. Fike v. George W. Young, et al.* Quiet title.
- *Otto E. Breymaier, et al. v. Caroline Wolf, et al.* Quiet title.
- *Floyd E. Petterhoff, et al. v. Alva M. Gabriel, et al.* Quiet title.

Number

Archuleta County

..... *The People of the State of Colorado, ex rel. Watrous, State Highway Engineer, v. P. C. Crowley, et al.* Condemnation suit.

Baca County

442. *Board of County Commissioners, et al. v. Ada L. Williams, et al.* Condemnation suit.

Bent County

6599. *In the Matter of the Suspension of the Privilege of Operating a Motor Vehicle on the Highways of the State of Colorado, of Gladys Troutman, Petitioner, v. George J. Baker.* Motor vehicle laws.

Boulder County

..... *Clifford H. Daugherty, Jr., et al. v. George E. Bermont, Trustee, et al.* Quiet title.

..... *Board of County Commissioners of the County of Boulder and the State Highway Department of the State of Colorado v. Ella Martin, et al.* Highway matter.

..... *Board of County Commissioners of the County of Boulder and State Highway Department v. William E. Russel Coal Company, et al.* Condemnation suit.

Cheyenne County

..... *C. C. Jaeger, et al. v. Malindar Allen, et al.* Quiet title.

139. *G. A. Anderson v. State Board of Land Commissioners, et al.* Injunction to restrain State Land Board from selling property at auction.

Clear Creek County

9407. *Board of County Commissioners of the County of Clear Creek v. James C. Blickensderfer, et al.* Quiet title.

9479. *State Highway Department of the State of Colorado v. C. O. Johnson, et al.* Highway matter.

Conejos County

..... *W. W. McClintock v. Campbell.* Sales tax receivership.

Costilla County

..... *San Luis Power and Water Company, et al. v. Board of County Commissioners of Costilla.* Abatement of taxes and revaluation of lands and properties.

Crowley County

Number

1546. *M. D. Irvin v. Earl V. Metz, et al.* Quiet title.
 1654. *Manuel Regalado, et al. v. Charles Lindquist, et al.* Quiet title.

Denver County

- A-57096. *Civic Association of America v. Rettig, et al.* Selling articles below cost.
 A-60211. *Irving Jacobs, et al. v. Eddie W. Bohn, et al.* Declaratory judgment to determine legality of boxing regulations.
 A-60624. *King Mortgage Company v. Barnard Cumming, et al.* Quiet title.
 A-608045. *Bernard M. Shotkin v. W. F. Perkins, et al.* Temporary injunction.
 A-61364. *City and County of Denver, State Highway Department v. Rose Adduci, et al.* Highway condemnation suit.
 A-62019. *The People of the State of Colorado, ex rel. White, Securities Commissioner, v. Hacienda Manana Hotels, Inc. et al.* Securities matter.
 A-62258. *Bertha Lee Shideler v. Johanna S. Ambrose, et al.* Quiet title.
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6935. *State Highway Department v. Ann Davis.* Highway.
7165. *Roxy Vendena, et al. v. Lilly Look, et al.* Quiet title.
7177. *State Highway Department v. Albert Bachman, et al.* Condemnation suit.
7225. *Martin Von Feldt, et al. v. Caroline Seitzed Behrens, et al.* Quiet title.
7254. *The State Highway Department, et al. v. George C. Fields, et al.* Condemnation.
- J. P. 51114. *Dependable Cleaners, et al. v. The State of Colorado.*
- *Everett H. Heath, et al. v. Clark Kelly, et al.* Quiet title.
- *Walter E. Epsom, et al. v. Relief E. Baxter, et al.* Quiet title.
- *Edythe E. Binkley, et al. v. Maud M. Jackman, et al.* Quiet title.
- *Denver Crushed Stone Co., Inc., v. Casper R. Bussert, et al.* Quiet title.
- *Therese E. McIntire v. William W. Wilmore, et al.* To reform deed and quiet title.
- *Florence Christmas Muhr v. Karl R. Forrest, et al.* Quiet title.
- *Walter E. Acre et al. v. State of Colorado, et al.* Quiet title.
- *Ransom P. Pettit, et al. v. Associated Industries, Inc., et al.* Quiet title.
- *O. E. Stephens v. W. T. Lambert, et al.* Quiet title.
- *Glenn Gibbons v. Effie L. Richards, et al.* Quiet title.
- *The Prudential Insurance Company of America, et al. v. the City of Golden, et al.* City ordinance.

Kiowa County

232. *F. B. Lamberson, et al. v. Frank Rich, et al.* Quiet title.
318. *C. L. Rose v. G. W. Lohn, et al.* Quiet title.
- *State of Colorado v. H. W. Scheffler, et al.* Quiet title.

Kit Carson County

1546. *In the Matter of the Estate of Ludwig F. H. Muller, Deceased.*

Number

1563. *In the Matter of the Estate of Helen M. Swenson, Deceased.*
Claim of Ridge Home against estate.
3790. *The People of the State of Colorado v. B. L. Harris.*
Habeas Corpus.
3792. *Howard Taton v. C. L. Hickman, et al.* Adjudication of
rights to land.
4016. *Everett Loutzenhiser, et al. v. August Schreiner, et al.* Con-
stitutionality of school reorganization act.

La Plata County

- *Board of County Commissioners of the County of La Plata,*
et al. v. Gladys Bradford Krueger, et al. Highway condemna-
tion suit.
5179. *In the Matter of the Petition of Reid Coppinger for Change*
of Point of Diversion v. Mrs. Earl Henry, et al. Water di-
version.
5746. *Ralph E. Hutchinson v. C. N. Feast.* •Damage by wild
animals.

Larimer County

280. *State Highway Department of the State of Colorado v. Bessie*
M. Ament, et al. Condemnation suit.
9711. *Mr. A. W. Hahn, et al. v. John Nesbit, et al.* Highway
condemnation suit.
10155. *Charles C. Rodarmel, et al. v. The Fort Collins Develop-*
ment Railway Company, et al. Quiet title.
10194. *John W. Elliott v. Poudre Valley National Bank of Fort*
Collins, et al. Quiet title.
10276. *Doris June Greenwood, et al. v. Sarah Minckler, et al.*
To Quiet title.
10288. *The State Highway Department of the State of Colorado v.*
William F. Kath, et al. Highway condemnation.
10331. *Mary J. Walters, et al. v. Jane Vandewark, et al.* Quiet
title.
10336. *Charles M. Buescher, Jr., et al. v. Emma J. Moore, et al.*
Quiet title.
10459. *Richard F. Rudolph v. W. F. Perkins, Director of Revenue.*
Objection to income tax assessment.
10462. *E. O. Bishop v. C. N. Feast.* To compel defendants to sub-
mit to arbitration certain claims for damages.
10526. *John Boxberger v. The State Highway Department.* To
obtain rescission and cancellation of deed.
10528. *State Highway Department v. Christina Ahlbrand Bender,*
et al. Petition in condemnation.

Number

10712. *H. M. Krazberger, et al. v. Marion W. Schuler, et al.*
Quiet title.
..... *State Highway Department of the State of Colorado v.*
Henry K. Schaffer, et al. Condemnation proceedings.
..... *State Highway Department, Board of County Commissioners*
of Larimer County, Town of Estes Park, Colorado, v. F. E.
Rogers, et al. Highway condemnation suit.

Las Animas County

16917. *The State Highway Department, et al. v. New Media Town*
Company, et al. Highway condemnation.
17632. *City of Trinidad, et al. v. The Atchison, Topeka and Santa*
Fe Railway Company, et al. Condemnation proceedings.
17837. *City of Trinidad, et al. v. Stanley Hardman Post No. 11*
American Legion, et al. Condemnation case.
..... *City of Trinidad, et al. v. Fred Gustafson, et al.* Highway
condemnation suit.

Logan County

7843. *People ex rel. Kenneth Floram v. Roy Best.* Habeas corpus.
8041. *C. A. Lynch v. Game and Fish Commission.* To recover
possession of lands.
..... *W. E. Outcalt v. Frank Hoefler, et al.* To enjoin from us-
ing public school funds for parochial schools.

Mesa County

3906. *In the Matter of the Estate of Edwinna Dakins Colpitss,*
Deceased.
7725. *The Board of County Commissioners of Mesa County, et al.*
v. John B. Kester, et al. Condemnation suit.
7897. *Kenneth D. Pigford, et al., v. Harry A. Spencer, et al.*
Quiet title.
..... *State Highway Department, et al. v. Dale H. Shreeves, et al.*
Highway case.
..... *Mesa County Commissioners, et al. v. C. H. Buttolph, et al.*
Highway condemnation suit.
..... *J. G. Gigax v. Martha Giffin, et al.* Quiet title.
..... *State Highway Department, et al. v. John B. Kester, et al.*
Highway condemnation.

Moffat County

1418. *Delbert H. Ducey, et al. v. Moffat County Commissioners,*
et al. Quiet title.
..... *State Highway Department, et al. v. Paul N. Diesel, et al.*
Damage to highway truck.

Number

Montrose County

6337. *R. E. Seago, et al. v. The Game and Fish Commission.*
Damage to crops by deer.
- *Ray Lewis v. Wells-Dickey Company, et al.* Quiet title.

Morgan County

7705. *C. A. Homes v. The Colorado Milling & Elevator Company,*
et al. To recover certain personal property—Land Board
case.
7749. *Virgil F. Vance, et al. v. Edward Wittmer, et al.* Quiet
title.

Otero County

5855. *Cecile L. Pinaire v. C. J. Stauder, et al.* Quiet title.
- *Joe W. Asher v. Jennie M. Beard.* Quiet title.

Ouray County

2203. *Oliver Fellin, et al. v. A. H. Reynolds, et al.* Quiet title.
2209. *John J. Fox v. Anna L. Grabow, et al.* Quiet title.
2241. *John P. Martin, et al. v. Josephine K. Leary, et al.* Quiet
title.
- *Robert Lundgren v. The Gardner Construction Company,*
et al. Highway matter.

Park County

3272. *Ray Landis, et al. v. Charlotte S. Allen, et al.* Quiet title.

Pitkin County

2761. *Louis J. Pastore, et al. v. Raymond Riede, et al.* Quiet title.
2762. *Emma and Otto Haerdle v. C. E. Palmer, et al.* Quiet title.
2784. *Stephen P. Knowlton, et al. v. The Aetna Real Estate and*
Investment Company, et al. Quiet title.
2787. *Veronica B. Cooper, et al. v. David R. C. Brown, et al.*
Quiet title.
2819. *Walter P. Paepoke, et al. v. C. A. Nevitt, et al.* Quiet title.
- *Mrs. H. E. Thorpe v. Charles Case, et al.* Quiet title.

Number

- *Frederic A. Benedict, et al. v. Jennie Adair, et al.* Quiet title.
- *Florian Haemmerle v. William Balderston, et al.* Quiet title.

Pueblo County

3265. *C. N. Feast, Director, v. Clyde D. Harrell, Claimant, et al.* Appeal from game damage award.
32833. *The Atchison, Topeka and Santa Fe Railway Company v. The Pueblo Terminal Railway Co., et al.* Condemnation suit.
32971. *The State Highway Department v. Ralph S. Moorehead, et al.* Highway condemnation suit.
33422. *Edgar E. Wilson v. Frank H. Zimmerman, et al.* Injunction suit re employees' hours at Colorado State Hospital.
33460. *R. J. Ryan v. City of Pueblo.* Ordinance.
- *The Atchison, Topeka and Santa Fe Railway Company v. The State of Colorado, et al.* Condemnation.
- *The Atchison, Topeka and Santa Fe Railway Company v. Hershey Ouye, et al.* Petition in condemnation.
- J. P. *Re—Martin Gabritsch, by his next friend, Matt J. Kikel.* Court Sanity of subject, right to counsel.

Rio Blanco County

846. *Max Dawson, et al. v. The State Highway Department.* Re gravel purchased by Highway Department.

Rio Grande County

- *In the Matter of the Estate of Frances Coleen Wright, Deceased.* Inheritance tax matter.

Routt County

- *Robert Rossi, et al. v. Thomas Buntin, et al.* Damages for injuries to car by highway truck.
- *State Highway Department v. E. Dillon Rich, et al.* Highway condemnation.

Number

Saguache County

- *Robert C. Moffitt, et al. v. County of Saguache, et al.* Quiet title.
- *Alfonso Luis Martinez v. W. F. Perkins.* Driver's license.

Sedgwick County

1932. *John E. Boone, et al. v. Owen M. Thomas, et al.* Quiet title.
1971. *Charles B. Donelan, et al. v. W. J. Bloom, et al.* Quiet title.

Washington County

3048. *Maynard A. Repp, et al. v. The Unknown Heirs of Ernest E. Hart, et al.* Quiet title.
3078. *Pauline Moore Fox v. Paul F. Fox, et al.* Quiet title.
3079. *Bert L. McKenzie, Administrator of Estate of Walter Moore v. John W. Metzger, et al.* Quiet title.
3129. *Bernard Stormberg, et al. v. Pauline M. Fox, et al.* Quiet title.

Weld County

10932. *Emil J. Sweitzer, et al. v. Etta B. Smillie, et al.* Quiet title.
11457. *Board of County Commissioners of the County of Weld v. Elzy A. Hoover, et al.* Highway matter.
11538. *Weld County Commissioners, et al. v. Louis J. Brantner, et al.* Highway condemnation.
- *William Bomer v. The City of Greeley.* City ordinance.
- *Weld County Commissioners, et al. v. Abram L. Mumper.* Highway condemnation suit.

Yuma County

243. *Russell A. King, et al. v. Donald C. Gillham, et al.* Registration of land.
3956. *Yuma County Commissioners, et al. v. John F. Rogers.* Highway condemnation.

MISCELLANEOUS CASES**Before the Civil Aeronautics Board, Washington, D.C.**

- In the Matter of a Proceeding to Determine Whether Public Convenience and Necessity require elimination of certain uneconomical competitive service between Chicago, Illinois and Washington, D. C.

Before the Civil Service Commission of the State of Colorado

203. *Joe Lakovich v. Thomas Allen, Executive Director, Coal Mine Inspection Department.*
- *In the Matter of the Complaint of the Water Users Association of Water District No. 6, Frank Brandt, et al.*
- *In the Matter of the Complaint of David B. Richeson Concerning the Superintendent of the Ridge Home for Mental Defectives, H. A. LaMoure.*

Before the Colorado State Board of Dental Examiners

- *In the Matter of the Revocation of Dental License No. 1692, Dr. Donald F. Long.*
- *In the Matter of the Revocation of Dental License No. 1671, Dr. H. G. Higgins.*

Before the Federal Power Commission of the United States of America

- *In the Matter of El Paso Natural Gas Company, San Juan Pipe Line Company and Pacific Gas and Electric Company.*

Before the Public Utilities Commission of the State of Colorado

- *In the Matter of the Application of the State Highway Department of Colorado for Authority to Construct a Railroad Grade Crossing on State Highway No. 14.*
9937. *In the Matter of the Application of the Colorado State Highway Department to Close Highway Crossing Over the Union Pacific Railroad Tracks in Weld County.*
10467. *In the Matter of the Application of the Denver Tramway Corporation for Extension of Certificate of Public Convenience and Necessity No. 319.*

INDUSTRIAL CASES (1949-1950)

- A-56801. District Court, City and County of Denver.
Kerr-McGee Oil Industries, Inc., a corp. v. Alva A. Jones and Ind. Comm. of Colo.
Jan. 3, 1949 Motion to vacate granted and Judgment of Sept. 27, 1948 reinstated, affirming Findings and Award of the Commission. Case closed.
31942. District Court, Pueblo County.
Bernstein Bros. Pipe & Mach. Co. v. Fidelity & Casualty Co. of New York--v. James M. Hadley & Indus. Comm. of Colo.
Mar. 1949 Decision of Industrial Commission affirmed. Case closed.
- Supreme Court No. 16100.
Frances Tegel Zuzich v. The Leyden Lignite Co. and Employers, Mutual Ins. Co. and Indus. Comm. of Colo.
May 23, 1949 Petition for Rehearing denied in Supreme Court. (May 2, 1949 Judgment affirmed). Case closed.
- A-59424. District Court City and County of Denver.
Manhattan Restaurant Inc. v. Indus. Comm. of Colorado and Marion M. Black.
June 14, 1949 Order from Bankruptcy Court staying all proceedings. Case closed.
- Supreme Court of Colorado No. 16182.
Thomas Arvas v. McNeil Coal Corp., The Employers Mutual Ins. Co. & Indus. Comm. of Colo.
Mar. 14, 1949 Rehearing, Supreme Court, denied and Opinion modified. Case closed.
7911. District Court County of Arapahoe.
Robert E. Downing v. General Iron Works Co., Employer; State Comp. Ins. Fund and Ind. Comm.
May 23, 1949 Judgment affirmed. Case closed.
- Supreme Court No. 16207.
George W. Ice v. Ind. Comm. of Colo., Continental Casualty Co., a corp., and John C. Murphy d/b/a Murph's Express.
June 15, 1949 Rehearing Denied in Supreme Court. Case closed.

- Sept. 6, 1949 Supreme Court No. 16261.
Edw. B. Merriman & Anchor Casualty Co. v. Industrial Comm. of Colo. and William H. Fitch. Affirmed Decision of District Court. Case closed.
- June 13, 1949 Supreme Court No. 16218.
Walter C. Chaney, Jr. v. Ind. Comm. and Elden B. Misner.
Petition to Supreme Court for Rehearing denied. Case closed.
- Jan. 19, 1950 Supreme Court No. 16468.
Lakewood Country Club and N. Y. Casualty Co v. Lula E. Meyer, Marilyn K. Meyer, et al., and Ind. Comm. of Colo. Judgment affirmed. Case closed.
- Mar. 1, 1950 28024. District Court, El Paso Co.
H. M. Hansen and Mrs. H. M. Hansen d/b/a "Bijou Grill" v. Ind. Comm. of Colo., Elsa K. Cleburne and State Comps. Fund. Stipulation of settlement. Case closed.
- July 2, 1949 A-62837. District Court, City and County of Denver.
Raymond W. Lewis and Ruth Banning Lewis d/b/a Banning-Lewis Ranches and Hartford A. & I. Co., a corp., v. Ethel Geneva Alford and Industrial Commission of Colorado. Findings and Judgment of Ind. Comm. set aside. Case closed.
- Sept. 15, 1949 Supreme Court No. 16278.
Pacific Employers Ins. Co., a corp., and Granby Contractors v. Ind. Comm. of Colo., and Herbert R. Jackson.
Petition for Rehearing filed.
- Apr. 1950 Later remanded to Commission for further evidence and Award entered. Paid. Case closed.
- June 23, 1950 Supreme Court No. 16382.
National Fuel Co., a corp., and Employers' Mutual Ins. Co., a corp., v. William E. Arnold & Ind. Comm.
Judgment affirmed. Case closed.
- Oct. 1, 1950 A-63580. District Court, City and County of Denver.
Industrial Comm. of Colorado v. Joseph Steinberg, et al.
Case dismissed. Case closed.

- A-64008. District Court, City and County of Denver.
Davis Construction and The Columbia Casualty Co., a corp. v. The Industrial Comm. of Colorado and John J. Jorgensen. Remanded to Ind. Comm. Insufficient evidence. Case closed.
- Oct. 15, 1949
- A-64580. District Court, City and County of Denver.
William Bond v. Ind. Comm. of Colo. and North-western Auto Co. and State Comp. Ins. Fund. Trial to Court affirmed. Case closed.
- Oct. 21, 1949
- Supreme Court No. 16385.
U. S. Fidelity & G. Co., a corp., and Joseph A. Shabough and Frank S. Snell, co-partners d/b/a Pikes Peak Auto Livery v. The Industrial Comm. of Colorado.
Judgment reversed. Case closed.
- May 22, 1950
- Supreme Court No. 16415.
A. B. Ballah, Jr. d/b/a The San Luis Mills v. Indus. Comm. of State of Colorado and Henry J. Valencia.
Judgment affirmed. Case closed.
- July 1, 1950
- Supreme Court No. 16369.
State Comp. Ins. Fund and Antlers Hotel Co., a Corp. v. Industrial Comm. of Colorado and L. A. West.
Judgment reversed. Case closed.
- July 30, 1950
- A-65908. District Court, City and County of Denver.
Royal Indemnity Co., a corp., and American News Co., Colorado News Divisions v. The Industrial Comm. and Abe Armstead.
Set for trial December 29, 1950—Continued to date unknown—and pending.
- Dec. 6, 1950
- Supreme Court No. 16440.
Joe Gregorich, Jr. v. Industrial Comm., The Oliver Coal Co., a Corp. and The Employee's Mutual Ins. Co.
Judgment affirmed. Case closed.
- Apr. 10, 1950
28538. District Court, El Paso County.
Sears, Roebuck & Co. v. Ind. Comm. and Retail Clerks Union Local 167.
Continued to date unknown. Pending.
- Nov. 20, 1950

- A-66835. District Court, City and County of Denver.
Hardware Mutual Casualty Co. v. U. S. F. & G.,
Vance Thornberg, d/b/a Thornberg Constr.,
Arthur Greenhill and Industrial Commission of
Colorado.
Mar. 23, 1950 Case closed by stipulation.
- A-67126. District Court, City and County of
Denver.
The Colorado Fuel and Iron Corp. v. Indus.
Comm. of Colo.
Oct. 20, 1950 Cause dismissed. Case closed.
348. District Court, Bent County, Colorado.
Cecil E. Klinerman v. John A. Reisinger and Ind.
Comm. of Colorado.
Dec. 30, 1949 Award of Commission affirmed. Case closed.
- A-67245. District Court, City and County of
Denver.
George Pike v. The Ind. Comm. of Colo. and The
Colorado Fuel and Iron Corp.
May 10, 1950 Judgment of Industrial Comm. affirmed. Case
closed.
- A-68103. District Court, City and County of
Denver.
Colorado College and Hartford Accident and In-
demnity Co., a Corp., v. Anthony J. Ruddy and
Industrial Comm. of Colorado.
May 4, 1950 Judgment affirmed. Case closed.
- A-68340. District Court, City and County of
Denver.
Pacific Employers' Ins. Co., a corp. and Resur-
rection Mining Co. v. Industrial Commission of
Colorado, a corp. and Frank Faidiga.
Apr. 17, 1950 Remanded to Indus. Comm. for further evidence.
Case closed.
- Supreme Court No. 16506.
Continental Oil Co., a corp. and Hartford A. & I.
Co., a corp. v. John L. Sirhall, et al. and Industrial
Comm. of Colorado.
Sept. 25, 1950 * Petition for re-hearing denied. Case closed.
- A-68527. District Court, City and County of
Denver.
Safeway Stores, Inc., a corp. and Hartford A. & I.
Co., a corp. v. Ray E. Newman and Industrial
Comm. of Colorado.
Dec. 1, 50 Judgment affirmed. Closed.

- Supreme Court No. 16518.
Remington Arms Co., Inc. and Liberty Mutual
Ins. Co. v. Michael A. Baeza and Indus. Comm.
of Colorado.
Oct. 30, 1950 Judgment affirmed. Case closed.
- A-70996. District Court, City and County of
Denver.
American Mutual Liability Ins. Co. of Boston,
a corp. and The Hoover Co. v. The Industrial
Comm. of Colorado, a body politic, and A. M.
Taylor.
July 10, 1950 Affirmed. Closed.
71140. District Court, City and County of
Denver.
Imperial Coal Co., a corp., The Employers' Mu-
tual Ins. Co., a corp., v. Thos. Di Giallonardo and
Industrial Comm. of Colorado.
Oct. 18, 1950 Awaiting further action.
Dec. 27, 1950 Judgment and decree reversing order of Ind.
Comm. in part. Closed.
- A-71195. District Court, City and County of
Denver.
Ernest V. Knox and Ervin L. Knox, d/b/a
Keensburg Dehydrating & Milling Co. v. Donald
Hughey and Indus. Comm. of Colorado.
Nov. 13, 1950 Remanded to Ind. Comm. for further evidence.
Closed.
- A-71594. District Court, City and County of
Denver.
Lloyd Nelson, Individually and d/b/a Nelson's
Office Supply Co. and Royal Indemnity Co. v.
Indus. Comm. of Colorado and Margaret Ruth
Burns.
July 17, 1950 Answer filed. Pending setting of case.
- A-71836. District Court, City and County of
Denver.
The Cudahy Packing Co. a corp., v. Theo Black
and Ind. Comm. of Colorado.
Nov. 9, 1950 Trial set for January 17, 1951.

- Supreme Court No. 16582.
L. B. Cole Produce Co. v. Industrial Comm. and Dolores La Come Garcia.
Dec. 27, 1950 Received copy of Plaintiff in Error's Reply Brief. *Pending.*
5687. District Court, La Plata County.
Pauline Conliff v. Ind. Comm. of Colorado, Les Don-Coors Distributor and Hartford Acc. & Ind. Co.
Nov. 6, 1950 Affirmed. Case closed.
- A-72228. District Court, City and County of Denver.
Neely Towner Motor Co. and The Ocean Acc. and Guarantee Co. v. Ind. Comm. of Colorado and Mike Fontana.
Oct. 9, 1950 Judgment affirmed. Case closed. December 12, 1950 received summons to hear Errors Supreme Court No. 16606.
- A-72367. District Court, City and County of Denver.
The Gates Rubber Co., a corp. v. Ray E. Tice, and Ind. Comm. of Colorado.
Dec. 2, 1950 Set for trial January 15, 1951.
61030. La Plata County District Court.
Anna McIntyre, et al. v. Indus. Comm. and Burnett Constr. Co. and State Compensation Ins. Fund.
Dec. 5, 1950 Pending.
- A-72560. District Court, City and County of Denver.
The Frank Shepard Co., a corp. and American Motorists Ins. Co., a corp. v. Betty Ann Wright and Indus. Comm. of Colorado.
Sept. 26, 1950 Answer filed—to be set. Pending.
- A-72892. District Court, City and County of Denver.
Wm. W. Meyer Drug Stores Co. v. Indus. Comm. of Colorado.
Oct. 3, 1950 Answer filed. Pending, to set for trial.

- A-73319. District Court, City and County of Denver.
Deines Brothers, Inc. and The Columbia Casualty Co., a corp. v. The Industrial Comm. of Colorado and William F. Hancock.
Oct. 21, 1950 Answer filed. Pending. To be set for trial.
- A-74005. District Court, City and County of Denver.
Colorado Fuel and Iron Corp. v. Industrial Comm. and Michael W. Kasan.
Nov. 25, 1950 Answer filed. Pending, setting for trial.
- A-74329. District Court, City and County of Denver.
Ideal Laundry Co., a Colorado Corp. v. Dry Cleaning & Laundry Workers.
Dec. 11, 1950 Answer filed. Set for trial. Pending.
- A-74269. District Court, City and County of Denver.
Employers' Mutual Liability Ins. Co. of Wisconsin, a corp. and Winslow, McMillon and Montague v. Indus. Comm. of Colorado.
Dec. 1, 1950 Answer filed. *Set for trial January 19, 1951.*
33970. District Court, County of Pueblo.
In the matter of the Death of Joe E. Tucker, et al. v. Industrial Comm. of Colorado and State Compensation Ins. Fund.
Dec. 18, 1950 Answer filed. Pending, to be set for trial.
- A-74403. District Court, City and County of Denver.
The Hallack and Howard Lumber Co. v. The Industrial Comm. of Colorado, Ex-officio Unemployment Compensation and Thomas M. Doyle.
Dec. 15, 1950 Answer filed. To be set for trial.
- Rocky Mountain Welding and Engineering Company and Employers Mutual Liability Ins. Co. of Wisconsin, a corp. v. The Industrial Comm. of Colorado and Joseph W. Beidler.
Dec. 22, 1950 Complaint received by Industrial Comm. *Answer to be filed.*

ESCHEAT CASES

<i>Name</i>	<i>County</i>
Elizabeth Cullen	Denver
Elizabeth Barnes	Denver
Helen Archbold Cooke	Denver
Joseph W. Otis.....	Denver
Mary Houston	Denver
John C. Ulrich	Denver
Olive E. Mulhern	Denver
Vasco Platison	Denver
Peter Lenahan	Denver
Sarah Louise Van Bradt	Denver
Fannie L. Tee	Denver
William J. Lusher	Denver
Arthur Krause	Denver
Richard Adams	Denver
Alice Yngstrom	Denver
Yonetara Shimada	Denver
Charles Canfield.....	Denver
Crdscencio Mijares	Denver
John B. McIntyre.....	Denver
George K. Peck	Denver
Simon Collins	Denver
Annie E. Martin	Denver
Michael Meehan	Denver
Benjamin E. Gorman	Denver
George W. Steward	Denver
Antone Sifitskie	Denver
Adam Koska	Denver
Carson B. Stewart	Denver
Anthony Valaroff	Denver
Emma F. Myers	Denver
Guiseppi Diaco	Denver
John Stupner	Denver
Charles H. Thatcher	Denver

<i>Name</i>	<i>County</i>
Oscar P. Nelson	Denver
Clifford Fleming	Denver
Jane Germano	Denver
Olive Mulhern	Denver
Martha Ballard	Denver
Alta Warren	Denver
John Mickalowski	Denver
William H. Walsh	Denver
James N. Thomas	Denver
George Hatori	Denver
Minerva Young	Denver
James A. Richardson	Denver
Robert A. Mills	Denver
Louis Laun	Denver
Adrian Picozzi	Denver
Fred Linsal	Denver
Felix Zambrano	Denver
John K. Smoluch	Denver
John C. Corbitt	Denver
Peter Hall	Denver
Eva Frazier	Denver
Howard Johnson	Denver
Frank Lawrence	Denver
John C. Corbitt	Denver
William H. Stout	Denver
Anthony Gerard	Denver
George G. May	Denver
Mike Stonish	Denver
Minnie Raether	Denver
Jessie Smiley	Denver
Millard G. Crippen	Denver
Levi L. Glover	Denver
James Washington	Denver
Harry Livingston	Denver

<i>Name</i>	<i>County</i>
Charles Fincher	Denver
William Clark	Denver
Ira L. Morgan	Denver
Eddie L. Behner	Denver
Lucy Lounsbury Young	Pueblo
William F. Singer	Pueblo
Grace McKenney	Pueblo
Juan Jose Castillo	Pueblo
Edwin T. Reese	Pueblo
Edwin T. Reese	Pueblo
Katherine G. Smith	El Paso
Mattie Ann Owsley	El Paso
William Lutz	El Paso
Robert Smith	El Paso
Joseph Paris	El Paso
Mary A. Roose	Boulder
Archie P. Hill	Adams
Jesse Fields	Montrose
Flora B. Barnes	Otero
Jess R. Youmans	Otero
Herman Steffen	Lake
Robert B. Ball	Lake
Wilma Ballard	Lake
Fannie Harrison	Lake
Edwinna Dakins Colpitts	Mesa
Luvena Wilson	Washington
William B. Milton	Routt
Peter Koos	Huerfano
James Earl Sutton	Douglas
Gaetana Frezza	Alamosa
Joseph Simons	Jackson
Mary A. Elliott	Logan
Martha Thomas	Crowley
Nellie Terrell	Arapahoe
Kasper Langedger	Arapahoe
Emma Hoppe	Montezuma
Floyd C. Banks	Elbert
Otto Rasanen	San Miguel

SCHEDULE III

OPINIONS AND SYLLABI OF OPINIONS

Rendered During the Biennial Period

1949-1950

Note: These syllabi and opinions are reported in the chronological order of the dates on which the opinions were rendered. A copy of each opinion is on file under a number corresponding with that of the syllabus.

GENERAL ASSEMBLY**Opinion No. 1371-49**

Hon. James A. Noonan,
 January 13, 1949.
 (Term; vouchers)

“The regular term of office of members of general assembly shall commence on the first Wednesday of December next after their election.” *Sec. 1, Ch. 74, 1935 C.S.A.*

General Assembly has jurisdiction to provide method for approval of vouchers for members of General Assembly while in session and between sessions. *Sec. 13, Ch. 74, 1935 C.S.A., House Bill No. 5, Ex. Session, 36th General Assembly.*

TAXATION**Opinion No. 1372-49**

Colorado Tax Commission,
 January 13, 1949.

Board of County Commissioners cannot assess general property tax on ditches, dams, tunnels, irrigation works, of a mutual company because of specific exemption granted by *Article X, Section 3, Colorado Constitution.*

**APPROPRIATIONS—CONTROLLER—
VOCATIONAL EDUCATION****Opinion No. 1373-49**

Mr. E. C. Comstock,
 January 14, 1949.

Moneys appropriated for the fiscal year can only be expended or encumbered in the fiscal year for which appropriated and any unexpended balance reverts to the general fund. (*Sec. 2, Ch. 57, S. L. 1945*). Expenses incurred in 1946 cannot be paid from an appropriation for the fiscal year 1948-1949.

**CONTROLLER—GOVERNOR—MINERAL
RESOURCES BOARD****Opinion No. 1374-49**

Mr. James A. Noonan,
 January 14, 1949.

1. Since the Act of 1937 does not authorize the publication of a report by the Mineral Resources Board justification for the expenditure of \$7800 from the appropriation of 1945 must be found in the language “to enable said Board to cooperate with Federal

War Agencies in preparing mining projects." *Ch. 65, S. L. 1945, and Sec. 17, Ch. 36, 1935 C.S.A.*

2. There is no warrant in law to pay the sum of \$9756.44 from the appropriation made by *Ch. 103, S. L. 1947*, and if relief is to be had, recourse must be the legislature.

VETERANS—MARRIAGE LAWS

Opinion No. 1375-49

Department of Veterans Affairs,
January 18, 1949.

1. A marriage between a white person and an oriental is legal in Colorado. (*Sec. 2, Ch. 107, 1935 C.S.A.*)

2. A common law marriage may be valid and binding in this state. (*Sec. 1, Ch. 106, 1935 C.S.A., Taylor v. Taylor, 10 C.A. 303.*)

3. The length of cohabitation is immaterial. The essential elements of the common-law contract of marriage is the ability of the person to contract a valid marriage and the actual consummation of the contract praesenti, with proof of the contract. *Thingan v. Mathews, 74 Colo. 93; Radovich v. Radovich, 84 Colo. 251.*

FEES AND SALARIES—COUNTY OFFICERS

Opinion No. 1376-49

Mr. George W. Lane,
January 18, 1949.

Sheriff's salaries must be paid from fees collected from his office and not from ordinary revenue. If there are insufficient fees to cover the stipulated salary, the deficit may not be made out of fees from previous or following year. Excess fees must be returned to the County General Fund.

LEGISLATURE—HIGHWAYS—PLANNING COMMISSION

Opinion No. 1377-49

Mr. John J. Harpel,
January 21, 1949.

The State Highway Engineer, with the approval of the Highway Advisory Board, has the power to abandon, locate, relocate state highways, subject to the procedure outlined in *Sec. 6, Ch. 212, S. L. 1935* (Planning Commission Act.)

BANKS AND BANKING**Opinion No. 1378-49**

Honorable Frank E. Goldy,
January 24, 1949.

Agreement between Estes Park Bank and President for monthly sum to be paid him for specified years of service and certain conditions to be performed by him is valid, since there are no specific provisions prohibiting such agreement in banking laws of Colorado. *Citing Sec. 60, Chap. 18, 1935 C.S.A.*

SECURITIES**Opinion No. 1379-49**

Mr. Curtis White,
January 25, 1949.

Profit sharing agreements are not proper as stock selling device.

Stockholders are not creditors of a corporation.

Dividends, declaration—rest in absolute discretion of directors and should not be limited by profit sharing agreements.

HIGHWAYS—MOTOR VEHICLES**Opinion No. 1380-49**

Mark U. Watrous,
January 25, 1949.

(Authority to issue permits for oversize and overweight loads).

The State Highway Department has authority to issue permits for oversize and overweight loads pursuant to Chapter 16, Section 283(a), 1935 Colorado Statutes Annotated.

FEES IN PROBATE CASES**Opinion No. 1381-49**

Hon. Buffer Roberts,
January 26, 1949.

Fees charged by an administrator or representative in selling real estate under probate procedure shall be maximum of \$25.00 in any one proceeding or decree. No additional fees could be assessed where the land described in the original petition is sold in parcels subsequent to decree of sale.

In proceedings in probate court for sale of real estate where a subsequent petition is filed, petition for the sale of lands not in-

cluded in the original petition and hearing is had on the sale of the land described in the subsequent petition, fees are chargeable as provided in the statute to the maximum amount of \$25.00.

STATE PURCHASING AGENT—PRINTING

Opinion No. 1382-49

F. L. Behymer,
Division of Purchases,
January 26, 1949.

In view of Section 22, Chapter 2, S. L. 1941, the State Purchasing Agent may prefer bids for Colorado materials, supplies, etc., over bids for non-Colorado materials, supplies, etc., to the extent of 5%.

CIVIL SERVICE

Opinion No. 1383-49

Mr. James A. Noonan,
January 26, 1949.

Where a civil service employee is dismissed from the service by the Civil Service Commission, the Commission may, in its discretion, forfeit all earned annual leave (*Para. 5, Sec. 1, Art. XIII*) or may grant all annual leave accumulated to date of separation, calculated at the rate of one and one-fourth working days per month from January 1st of that year to date of separation. (*Par. 4, Sec. 1, Art. XIII, Rules Civil Service.*)

CIVIL SERVICE COMMISSION—VETERANS

Opinion No. 1384-49

State Civil Service Commission,
January 27, 1949.

(Widow's right to veterans preference).

Right to special credit "Veterans Preference" limited to "Widow" and not to term "Widows" and *remarried* "Widows."

Person claiming right as "Widow" must be unmarried "Widow" of veteran upon whose service record she claims benefit. Remarriage forfeits her rights.

Commission has power, as policy making organization, to apply this section otherwise.

OLD AGE PENSIONS—ALIENS**Opinion No. 1385-49**

Honorable Frank L. Gill,
January 27, 1949.

In Re: Constitutionality of Senate Bill No. 166, which would admit aliens on pension rolls. Opinion holds the bill is constitutional; that Article 4, Section 3 of the Constitution, in part, states: "Every citizen of the United States * * * shall be entitled to receive the same (pension) * * * ." As long as this provision is not abridged, the legislature may add others (aliens) to the pension rolls.

SCHOOLS**Opinion No. 1386-49**

Mr. Joseph J. Evantz,
January 27, 1949.
(Teachers' Contract)

Unless release is granted by Board of Directors of a school district, teachers shall be assessed one-twelfth of their annual salary for failure to complete contract. *Chapter 226, Session Laws of Colorado, 1945.*

**EMPLOYEES—PUBLIC FUNDS—FEES AND SALARIES
(BASIC SCIENCE BOARD)****Opinion No. 1387-49**

Mrs. Esther B. Starks,
January 28, 1949.

Officers, assistants or employees of any department, institution or agency shall receive no compensation or fees from more than one department or in more than one capacity.

LEGISLATION—MOTOR VEHICLES**Opinion No. 1388-49**

Representative O. C. Abernathy,
January 28, 1949.
(Re H. B. 233)

Re proposed legislation involving H. B. 233. *Favorable opinion is given after study of "Construction and application of statute."* Municipal corporations are liable for damages due to negligence of official employee while operating vehicle. 136 *A.L.R.*, 582, and Section 400 of the motor Vehicle Code of California.

NEWSPAPERS**Opinion No. 1389-49**

Mr. D. O. Tipton,
January 31, 1949.

“El Herald” is a legal paper within the meaning of Ch. 130, Sec. 3, 1935 C.S.A., and a legal paper does not lose its standing as such merely because it is mechanically printed elsewhere.

**CONSTITUTIONAL LAW—LEGISLATURE
TAXATION**

Opinion No. 1390-49

Mr. W. F. Perkins,
February 1, 1949.

(Clarification of House Bill 924)

No act may be passed by General Assembly in nature of ex post facto law, impairing obligation of contract or retrospective in its operation.

Legislature may not pass tax law which sets up different taxing procedure and rate for periods prior to the date of the enactment of said law.

Legislature may enact new tax law governing incomes after date of approval of act.

Legislature in setting up tax policy for remainder of year can take into consideration probable income loss up to date they expect new tax law to become effective.

**CIVIL SERVICE—OFFICERS—WATER
CONSERVATION BOARD**

Opinion No. 1391-49

Hon. Neal Bishop,
February 1, 1949.

(Employment of Director of Water Conservation Board)

Director is an appointive administrative public officer of the State of Colorado unless he can be found to be within exception, he is within classified service of the State of Colorado and subject to Sections 13 and 14, Article XII Colorado Constitution and under the jurisdiction of the State Civil Service Commission. It becomes the duty of the Commission to determine whether or not a classification of the position of director of the Water Conservation Board places the position within the classified Civil Service or without the classified Civil Service by reason of position coming within some one or more of the listed exemptions. (Sec. 13, Art. XII, Colorado Constitution. Sec., 8, Ch. 173B, 1935 C.S.A.—Ch. 265, S. L. 1937).

**ELECTIONS—COUNTY OFFICERS
(Assessor)****Opinion No. 1392-49**

Mr. Robert Delaney,
February 1, 1949.

Officer appointed to fill vacancy before Section 6, Senate Bill No. 2, First Extraordinary Session became effective, and who is elected after effective date of Act, but not for short term, merely for period beginning January 11, 1949, not entitled to additional compensation for period between election Nov. 2, 1948 and Jan. 11, 1949.

COUNTY OFFICERS—COUNTY BOARD OF HEALTH**Opinion No. 1393-49**

Mr. John C. Banks,
February 2, 1949.

1. County Commissioners and members of the County Board of Health under 1935 C.S.A., Ch. 78, Sec. 25, may not pass substantive laws and provide penalties. This is a power given by the Constitution to the Legislature and may not be delegated.

2. County Commissioners may make rules and regulations not in conflict with existing laws as promulgated by the State Board of Health.

3. County Health Board may pass rules and regulations which have the effect of upward revision under the Board's police power, but which rules must be reasonable. Reasonableness is a test for the Court.

4. If rules and regulations of the County Board are violated, the Health officer must make his complaint to the District Attorney and is endorsed as the prosecuting witness.

PUBLIC UTILITIES—FIRE PROTECTION DISTRICT**Opinion No. 1394-49**

Public Utilities Commission,
February 3, 1949.

Fire protection district purpose is for fire protection. Board of Directors have no power or authority to issue franchises to electric company for period of ten or twenty years, or at all. Sec. 2, Ch. 130, S. L. 1941 (repealed by Ch. 238, S. L. 1947) defined "a fire protection district is one to *supply* protection against fire by any available means."

Sec. 2, Ch. 238, S. L. 1947, defines "a fire protection district is one to *provide* protection against fire by any available means." Only change in the two definitions lies in the underscored words.

FEES AND SALARIES—STATE BOARD OF HEALTH**Opinion No. 1395-49**

Dr. R. L. Cleere,

February 3, 1949.

1. Fees must be established by the legislature and unless an agency is empowered by statute to collect fees, it may not do so.

2. The Board of Health may sue civilly or be sued civilly in its representative capacity. Criminal actions are filed and prosecuted by the local District Attorney upon complaint of the local health officer who is endorsed as a prosecuting witness.

STATE BOARD OF HEALTH—RESTAURANT ACT**Opinion No. 1396-49**

Dr. R. L. Cleere.

February 4, 1949.

(“Meal” defined, wrapped and machine dispensed foods)

1. Meals as defined by Webster are “That portion of FOOD taken at one time to satisfy appetite.”

2. Food as defined by Chapter 81, Section 14, subsection b of 1935 C.S.A. as “any substance used, or intended to be used for human consumption on the premises * * * * * except soft drinks, ice cream or ices, and confections.”

3. Any store or organization which sells “meals” for consumption and furnishes space and accommodations, in consideration of payment, comes under the terms of the Restaurant Act.

4. No exceptions are made by the statutes concerning whether or not the food is wrapped, dispensed by hand or by machine.

BOARD OF CHIROPRACTIC EXAMINERS**Opinion No. 1397-49**

Dr. E. A. Jackson,

February 4, 1949.

1. The Board of Chiropractic Examiners need not permit an applicant to take the state examination until he submits a photostatic copy of his diploma from an accredited school or college, or other evidence of his graduation from the same.

2. The board may require applications to be submitted thirty days prior to the examination date and adopt other reasonable rules for the administration of the chiropractic act.

SCHOOLS**Opinion No. 1398-49**

Mrs. Nettie S. Freed,
February 4, 1949.

Consolidation of school districts to form a special school district does not affect or change the boundaries of incorporated towns within the area of the special school district.

TAXATION—SCHOOLS**Opinion No. 1399-49**

Mr. Clifford J. Gobble,
February 5, 1949.

Allocation of Specific Ownership Tax to school districts. Method of allocation explained.

MOTOR VEHICLES**Opinion No. 1400-49**

Mr. William F. Perkins,
February 7, 1949.

(Financial Responsibility Law)

Papers showing release of liability filed with Director of Revenue in connection with Financial Responsibility Law are not confidential within the meaning of Section 183, Chapter 16, 1935 C.S.A.

CONSTITUTIONAL LAW—CITY TRUSTS—LEGISLATION**Opinion 1401-49**

Hon. Andrew D. Kelley,
February 8, 1949.
(House Bill No. 724)

An act creating the Board of Directors of City Trusts in the City and County of Denver.

Squarely opposed to Art. XX, Constitution of Colorado, and particularly to Section 1 thereof. If passed would be inoperative and ineffective because of its unconstitutionality.

HIGHWAYS**Opinion No. 1402-49**

Colorado State Highway Department,
February 10, 1949.

Whether or not fees and commissions of real estate men for services in acquiring rights of way and access rights for a state

highway may legally be paid by the State Highway Department out of the Special 3% Motor Fuel Fund is determined by whether or not said services are reasonably appropriate and incidental to the "construction" of said public highway.

POLICEMEN'S PENSION FUND

Opinion No. 1403-49

Mr. A. Werner,

February 11, 1949.

Duty of municipal or city attorney to advise board of trustees on all matters pertaining to their duties and management of said fund whenever required to do so. Ch. 163-1935 C.S.A.

Any member reaching age of 60 years and having served 20 years in any department shall be entitled to one half amount of average salary for one year before time of granting application. Cannot hold another position paying more than \$60.00 per month.

COUNTY OFFICERS—GAME AND FISH

Opinion No. 1404-49

Mr. C. N. Feast,

February 11, 1949.

(Reimbursement of County Commissioners for expenditures)

The Game and Fish Department is not liable to reimburse County Commissioners or other persons for expenses incurred in searching for lost hunters.

**LEGISLATURE—RACING COMMISSION—CONTROLLER
TREASURER**

Opinion No. 1405-49

Hon. Ben Bezoff,

February 21, 1949.

1. Section 3(c), H. B. 3, Session Laws 1949 and Section 9, Chapter 256, Session Laws 1947, are violative of Section 12, Article V, Colorado Constitution. *In Re House Resolution*, 12 Colorado 395 at 397; *Institute v. Henderson*, 18 Colo. 98.

2. The legislature has the power to enact H. B. 1096, 37th General Assembly 1949. Sec. 1, Article V, Colorado Constitution.

LEGISLATURE**Opinion No. 1406-49**

Hon. Pat Magill, Jr.,

February 23, 1949.

(Period of adjournment)

House of Representatives under terms of constitution must reconvene not more than three days after its adjournment. Applying reasoning of Supreme Court of Colorado, one of the days must be included—either Saturday or Wednesday. Duty of House to secure consent unless it intended to re-convene within time required.

BUILDING AND LOAN**Opinion No. 1407-49**

Hon. William Albion Carlson,

February 23, 1949.

Share, certificate, or savings accounts in any state or federal chartered building or savings and loan association in Colorado are not stock of any private corporation as that phrase is used in Article V, Section 36 of the Constitution of the State of Colorado.

SOIL CONSERVATION**Opinion No. 1408-49**

Mr. Kenneth W. Chalmers,

February 23, 1949.

(District Referendum)

Assessments only through majority vote of all the qualified voters in the District. (Individual localities within a district may not assess themselves under the Act).

COUNTIES**Opinion No. 1409-49**

Hon. Mansur Tinsley,

February 14, 1949.

(Board of Adjustment)

The terms of members of the Board of Adjustment, in the absence of specific designation by the Board of County Commissioners, begin on the date such appointments are made by appropriate resolution of the Board of County Commissioners.

Members of the Board of Adjustment are county officers and as such, under Article XIV, Section 12 of the Constitution, their individual terms of office are limited to two years.

The Board of County Commissioners of Jefferson County cannot appoint persons to county offices where the terms of such offices begin after the terms of the Board of County Commissioners attempting to make such appointment have expired.

COUNTIES—PUBLIC UTILITIES**Opinion No. 1410-49**

Honorable Lee Knous,

February 9, 1949.

(Counties and private owners affected by abandonment of narrow gauge 28 mile Denver & Rio Grande Western Railroad. Railroad received easement right by act of Congress. Abandonment approved by Interstate Commerce Commission.)

Whenever public lands granted to railroad company for right of way when use has ceased or by abandonment then all rights, title, interest and estate of United States is transferred to company except such part thereof as may be embraced in a public highway legally established within one year after the date of said decree or forfeiture or abandonment, except lands in municipality which would revert to municipality.

Right of way for changed line—old line reverts to tenders upon payment to railroad company of amount assessed by the board.

No reverter takes place under Federal statute if a public highway is legally established within one year after the date of the decree of forfeiture or abandonment or after the actual abandonment.

CITIES AND TOWNS—POLICEMEN'S PENSION**Opinion No. 1411-49**

Hon. C. H. Darrow,

February 11, 1949.

In Re: Section 4, Chapter 144, Session Laws of 1927 applicable to every municipality in the state maintaining a regularly organized and paid police department, etc. Answer in the affirmative. Section 518, Chapter 163, 1935 C.S.A., amended Chapter 205, 1937 Session Laws.

COUNTIES—PUBLIC UTILITIES**Opinion No. 1412-49**

Hon. Lee Knous,

February 11, 1949.

Proposed abandonment of Denver & Rio Grande Western R. R. affecting 28 mile stretch of right of way. Question as to the actual acquisition of this right of way as a public highway legally established. Sec. 108, Ch. 143, 1935 C.S.A.

Highway Engineer with approval of Highway Advisory Board hereby created shall have full power to abandon or change any part or add thereto. Section 111, Ch. 143, supra, provides: State High-

way Engineer shall, when he deems it desirable to establish, open, re-locate, widen or alter portion of a State Highway. When Board requires he must make written report. Sec. 6, Ch. 212, S. L. 1935. No State Highway shall be constructed or acquired with state funds unless same is submitted to State Planning Commission and report and advice of Commission thereof shall have been received. Sec. 25(8), Ch. 45, 1935 C.S.A. The Board of County Commissioners of each county shall have power at any meeting to lay out, alter or discontinue any road running through such county, and also to perform such other duties respecting roads as may be required by law.

NEWSPAPERS—TAXATION

Opinion No. 1413-49

Mr. Charles F. Stewart,

February 14, 1949.

(Publication Tax Sales)

When tax sale advertisement is made in a weekly newspaper, it shall be published in four successive weekly issues. When publication is made in a daily newspaper, the notice shall be published only four times, once each week, on the same day of the week. Chapter 142, Section 228.

Legal rates for advertising of tax sale notices governed by Chapter 191, S. L. 1945, thus superseding Chapter 130, Section 7.

STATE PLANNING COMMISSION—COUNTIES

Opinion No. 1414-49

The Honorable Mansur Tinsley,

February 14, 1949.

The terms of members of the Planning Commission, in the absence of specific designation by the Board of County Commissioners, begin on the date such appointments are made by appropriate resolution of the Board of County Commissioners.

The Board of County Commissioners of Jefferson County cannot appoint persons to county offices where the terms of such officers begin after the terms of the Board of County Commissioners attempting to make such appointments have expired.

COUNTIES—VETERANS SERVICE OFFICER

Opinion No. 1415-49

The Honorable Mansur Tinsley,

February 14, 1949.

Where the Board of County Commissioners of Jefferson County fails to designate the beginning and ending dates of the

terms of the County Veterans Service Officer, the term of said county officer shall begin on the date of his appointment by said Board.

An officer holding over after the expiration of a term does not by so doing change the term of the office, but merely shortens the term of his successor.

COUNTY COMMISSIONERS—FEES AND SALARIES

Opinion No. 1416-49

Mr. H. L. Townsend,
February 17, 1949.

The Legislature acted within its constitutional authority in classifying the several counties of the state and fixing the compensation of county and precinct officers. Where the office is a fee office the salary is payable out of the fees actually collected. The salary of the County Judge is payable from the County General Fund.

S. B. 2—36th General Assembly, 1st Ext. Session 1948; Sec. 15, Art. XIV, Colorado Constitution; Chapter 66, 1935 C.S.A.; Sec. 16, Ch. 125, S. L. 1945; Sec. 22, Art. VI, Colorado Constitution; Section 6, Chapter 190, S. L. 1947; H. B. 3—1st Ext. Session 1948.

MENTAL INCOMPETENTS—COLORADO STATE HOSPITAL

Opinion No. 1417-49

Mr. Herbert A. Alpert,
February 17, 1949.

The estate of a mental incompetent is liable for his support and maintenance. Where the mental incompetent is a pauper, his relatives and kinfolk are liable for his support and maintenance. The state only assumes the burden of support where there is no estate or the relatives and kinfolk are unable to contribute to such support. Secs. 9, 16, Ch. 105, and Sec. 227, Ch. 176, 1935 C.S.A.

HIGHWAYS

Opinion No. 1418-49

State Highway Department,
February 17, 1949.

Improvements on land acquired for right of way purposes which must be removed so that the highway construction may be carried on, lose identity as real property and become personal property, hence said improvements may be sold by the State Purchasing Agent with the approval of the Governor pursuant to the Administrative Code of 1941.

SCHOOLS**Opinion No. 1419-49**

Mr. Damon Waldhauser,
February 17, 1949.
(Budget)

Procedure for preparing and adoption set forth in Chapter 168, 1945 Session Laws of Colorado. (Local Government Budget Law).

LEGISLATION—RACING COMMISSION**Opinion No. 1420-49**

The Honorable Ben Bezoff,
February 19, 1949.

Question as to legal sufficiency of House Bill No. 1096—making appropriation of \$25,000.00 to Colorado Racing Commission on condition that commission shall reimburse appropriation out of first funds.

House may legally make appropriation to provide commission with funds. Appropriation in nature of loan or advance in order to get law into operation.

INSURANCE**Opinion No. 1421-49**

Hon. Luke J. Kavanaugh,
February 24, 1949.

In the absence of a regulation of the Commissioner of Insurance, prohibiting the issuance of preferred stock, Colorado Insurance Companies may issue preferred stock.

INDUSTRIAL COMMISSION**Opinion No. 1422-49**

Mr. H. E. Dill,
February 25, 1949.
(Definition of an artisan)

Section 157, Chapter 97, 1935 C.S.A., sets forth four categories, namely, day laborer, mechanic, artisan or household or domestic servant. Whether job fits under any of above sections is question of fact for commission to decide.

STATE TREASURER**Opinion No. 1423-49**

Hon. Homer F. Bedford,

February 25, 1949.

(Duplicate Warrants)

A duplicate warrant issued before the expiration of the six month period does not require the posting of a bond. However, a duplicate warrant issued during the six months period requires a bond. Paragraph (h), Sec. 3, Chapter 118, S. L. 1947.

COUNTY CLERKS AND RECORDERS—PUBLIC RECORDS**Opinion No. 1424-49**

Mr. Siewers Fincher,

February 26, 1949.

Destruction of Public Records by County Clerks and Records is governed by special statute. Chapter 125, 1937 Session Laws of Colorado.

COUNTIES**COUNTY TREASURER—DISTRICT ATTORNEY****SCHOOLS****Opinion No. 1425-49**

Hon. James Ingles,

February 26, 1949.

Construction of statute of limitations in relation to county and school warrants. Duties of County Treasurer defined. District Attorney is the legal adviser of the County Treasurer. County Treasurer is not an officer of the school district. Sec. 147, Ch. 45, 1935 C.S.A.; *Forbes v. Grand Co.*, 23 Colo. 344; Sec. 5, Ch. 55, 1935 C.S.A.

STATE BOARD OF HEALTH—CHIROPRACTORS**Opinion No. 1426-49**

Dr. Roy L. Cleere,

February 28, 1949.

(Treatment of tuberculosis, communicable diseases)

Chiropractors, under Section 2, Chapter 34, 1935 C.S.A., may not treat active, infectious diseases.

BOXING COMMISSION**Opinion No. 1427-49**

Mr. Eddie Bohn,

February 28, 1949.

1. Boxing and wrestling matches promoted and sponsored by public and private schools do not come under the jurisdiction of the State Athletic Commission even though the aforesaid matches are held in buildings other than those commonly used by the aforementioned schools. The exemption also applies even though contestants from out of state engage in these matches provided, however, they are bona fide students.

2. A five per cent tax is collectible on all tickets sold even though such tickets may not be presented for admittance. A National Guard Company comes under the last exemption clause of the boxing-wrestling act.

TAXATION—SOLDIERS AND SAILORS RELIEF ACT**Opinion No. 1428-49**

Lt. Colonel Arthur Skarry,

March 2, 1949.

Specific Ownership tax is not a tax on personal property and is not under the provisions of Section 514 of the Soldiers and Sailors Civil Relief Act.

INTOXICATING LIQUORS**Opinion No. 1429-49**

Mr. Samuel L. Fairlamb,

March 2, 1949.

Question as to whether windows of pool halls and places where 3.2 beer is sold should be free from any obstructions. The licensing authority having power to issue licenses likewise has power to make reasonable rules and regulations with respect to sale of fermented beverages as he may deem proper, not inconsistent with provisions of act.

GAME AND FISH**Opinion No. 1430-49**

Mr. Elton K. McQuery,

March 3, 1949.

(License refunds)

No refund should be made on any license outstanding during hunting season. Refund may be made if the Commission is satisfied license money was paid through mistake of law or fact.

COUNTIES—COUNTY ATTORNEY—FEES AND SALARIES**Opinion No. 1431-49**

Mr. D. E. Johnson,

March 4, 1949.

Deputy in any county office including Deputy Clerk of the County Court and Deputy of the District Court "shall be paid monthly out of the County General fund" in such an amount as not to exceed the compensation fixed by the appointing officers with the approval of the Board of County Commissioners of their respective counties. Ch. 125, S. L. 1945; Sec. 15, Art. XIV, Constitution; Sec. 30, Art. V, Constitution; *Lancaster v. Co. Commrs.*, 115 Colo. 261.

SCHOOLS—(Transportation)**Opinion No. 1432-49**

Mrs. Willa Zick,

March 4, 1949.

(3rd class districts)

Agreements to transport pupils to a private school on a public school bus would be in the discretion of the School Board; and their validity would depend on the facts. In no event may there be any payment from public funds of any amount in aid of private or sectarian schools.

**PUBLIC UTILITIES—CONTRACTORS
HIGHWAYS****Opinion No. 1433-49**

Mr. Ralph C. Horton,

March 4, 1949.

Public Utilities Commission has jurisdiction over an excavator hauling dirt and gravel from the excavation to a place of dumping, when traveling over state highways. Exception as to contractors hauling supplies to be used in a building they are constructing not applicable. Excavator must secure a "B" permit and pay the wheel tax.

Excavator hauling dirt and gravel from the excavation to a place of dumping does not come with the exception applicable to contractors insofar as the jurisdiction of the Public Utilities Commission is concerned, and a permit must be secured and the wheel tax paid.

**STATE HIGHWAY
DEPARTMENT****Opinion No. 1434-49**

Mr. H. Rodney Anderson,

March 4, 1949.

(Claims)

Claim for damages by landowners for flooding of lands resulting from breaking of company's reservoir, cannot be classified as a claim coming under the provisions of Chapter 39, Sections 6 and 7, 1935 C.S.A. Conclusion based on 77 Colo. 345 and 108 Colo. 472.

SCHOOLS**Opinion No. 1435-49**

Mr. Dean Johnson,

March 4, 1949.

(Bonded indebtedness)

"The right to tax for bonded indebtedness must be limited to the real estate which was taxable as such at the time the bonded indebtedness was contracted." *Callaway v. D. & R. G.*, 6 Colo. App. 284.

INSURANCE**Opinion No. 1436-49**

Hon. Luke J. Kavanaugh,

March 8, 1949.

County Mutual Protective Association organized under the laws of Colorado cannot legally sell a so-called "Pro-Rata Policy" wherein the insured may receive a proportion of premium paid in after all losses and expenses of the association are paid. *Sec. 91, Chapter 87, 1935 C.S.A.*

STATE LAND BOARD**Opinion No. 1437-49**

State Board of Land Commissioners,

March 9th, 1949.

Insured farm loan notes and mortgages issued pursuant to the provisions of the Bankhead Jones Farm Tenant Act, as amended, are eligible for investment of the Public School Permanent Fund.

RACING**Opinion No. 1438-49**

State Racing Commission,

March 11, 1949.

Paragraph 3, Sec. 8, Ch. 256, S. L. 1947, as amended by H. B. 3, S. L. '49, is unambiguous in character and must be construed as a special provision of the state and therefore an exception to the general provisions thereof.

The Commission cannot enlarge its powers by rule, neither can it require the applicant to contract away its rights under the statute in order that it may obtain the initial license.

If the consequences of the statute are objectionable, the remedy lies in the legislature and not in the courts. (50 Am. Jur., 371—Secs. 367, 375, 368; *Bedford v. C. F. & I.*, 102 Colo. 538; 59 C. J. 993-995).

AGRICULTURAL COLLEGE**Opinion No. 1439-49**

Colorado A & M College,

March 15, 1949.

1. The college cannot mortgage or encumber state owned lands. (Sec. 3, Ch. 5, '35 C.S.A.)

2. The college can take, hold and sell personal property and real estate. (Sec. 3, Ch. 5, '35 C.S.A.).

3. The college can construct self liquidating projects. *Hoyt v. Trustees*, 96 Colo. 442.

4. The payment of the indebtedness is limited to the revenue derived from the building or from sources which do not obligate the state, the institution or the corporate board.

5(a). The college can sell and convey real estate but the word sell means to convey for a price and not a gift or donation.

(b) If the property is conveyed to an independent corporation, such independent corporation can mortgage and encumber the premises as it sees fit.

(c) After the building is completed, the board may in its discretion and with the approval of the State Purchasing Agent, the Controller and the Governor lease said building or buildings from said independent corporation.

(d) The college could thereafter acquire the building if the acquisition is first approved by the Planning Commission, State Controller, and Governor. No opinion expressed on question of tax liability, however.

6. In view of Section 5, Article X, Colorado Constitution, *Denver v. Gunter*, 63 Colo. 69 and in *Re Mackey's Estate*, 46 Colo. 79 @ 97, it is reasonable to conclude that if the college leases the

building and pays the annual rental or amortization charges from its operating revenues and applies the rental income for school purposes, their being no profit to the owner corporation, it comes within Sec. 5, Article X, Colorado Constitution, and above cases and would be exempt from taxes.

LIVESTOCK

Opinion No. 1440-49

Mr. Ed Paul,
March 15, 1949.

Question: "What authority does State Board of Stock Inspection Commissioners have through its Brand Inspectors to hold cattle for title, bill of sale from owner of the recorded brand, or the holding of proceeds on the markets until proper ownership is provided?"

Sec. 209(14), Ch. 160, 1935 C.S.A., as amended by Session Laws 1937 proceeds must be retained for reasonable time, not to exceed 30 days. Proceeds are to be handled in accordance with Colorado Estray Laws, relating to distribution of estray laws. Sec. 138, Chapter 160, 1935 C.S.A., provides procedure for holding and disposing of estray funds. Responsibility is solely that of Board and action must be taken by Board and not its employees.

FEES AND SALARIES—DISTRICT ATTORNEY COUNTIES

Opinion No. 1441-49

Hon. Charles R. Corlett,
March 15, 1949.

Mileage for travel of the District Attorney of the Twelfth Judicial District is a necessary expense of maintaining an office under Section 93(1) of Chapter 66 of 1935 C.S.A., as amended, which expense must be pro rated among the counties in the Twelfth Judicial District on a basis of population of each county.

CITIES AND TOWNS

Opinion No. 1442-49

Mr. John W. Old,
March 16, 1949.

(Excess moneys in bond redemption fund)

In cases where municipal corporations through special levy create a Special Bond Redemption Fund and payment of the bonds is anticipated leaving an excess in the Special Bond Fund after the purpose of the levy has been accomplished and the bonds paid, the excess money may be transferred by the proper official of the town to the General Fund of the town.

COUNTY FUNDS**Opinion No. 1443-49**

Hon. Charles R. Corlett,

March 16, 1949.

Board of County Commissioners cannot legally transfer moneys from the "Court House Building Fund" to the "County Road Fund" to meet an overdraft in said road fund.

BANKS AND BANKING—INSURANCE**Opinion No. 1444-49**

Hon. Frank E. Goldy,

March 17, 1949.

There is nothing in the banking laws of the State of Colorado to prevent State Banks from offering life insurance to borrowers, which insurance would pay off the loan in the event of the borrower's death, or pay his monthly installments if he be sick or injured.

STATE HIGHWAY DEPARTMENT**Opinion No. 1445-49**

Mr. Mark U. Watrous,

March 21, 1949.

(Approval of rights of way by Advisory Board)

Improper for Highway Department to proceed for acquisition of rights of way without authority of Highway Advisory Board.

Highway Department is entirely a creature of statute being a body corporate, with only such powers as the law affords.

Any round-robin method of procuring approval is contrary to law.

May request Governor to call meeting of Highway Advisory Board for its approval or disapproval.

INSURANCE**Opinion No. 1446-49**

Hon. Luke J. Kavanaugh,

March 21, 1949.

A foreign title insurance company may be admitted to do business in Colorado provided it can comply with the general insurance laws of the State.

CITIES AND TOWNS—RAILROADS—FIRE DISTRICT**Opinion No. 1447-49**

Joseph T. Callahan,

March 22, 1949.

Section 3, Chapter 238, S. L. 1947, applies to non-contiguous tracts of land. If railroad owns non-contiguous tract exceeding 20 acres with assessed valuation over \$25,000 consent must be given by it for inclusion in the district.

GAME AND FISH DEPARTMENT**Opinion No. 1448-49**

Game and Fish Commission,

March 23, 1949.

1. County Treasurer collects tax on goats, etc., and remits to State Treasury for deposit in Predatory Animal Fund. (Sec. 2, Ch. 198, S. L. 1947).

2. Sales receipts from beaver pelts to be handled pursuant to Ch. 136, S. L. 1941, and state's share of proceeds to be deposited with State Treasurer to credit of Game Cash Fund.

3. Licenses must be issued on blanks furnished by the Commission. (Sec. 173, Ch. 173, 1935 C.S.A.) and funds be remitted to the State Treasurer for deposit to the Game Cash Fund. (Sec. 157, Ch. 153, 1935 C.S.A., Sec. 205, Ch. 73, 1935 C.S.A.).

4. The advisability of transferring of the function of collecting to Revenue Department is a matter of policy and not of law but if done can only be accomplished by legislative action. (Subsec. 7(d), Sec. 32, Ch. 2, S. L. 1941).

PEACH BOARD OF CONTROL—OFFICERS**Opinion No. 1449-49**

Hon. Lee Knous,

March 25, 1949.

(Funds)

Funds of the Peach Board should be deposited with the State Treasurer. Expenditure of such funds must be made with the approval of the Director of Agriculture, with warrants properly made upon the State Treasurer. Paragraph B, Section 54, Chapter 106, 1935 C.S.A.

STATE AUDITOR—GAME AND FISH**Opinion No. 1450-49**

Mr. Myron C. McGinley,

March 26, 1949.

In view of Chapter 136, Session Laws 1941, the Game and Fish Commission are requested to sell and dispose of beaver pelts in the manner therein provided; licenses are to be issued pursuant to Section 173, 1935 C.S.A., as amended. Section 157, Chapter 153, 1935 C.S.A., provides that every officer, employee, etc., empowered to collect money for the state must deposit the same with the State Treasurer.

Chapter 2, Session Laws 1941, expressly excludes the Department of Revenue from collecting license fees, etc., for the Department of Revenue.

Until such time as the legislature provides for another means of collecting the license revenue of the Game and Fish Department, Section 157, Chapter 153, 1935 C.S.A., is controlling.

STATE TREASURER—PUBLIC FUNDS—SECURITIES**Opinion No. 1451-49**

Mr. Homer F. Bedford,

March 28, 1949.

State statutes provide that Treasurer is the custodian of certain securities which are purchased by state departments such as Employees Retirement Board, Industrial Commission, State Land Board, State A & M College, and others. Question—Is it the duty of the Treasurer to collect interest, or default, should he demand payment. Section 26, Chapter 3, 1935 C.S.A., directs that Treasurer "shall be the custodian of all moneys and securities of the state." No duty to collect interest or to demand payments.

Section 28, Chapter 36, 1935 C.S.A., directs that Treasurer upon written certification by the Retirement Board, shall invest the moneys belonging to this fund. Section 44(20) gives Retirement Board the power to promulgate general rules and regulations for management of fund. Section 419, Ch. 97, 1935 C.S.A. provides that Treasurer be custodian of this fund. Section 420 of this chapter provides it is duty of treasurer to collect interest earned on bonds, duty to collect mature bonds inferred.

Section 5, Chapter 38, 1935 C.S.A., makes Treasurer the custodian of all notes and mortgages, bonds and other securities of the Colorado State College. No duty to collect interest in absence of statute. Administrative duties are to be done by State Department.

PURCHASING AGENT ✕**Opinion No. 1452-49**

Mr. Lacy L. Wilkinson,

March 28, 1949.

Until such time as the Legislature expressly require the state or its several agencies to purchase and use license plates on state-owned automotive vehicles, Section 4, Article V, Colorado Constitution, exempts the property of the state from such form of taxation. *People v. Denver*, 84 Colo. 576; *Macky Est.*, 46 Colo. 79.

LEGISLATURE—SCHOOLS**Opinion No. 1453-49**

Hon. Neal D. Bishop,

March 30, 1949.

(H. B. 900)

In view of *Mayor v. Shattuck*, 19 Colo. 104; and Section 1, Art. XI, and Sec. 12, Art. XV, Colorado Constitution, there is sufficient precedent to warrant the conclusion that H. B. 900 if enacted into law would be sustained by the Court as not in violation of the Constitution.

It is my further conclusion that in view of *Stone v. Charleston*, 114 Mass., 214; *Vernon School Dist. v. Bd. of Education* (Calif.), 58 Pac. 175; 64 ALR 1336 - 1366, H. B. 900, if enacted into law, would not be an unlawful delegation of legislative powers to the voters in the area affected by the consolidation.

STATE BOARD OF ENGINEERS AND LAND SURVEYORS**Opinion No. 1454-49**

State Board of Examiners of Engineers and Land Surveyors,

March 30, 1949.

Section 4, Chapter 62, 1935 C.S.A., vests authority in the board to make all by-laws and rules, not inconsistent with law, needed in performing its duty.

Sections 1, 8, 9, 10, 11, 12, 13 and 15 of said chapter are complete in coverage and could be adopted by board in toto as rules and regulations governing admission of engineers and continuance under regulations.

Board may adopt any further regulations not in conflict with statute and not harsh and inequitable.

**UNIVERSITY OF COLORADO—PURCHASING AGENT
STATE AUDITOR**

Opinion No. 1455-49

Board of Regents,
March 31, 1949.

1. The University of Colorado, Psychopathic Hospital and Colorado General Hospital, are all spending agencies of the State of Colorado and as such are subject to the provisions of Section 20, Chapter 2, S. L. 1941.

2. The said institutions are spending agencies within contemplation of law and are therefore subject to audit by the State Auditor under and pursuant to Article 5, Chapter 2, Session Laws 1941. Sections 12-14, Article IX, Section 5, Article VIII, Colorado Constitution; *In re Macky Est.*, 46 Colo. 79; Ch. 169, S. L. 1919; Ch. 186, S. L. 1923.

**LEGISLATURE—VETERANS HOUSING
PUBLIC FUNDS**

Opinion No. 1456-49

Mr. Charles E. Bennett,
April 4, 1949.

The Legislature has both authority and legislative precedent to warrant the enactment of laws that will enable the investment of school funds, Workmen's Compensation Funds and Employment Retirement Funds in guaranteed securities of the character proposed in H. B. 969.

Section 3, Article IX, Colorado Constitution; *In Re School Fund*, 18 Colo. 195; Sec. 47, Chapter 146, 1935 C.S.A., as amended by S. L. 1945; Sections 401, 402, 420, Chapter 97, 1935 C.S.A.; *State Treasurer v. Industrial Commission*, 71 Colo. 133; Section 28, Chapter 36, 1935 C.S.A., as amended by Session Laws 1945; Section 5198, R. S. 1908; Ch. 122, S. L. 1917; Ch. 203, S. L. 1919.

COUNTIES—CIVIL SERVICE

Opinion No. 1457-49

Honorable Peter Culig, Jr.,
April 6th, 1949.

There are no provisions in statute or Constitution to prevent or to allow counties to set up civil service without proper legislative enactment.

LEGISLATURE—SEVERANCE TAX**Opinion No. 1458-49**

Honorable Robert D. Blackman,
April 5, 1949.

Question whether subject matter of H. B. 330 could be substituted for subject matter of H. B. 956. Opinion that this could not be done without endangering the constitutionality of H. B. 956 if it should be enacted. Section 17, Article V of the State Constitution,—“No law shall be passed but by bill.—*Amendments*. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.” Section 21, Article V. Bill may contain but one subject expressed in title.

GOVERNOR—PUBLIC FUNDS**Opinion No. 1459-49**

Mr. Elton K. McQuery,
April 5, 1949.

In view of Sec. 34, Art. V, Colorado Constitution, Sec. 2, Art. XI, Colorado Constitution, and In Re Relief Bills, 21 Colo. 62, neither the state nor its agencies can contribute funds or make donations to or lawfully subscribe to any agency over which it does not have absolute control. The Colorado Resources Development Council, Inc.

COSMETOLOGY—LEGISLATION—CONSTITUTIONAL LAW**Opinion No. 1460-49**

The Honorable Robert D. Blackman,
April 5, 1949.
(Home permanents)

House Bill No. 845 of the 38th General Assembly to amend Section 24 of Chapter 42 of the 1935 Colorado Statutes Annotated is unconstitutional and in violation of Sections 7 and 25 of Article II of the Constitution of the State of Colorado.

UNIVERSITY OF COLORADO—FORT LEWIS SCHOOL**Opinion No. 1461-49**

Hon. Robert L. Stearns,
April 5, 1949.

The matter of admitting students from the Fort Lewis School and the credits to be allowed to such students is a matter which the Board of Regents must decide as a matter of its discretion. (Sec. 90, Sec. 91, Ch. 38, 1935 C.S.A.; Sec. 14, Art. IX; Sec. 12, Ch. 169, 1935 C.S.A.)

JUSTICE OF PEACE**Opinion No. 1462-49**

Hon. Wilkie Ham,
April 5, 1949.

Re: Authority of a Justice of the Peace to issue a subpoena to witness residing outside of his county for a preliminary hearing or a misdemeanor trial before a Justice of the Peace. A witness in a civil case is not compelled to travel beyond county of residence either to testify or give deposition. Chapter 96, Section 34, 1935 C.S.A., provides method of procedure.

BUILDING CODES**Opinion No. 1463-49**

Hon. Raymond M. Foley,
April 6, 1949.

State does not have a building code as such, but exercises its police power in regulation of building construction through various departments.

1. Plumbing regulations delegated to State Board of Health by Ch. 126, 1935 C.S.A.
2. Regulations governing fire prevention in state and public buildings in Vol. 2, Ch. 26, 1935 C.S.A.
3. Regulations governing fire protection in factories delegated to Industrial Commission by Vol. 3, Ch. 97, 1935 C.S.A.
4. Authority given to Municipal Corporations to regulate fire protection given by Ch. 163, Vol. 4, 1935 C.S.A.
5. Health regulations delegated to State Board of Health by Ch. 78, Vol. 3, 1935 C.S.A.
6. Rules and regulations regarding electrical wiring and apparatus delegated to Industrial Commission by Ch. 97, Sec. 15 and 16, 1935 C.S.A.
7. Zoning Commission to regulate height, number of stories and size of buildings or other structures in cities and town by authority of Art. 2, Ch. 26, 1935 C.S.A.

Laws 1947, Ch. 163, page 364, amending laws of 1945, Ch. 90 authorizes Bd. of County Commissioners to adopt area building code. County Building Inspector to enforce regulations, L. 1945, page 244; L. 1947, page 366, Sec. 1. Case *Olmstead v. People*, 41 Colo. 32, defines "Frame Building."

SCHOOLS

Mr. Clarence Reckmeyer,
April 6, 1949.

Opinion No. 1464-49

An elector who paid a school tax in the year next preceding the election irrespective of whether such tax be on personal property or on real property, is entitled to vote in the school bond election. Sec. 197, Ch. 146, 1947 Supplement, C.S.A. 1935.

COUNTY OFFICERS—FEES AND SALARIES**Opinion No. 1465-49**

Mr. D. E. Johnson

April 6, 1949.

County Judge acting as County Court Clerk may not draw the additional salary permitted the Clerk.

**COUNTY OFFICERS—COUNTY COMMISSIONERS
HOSPITALS****Opinion No. 1466-49**

Mr. Joseph T. Callahan,

April 8, 1949.

County cannot grant or loan its funds to a private hospital corporation. Such an act by the Board or County Commissioners would be in violation of Sections 1 and 2 of Article XI of the Constitution of the State of Colorado.

COUNTY TREASURER—TAXATION**Opinion No. 1467-49**

Mr. Myron C. McGinley,

April 11, 1949.

Treasurer has no authority under revenue statutes to accept partial payment of taxes, which we assume is not the half payments provided for by law, and deposit proceeds therefrom in a bank account in his own name, with no official record of such payments in his office.

**MOTOR VEHICLE DEPARTMENT—
REVENUE DEPARTMENT****Opinion No. 1468-49**

Mr. W. F. Perkins,

April 11, 1949.

In view of Sec. 90, Ch. 16, 1935 C.S.A., the Motor Vehicle Supervisor or the equivalent officer is required to execute a good and sufficient bond to the State of Colorado in the sum of \$25,000.00 conditioned upon the faithful discharge of his duties.

**EMPLOYEES RETIREMENT ASSOCIATION—
SCHOOL DISTRICTS****Opinion No. 1469-49**

Mr. Raymond J. Heath,

April 11, 1949.

A school district having affiliated with Public Employees Retirement Fund under the Public Employees Retirement Act cannot

withdraw from such act by affirmative withdrawal, failure to make payments, or otherwise.

In case of attempted withdrawal by default or otherwise of a school district, it is incumbent on the Public Employees Retirement Board, in the interest of employees affected thereby to take all steps necessary to insure continued participation under the act by such school district.

LEGISLATION—COUNTIES—OIL AND GAS

Opinion No. 1470-49

Hon. James B. Radetsky,

April 11, 1949.

(Re S. B. 411 relating to oil, gas and other minerals in county lands).

H. B. 330 previously passed by house, S. B. 411 amended by striking "in the county." After amendment, entire S. B. 411 below enacting clause was stricken and amendment inserted essentially embodying language of H. B. 330. Question whether Constitution was violated. Colorado case of *People ex rel. Rhodes v. Fleming, et al*, held, "Legislature is invested with plenary power for all purposes of civil government, constitution only limitation on power." Amendment must be germane to title and body of bill,—which it was in this case.

STATE TREASURER—COUNTY TREASURER—LIQUOR— OLD AGE PENSION FUNDS

Opinion No. 1471-49

Mr. Homer F. Bedford,

April 12, 1949.

Question as to the responsibility of the State Treasurer to require County Treasurer to make remittance of 85% of county liquor licenses approved by County Commissioners for old age pension fund.

Section 32(b) of Chapter 3, 1935 C.S.A., creates Department of Revenue, vesting powers of collection and enforcement. Section 26 of Chapter 3, 1935 C.S.A.,—"State Treasurer,—shall have no tax collection or enforcement functions whatsoever."

**GOVERNOR—COLORADO A & M COLLEGE
PUBLIC FUNDS****Opinion No. 1472-49**

Mr. Elton K. McQuery,
April 12, 1949.

There is no warrant in law for paying the claim of W. E. Morgan for his transportation expenses from Washington, D.C. to Fort Collins in order for him to make an application in person for appointment as President of Colorado A & M College, altho it was advantageous for the Board to see and talk with Mr. Morgan in person.

GAME AND FISH**Opinion No. 1473-49**

Game and Fish Commission,
April 13, 1949.

Game and Fish Department cannot license park or lake under Section 94, Chapter 73, 1935 C.S.A., unless the park or lake is located "in whole on lands held by private ownership." (Section 92, Chapter 73, 1935 C.S.A.).

**SOIL CONSERVATION DISTRICTS—
WORKMEN'S COMPENSATION****Opinion No. 1474-49**

Mr. C. Ray Strain,
April 16, 1949.

See Chapter 97, Sections 287 (a) and 328, 1935 C.S.A., Districts are "Employers" under the fact. Contractors working in the Districts may or may not be "employes" under the Act, depending upon the facts of their employment.

GOVERNOR—CONTROLLER—UNIVERSITY OF COLORADO**Opinion No. 1475-49**

Mr. Elton K. McQuery,
April 18, 1949.

The State Controller is not required by law to approve the contracts of the University of Colorado proper. No opinion is expressed as to the institutions or agencies under its supervision and control and not an integral part of the University.

**STATE BOARD OF HEALTH—MEDICAL BOARD—
CHIROPRACTORS**

Opinion No. 1476-49

Dr. C. Robert Starks,
April 18, 1949.

Members of a professional group shall not constitute a majority of the State Board of Health. Medical doctors, osteopaths and dentists constitute a professional group, i.e., persons licensed to practice the healing arts.

STATE BOARD FOR VOCATIONAL EDUCATION

Opinion No. 1477-49

C. B. Noxon,
April 20, 1949.

1. There is no conflict between Chapter 87, S. L. 1937, and Chapter 170(a), passed in 1947 as to jurisdiction over apprenticeship training; (2) determination and definition of apprenticeship trades and apprenticeable trades is an administrative function of the State Board for Vocational Education; (3) the legal effect of the proposed amendment would give complete jurisdiction over definitions, approvals, etc., of apprentice-training to the State Board for Vocational Education.

**DEPARTMENT OF AGRICULTURE—STATE BOARD OF
STOCK COMMISSIONERS—LEGISLATION**

Opinion No. 1478-49

Mr. Ed Paul,
April 22, 1949.

House Bill 1000 which creates a State Department of Agriculture and transfers certain duties of the State Board of Stock Inspection Commissioners to the Department of Agriculture automatically transfers certain employees of the State Board of Stock Inspection Commissioners to the Department of Agriculture, and the latter department would be responsible for their salaries.

PUBLIC WELFARE

Opinion No. 1479-49

Mr. Earl M. Kouns,
April 22, 1949.
(Tuberculosis recipients)

Residence of tuberculous recipients required to be three or more years immediately preceding application as set forth in subparagraph (a), Section 41, Chapter 141, 1947 Cumulative Supplement of the 1935 C.S.A. Reversing in part Opinion No. 895-46.

GOVERNOR—INDUSTRIAL COMMISSION**Opinion No. 1480-49**

Mr. Elton K. McQuery,

April 27, 1949.

Ten per cent of the compensation funds may be considered as operating funds under the law. The remaining ninety per cent is a benefit fund in the nature of a trust and cannot become state funds in any sense of the word. (Sections 323 - 401, 403, 404, Chapter 97, 1935 C.S.A.) The ten per cent fund is within the purview of the Governor's Order No. 1 '49 instructing the Industrial Commission to "utilize completely the facilities and services available in the office of the State Purchasing Agent." The ninety per cent benefit does not come under the order and is expendable by the Commission pursuant to law, without the approval of the Purchasing Agent, Controller or Governor. *Ind. Com. v. Strong*, 77 Colo. 590; *People v. Field*, 66 Colo. 367.

STATE HIGHWAYS**Opinion No. 1481-49**

State Highway Department,

April 27, 1949.

In order to establish a public highway after abandonment of a railroad right of way as contemplated by Title 43, Section 912, U.S.C.A., it is necessary that the Public Highway be established within one year after abandonment by resolution of the County Commissioners or State Highway Advisory Board.

AGRICULTURAL COLLEGE—MOTOR VEHICLES**Opinion No. 1482-49**

James R. Miller,

April 28, 1949.

College does not have power to impose and collect nominal penalties from students and employees in control of traffic.

HIGHWAYS—CITIES AND TOWNS—COUNTIES**Opinion No. 1483-49**

The State Highway Department,

April 28, 1949.

State Highway Department has authority to contract with cities, counties or cities and counties for the construction of State Highways at joint expense.

**JUSTICES OF PEACE—PUBLIC UTILITIES COMMISSION
MOTOR VEHICLE FINES**

Opinion No. 1484-49

Mr. Ralph C. Horton,

April 28, 1949.

1. Under Ch. 96, Sec. 158, J. P. courts have jurisdiction over misdemeanors and so may punish violations of the various motor carrier acts.

2. Disposition of fines levied for violations of motor vehicle carrier law dependent on various facts,—court retains costs, fine itself goes to Policemen Pensions Fund (through State Treasurer), the County School Fund, or the County General Fund depending upon size of municipality wherein violation committed and other circumstances. Sections 518-521, Chapter 163, 1935 C.S.A. Sections 319, 343, 365, Ch. 16, 1935 C.S.A.

TAXATION—COUNTY TREASURER

Opinion No. 1485-49

Mr. William T. Jackson,

April 28, 1949.

(Redemption part of land sold as a unit at tax sale)

Under Colorado statutes land sold as a unit at tax sale must be redeemed as a unit, provided, however, where a portion of this land is purchased subsequent to the sale and issuance of the tax certificate, the owner of the portion purchased can redeem the portion purchased. Provided, further, that the issuance of the redemption certificate is to be made under the sound discretion of the County Treasurer.

**MINOR CHILDREN
ADOPTION LAWS**

Opinion No. 1486-49

Hon. Elizabeth Pellett,

April 29, 1949.

1. S. B. 605, being an act concerning relinquishment of minor children, supersedes 1925 Maternity Home Act,—Section 146, Chapter 78, 1935 C.S.A.

2. Section 41, Chapter 33, 1935, C.S.A. is repealed by Section 19 of S. B. 604 (an act concerning adoption). S. B. 604 supersedes other laws in conflict therewith.

STATE BOARD OF AGRICULTURE**Opinion No. 1487-49**

Mr. James R. Miller,

May 2, 1949.

Resignation of President of State Board of Agriculture written in the following terms, "I hand you for your acceptance my resignation from the State Board of Agriculture, effective as of this date," is not effective until it has been formally accepted by said Board.

BANKS AND BANKING**Opinion No. 1488-49**

Hon. Frank E. Goldy

May 2, 1949.

An office of a bank maintained away from the main place of business of said bank which is restricted to the cashing of checks and the receiving of deposits is not a branch bank within the meaning of Section 61 of Chapter 18, 1935 C.S.A.

MARRIAGE LAWS**Opinion No. 1489-49**

Hon. Archie R. Moore,

May 2, 1949.

First cousins may marry under Colorado law. Chapter 107, Section 2, as amended, supersedes Chapter 48, Section 204.

COUNTIES—PUBLIC FUNDS—HEALTH**Opinion No. 1490-49**

Mr. F. W. Azar,

May 2nd, 1949.

1. Warrants and expenditures for district boards of health shall be issued upon the County Treasurer after approval by the Board of County Commissioners as per Chapter 78, Section 25(13), 1935 C.S.A.

2. The Board of County Commissioners may not by-pass and there shall be no direct dealings between the District Board of Health and the County Treasurer.

BANKS AND BANKING**Opinion No. 1491-49**

Hon. Frank E. Goldy,

May 2, 1949.

Establishment of a central point for delivery of deposits by armored motor service for distribution by bank tellers representing

the various Denver banks does not constitute "branch" banking.

Establishment of stations throughout Denver where deposits could be received may constitute branch banking and the Bank Commissioner should not sanction such a procedure until its legality is approved by the courts of this state.

LEGISLATION

Opinion No. 1492-49

Hon. Lee Knous,

May 2, 1949.

Where enacting clause was inadvertently omitted from the enrolled bills and it clearly appears that same was due to clerical error after proper passage in both houses, Governor may order insertion of required clause even after bill has been filed in the office of the Secretary of State.

STATE TREASURER—CIVIL SERVICE COMMISSION GOVERNOR—UNIVERSITY OF COLORADO STATE HOSPITALS

Opinion No. 1493-49

Mr. Homer J. Bedford,

State Civil Service Commission,

Mr. Elton K. McQuery,

May 3, 1949.

1. That the constitutional provisions (Sec. 14, Art. IX), giving to the board of regents "exclusive control and direction of all funds of, and appropriations to, the university," is limited to the funds and appropriations of the university proper, and does not extend to any outside institutions or agencies over which the board of regents has been granted general supervision and control by the legislature;

2. That the funds and appropriations made to the Psychopathic Hospital and Colorado General Hospital are funds in the hands of the state treasurer, as treasurer of the state, and for which his bondsmen are responsible, and not as a mere custodian thereof; and are subject to withdrawal from the treasury upon voucher and warrant in regular manner;

3. That the employees of both the Psychopathic Hospital and the Colorado General Hospital are within the classified civil service of the state, except such as may be found to be "officers and teachers in educational institutions not reformatory or charitable in character."

STATE RACING COMMISSION OF COLORADO**Opinion No. 1494-49**

Racing Commission of Colorado,

May 3, 1949.

(Disposition of funds from "breaks" or "breakage").

A licensee under the Racing Act is entitled to 15% of the gross receipts of any pari mutuel wagering conducted under the act, but nothing in excess thereof, and any sums accruing from the "breaks" or any other source over and above said 15%, accrues to the state and not to such licensee. (Sec. 11, Ch. 256, S. L. 1947).

SCHOOLS**Opinion No. 1495-49**

Mr. Peter F. Bossie,

May 7, 1949.

A resolution allowing the President of the School Board mileage, per diem and expenses would be contrary to the provisions of paragraph 1, Section 89, Chapter 149, 1935 C.S.A., which makes it unlawful to pay any member but Secretary of Board.

INDUSTRIAL COMMISSION OF COLORADO**Opinion No. 1496-49**

Mr. H. E. Dill,

May 9, 1949.

(Women's Eight Hour Law)

Under Sections 1 and 2, Session Laws of Colorado 1913, page 692, women shall only be employed eight hours per calendar day.

SCHOOLS**Opinion No. 1497-49**

Mr. Jess W. Waggoner,

May 9, 1949.

Ruled that it is legal to have write-in campaigns in a first or second class district. *Littlejohn v. People*, 52 Colo. 217. Sec. 79, Chapter 146, 1935 C.S.A. Person receiving greatest number of properly cast votes is the person elected to office, even though such person has not filed his intention.

NOTARY PUBLICS**Opinion No. 1498-49**

Mr. John W. Ramey,

May 9, 1949.

Notaries Public may take acknowledgments and perform their official functions anywhere within the State of Colorado.

ELECTIONS—SANITATION DISTRICTS**Opinion No. 1499-49**

Mr. Thomas F. Beck,

May 9, 1949.

An elector to vote upon a petition which seeks to establish a sanitation district is subject only to the same qualifications he would be subject to in order to vote in a general election.

An elector to elect sanitation district directors, subsequent to the establishment election, must be a taxpaying elector.

ELECTIONS**Opinion No. 1500-49**

Mrs. R. M. Bundy,

May 9, 1949.

(Bond issue for sewage system)

1. Only qualified voters would be eligible to vote on election authorizing bond issue for sewage system. Qualifications are set forth in Chapter 59, Section 12, 1935 C.S.A.

2. Notice of election, publication, conduct of such election, etc., should conform as nearly as possible with provisions of laws governing elections of municipal officers in cities and towns.

**LEGISLATION—SPECIFIC OWNERSHIP TAX
REVENUE DEPARTMENT****Opinion No. 1501-49**

Mr. William F. Perkins,

May 10, 1949.

1. House Bill No. 958, 37th General Assembly does not affect collection of specific ownership tax. 2. Awarding motor vehicles to veterans under Public Law 663.

**ADMINISTRATIVE CODE OF 1941
LEGISLATION
AUDITOR****Opinion No. 1502-49**

Hon. Myron C. McGinley,

May 11, 1949.

(Administrative Code of 1941 as amended and penalties thereunder)

Subsection (p) of Section 3, including the Amendment of 1947, and the penalties therein contained are not limited to the Amendment or Chapter 118 only.

SECURITIES**Opinion No. 1503-49**

Mr. Curtis White,
May 13, 1949.

(1) Must be registered unless an officer of the issuer.

(2) This rule applies whether offering or sale is "public" or "private."

SOIL CONSERVATION BOARD**Opinion No. 1504-49**

Mr. Kenneth W. Chalmers,
May 13, 1949.

(Funds disbursed)

The Board is authorized to administer and to disburse funds made available to it. (Section 3 of Act). No conflict with Section 4 of 1949 Act setting up State Agricultural Commission and authorizing it to administer and disburse funds made available to it for purpose of assisting soil conservation districts in their work.

SCHOOLS**Opinion No. 1505-49**

Mr. N. N. Jones,
May 14, 1949.

While not specifically prohibited, it would be ill-advised and against public policy for school board to hire daughter and wife of president of the board.

LEGISLATURE—ELECTIONS—GOVERNOR**Opinion No. 1506-49**

Mr. L. G. Machamer,
May 17, 1949.

In case of vacancy in the House of Representatives, the Governor may issue a writ for a special election at any time after the vacancy occurs. In the event he does not do so, the vacancy remains until the next general election.

**STATE BOARD OF MEDICAL EXAMINERS—
BASIC SCIENCE ACT****Opinion No. 1507-49**

State Board of Medical Examiners,
May 17, 1949.

One licensed to practice medicine in the State of Colorado whose license has been revoked because of non payment need com-

ply with no greater regulations or higher qualifications than were necessary at the time of his original licensing. Provided, however, the revocation is for non payment of the annual registration fee.

ABSTRACTORS

Opinion No. 1508-49

Mr. Claud L. Goff,
May 17, 1949.

1. When a statute is amended setting up additional qualifications for board members, the original members remain on the board unless they no longer meet those qualifications.

2. A statute in order to give the Governor authority to appoint an entire new board must be specific.

SCHOOLS

Opinion No. 1509-49

Mrs. Nettie S. Freed,
May 19, 1949.

(H. B. 900—School District Reorganization Act)

1. Meetings of a County Committee may be held at a time and place specified by the committee at a previous meeting. Other meetings may be held upon written notice mailed by secretary. Person entitled to attend such meeting may waive notice of meeting.

2. "Majority" means "more than half of any total" and not simply a greater number.

3. President of a joint school district, which includes parts of two counties, should be notified of the organization meeting by both county superintendents, but may be elected only to the county committee of the county in which he resides.

SECRETARY OF STATE—CONTROLLER—GOVERNOR

Opinion No. 1510-49

Mr. George J. Baker,
May 19, 1949.

In view of the powers granted the controller under Chapter 118, S. L. 1947, the controller may recommend transfers between appropriations to become effective upon approval by the Governor.

SCHOOLS

Opinion No. 1511-49

Miss Willa Zick,
May 19, 1949.

H. B. 636 relating to distribution of State School Equalization Fund is not retroactive, it applies only to future and not to the past. H. B. 900 regarding School District Reorganization does not provide for compulsory reorganization of school districts. Each bill held to be constitutional.

CITIES AND TOWNS**Opinion No. 1512-49**

Mr. David W. Sarvas,

May 20th, 1949.

Conveyance of real estate made by towns or cities prior to April 4th, 1947, signed and acknowledged by the mayor of such town or city and attested by the clerk and bearing the official seal of such town or city, convey good title made so by Section 3, Chapter 159, 1947 S. L. Conveyances made by town or city subsequent to April 4th, 1947 must be made in compliance with Section 1, Chapter 159, 1947 S. L., or with Section 11, Chapter 163, 1935 C.S.A.

The words "Resolution" and "Order" when used by Board of Trustees of town or city in connection with sale of real estate are synonymous, either can be used. However, the statutes use the word "Order" and this would be preferable.

SCHOOLS**Opinion No. 1513-49**

Hon. Herrick S. Roth,

May 20, 1949.

1. A teacher in order to have permanent tenure under H. B. 571, the Teacher Tenure Act of Colorado, must satisfy the following conditions.

- (1) Employment for three consecutive school years;
- (2) Re-election after the passage of the Act, that is, the effective date, August 12, 1949. There can be no presumption of re-employment of teachers, not under permanent tenure, as stated in Section 3(c) of the Act since the provisions of that sub-section cannot become operative until April 15, 1950.

2. A teacher now employed in any district cannot assume continuing employment for the coming school year (as of September 1, 1949) because he was not notified to the contrary on April 15, 1949, since the provision relating to April 15, cannot become operative until April 15, 1950.

SECURITIES**Opinion No. 1514-49**

Mr. Curtis White,

May 23, 1949.

Securities registration—coverage when one corporation is the trustee for ten separate trust funds, only one registration *may be* necessary.

**COLORADO STATE HUMANE SOCIETY—
FEES AND SALARIES
JUSTICE OF THE PEACE**

Opinion No. 1515-49

Ernest Olinger,

May 25th, 1949

A fine collected by a Justice of the Peace against one properly convicted of cruelty to animals must be paid over to the Treasurer of the Colorado State Humane Society.

SCHOOLS

Opinion No. 1516-49

Ms. Doris R. Plummer,

May 18, 1949.

(Motor fuel excise refunds)

The motor fuel excise tax applies to all persons including political subdivisions of the state (Section 381, Chapter 16, 1935 C.S.A.). Refunds are permitted only to certain persons, but not including school districts or other political subdivisions of the state. (Section 3(c), Chapter 16, 1935 C.S.A.).

**COLORADO STATE REFORMATORY—
PARDONS AND PAROLES
GOVERNOR**

Opinion No. 1517-49

Hon. Lee Knous,

May 18, 1949.

Until necessary personnel is appointed under House Bill No. 149, it is impossible to revoke the parole of any paroled inmate.

SCHOOLS

Opinion No. 1518-49

Mr. Robert Delaney,

May 19, 1949.

(Bond indebtedness)

Question: How can Tax Commission approve \$35,000.00 bond issue limitation instead of the \$27,000.00 limitation under Section 175, Chapter 146, 1935 C.S.A., when it appears that previous issues have been made to an extent that equaled 6% of the assessed valuation?

By 1948 increased valuation as shown by county records would allow district to issue additional bonds and still remain in 6% limitation.

Primary question: Whether the sinking fund, or any part thereof is a deductible item in making the determination.

The view is well supported that sinking fund is deductible in computing outstanding indebtedness in determining whether proposed bond issue was unconstitutional as exceeding the constitutional debt limitation.

Section 125 A.L.R., Page 1394 and citations.

STATE BOARD OF PHARMACY—PUBLIC FUNDS

Opinion No. 1519-49

Mr. Ralph E. Kemp,

May 25, 1949.

(Illegal vending machines)

The District Attorney may under his power of "abatement of nuisance" ask for an order of court for the destruction of illegal prophylactic vending machines. Money recovered from such machines would be turned over to the County Treasurer for the General County School Fund upon order of Court. Fines recovered in such cases should be turned over to the State Board of Pharmacy.

SCHOOLS

Opinion No. 1520-49

Mrs. Nettie S. Freed,

May 26, 1949.

(School District Reorganization Act of 1949, "taxpaying elector").

The Specific Ownership Tax on motor vehicles, trailers, semi-trailers (Section 108, Chapter 16, 1935 C.S.A., as amended) is primarily a property tax although with some characteristics of a privilege tax sufficient to render the payer of the tax a "taxpaying elector" eligible to vote at elections held under House Bill 900, the School District Reorganization Act of 1949. One who pays the tax on an automobile only is a taxpaying elector and is eligible to vote upon the reorganization of school districts as provided in Section 22 of said House Bill No. 900. If the certificate of title is in the name of the husband, the wife may not vote in said election. While a specific ownership tax on motor vehicles, trailers and semi-trailers is primarily a property tax paid on personal property, it is not a "school tax" paid within the district within the contemplation of Section 7, Article 11 of the State Constitution and of Section 121 and Sections 128 and 129, as amended, Chapter 146, 1935 C.S.A. so as to make the taxpayer eligible to vote in the school bond election.

STATE BOARD OF LAND COMMISSIONERS**Opinion No. 1521-49**

State Board of Land Commissioners,
May 27, 1949.

Under Section 2, Chapter 204, 1937 Colorado Session Laws, it is the duty and requirement that the State Board of Land Commissioners of the State of Colorado administer and have under its control, develop and maintain all state parks, state monuments and state recreation areas and as provided in Section 1, Chapter 300, 1947 Session Laws, the title to all property acquired by the State Historical Society vests in and belongs to the State of Colorado when accepted by the society.

CIVIL SERVICE—SUPREME COURT EMPLOYEES**Opinion No. 1522-49**

Mr. James A. Noonan,
May 27, 1949.

(Position of Assistant Secretary of the State Board of Law Examiners)

The position of Assistant Secretary to the State Board of Law Examiners does not require certification by the Civil Service Commission and the approval of the Governor. *People v. Morley*, 67 Colo. 331. *Section 27, Ch. 46, 1935 C.S.A.*

LEGISLATURE**Opinion No. 1523-49**

Mr. James A. Noonan,
June 1, 1949.

Re: Whether or not absence of the safety clause defers the effective date of all legislative bills approved by the Governor, including appropriation bills. There should be a special determination in all cases.

SCHOOLS**Opinion No. 1524-49**

Mrs. Nettie S. Freed,
June 1, 1949.

School districts may convert property not needed for district school purposes into a community recreation center and support it thereafter from district school funds, either independently or in cooperation with other agencies. Chapter 251, S. L. 1947. Such action by a school district is not contrary to Section 2, Article XI of the State Constitution.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**Opinion No. 1525-49**

Mr. Raymond J. Heath,

June 3, 1949.

An employee of the State Government who has withdrawn his accumulated deductions and interest from the Retirement Fund may be reinstated to full rights and benefits as of the date he or she first became a member of the Retirement Association if (1) the employee re-enters the employment of the State within five years from the date of separation, and (2) the employee repays the Retirement Fund the full amount withdrawn together with amount equal to such monthly salary deductions during the period of non-employment by the State with interest at 4% compounded semi-annually.

It is not necessary that the employee apply for reinstatement immediately after reentering into the employment of the State.

SCHOOLS**Opinion No. 1526-49**

Mrs. Nettie S. Freed,

June 3, 1949.

(Teachers Tenure Act)

The Teacher Tenure Act of Colorado does not include Superintendents of school districts subject to the act but does include all classroom teachers, supervisors, principals, assistant superintendents and all other administrative personnel employed by the district and required to have had teachers' certificates at the time of their original employment.

SCHOOLS**Opinion No. 1527-49**

Hon. William R. Welsh, Jr.,

June 3, 1949.

Where a city leases a building and a certain amount of ground to be used for school purposes, the boundary of that leased parcel of land should be the same as though the school owned the land and distance from the school to a tavern should be measured from the leased boundary of the school to the tavern and if the distance is five hundred feet, then certainly it would come within the law.

STATE BOARD OF LAND COMMISSIONERS**Opinion No. 1528-49**

State Board of Land Commissioners,

June 3, 1949.

(Re: State owned mineral rights on City of Trinidad Airport property)

Under powers and authority granted by constitution and statutes, the State Board of Land Commissioners may issue letter of guarantee.

SOIL CONSERVATION DISTRICT**Opinion No. 1529-49**

Mr. Ernest Lyckman,

June 7, 1949.

Soil Conservation District may purchase water rights. (S. B. 163).

SMALL CLAIMS COURT—CORPORATIONS**Opinion No. 1530-49**

Mr. Clark W. Kinzie,

June 7, 1949.

Chapter 159, 1939 S. L. (Ch. 149A, 1935 C.S.A.) which prohibits any other person than the plaintiff and defendant from appearing in Small Claims Court, makes no distinction between individuals and corporate plaintiffs and defendants. If an attorney is actually the agent or employee of a corporation and appears as such, and not as an attorney, the provisions of the act would not be contravened.

CITIES AND TOWNS—PUBLIC UTILITIES**Opinion No. 1531-49**

Mr. Mark U. Watrous,

June 7, 1949.

Under the terms of the franchise given by the City of Greeley to the Home Gas and Electric Company, the said Company is not relieved from the expenses of making changes in their facilities should the city require changes in the streets for traffic purposes.

RESTAURANTS—LIQUOR—LOTTERIES**Opinion No. 1532-49**

Mr. J. Glenn Donaldson,

June 8, 1949.

An amusement device or shuffleboard held for gain or profit in a restaurant is not a business as such and therefore is not prohibited by Section 18, Paragraph "N," Chapter 89, 1935 C.S.A.

COUNTIES—COURTS—FEES AND SALARIES**Opinion No. 1533-49**

Mr. Kenneth A. Johnson,

June 8, 1949.

The fifty cents charge per page for photographic copies may not be made when the copies are furnished by the party ordering the same.

STATE BOARD OF LAND COMMISSIONERS**Opinion No. 1534-49**

State Board of Land Commissioners,

June 8, 1949.

Town's assessment of charge for garbage collection against a state office where said office has no accumulation of garbage and no need for such service, held to be unconstitutional and unreasonable.

SCHOOLS**Opinion No. 1535-49**

Mrs. Nettie S. Freed,

June 10, 1949.

(Fiscal Year)

In the absence of specific provision of law, districts under a population of 30,000 may adopt whatever fiscal year meets with their convenience.

Sec. 3, Ch. 168, S. L. of Colo. 1945, provides fiscal year of local governments, which term includes school districts shall be as may be fixed by law and that such fiscal year shall constitute the budget year of the local government.

Sec. 3, Ch. 193, S. L. 1945, provides for annual audits of school districts which spend more than \$10,000 annually, but that audit may be at more frequent intervals.

OFFICES—LIQUOR—CONSTITUTIONAL LAW**Opinion No. 1536-49**

Mr. William A. Craig,

June 10, 1949.

Office of police magistrate is incompatible with owning and operating a liquor store.

INDUSTRIAL COMMISSION**Opinion No. 1537-49**

Mr. H. E. Dill,

June 10, 1949.

Labor, interpretation of Sec. 6, Paragraph 1 of the Colorado Labor Peace Act of 1943, Ch. 131, Session Laws 1943.

Three-fourths or more of his employees as set forth in the Act, interpreted to mean that three-quarters of the employees who actually vote, vote affirmatively in favor of such agreement.

REVENUE DEPARTMENT**(Sales and Use Tax)****Opinion No. 1538-49**

Mr. W. F. Perkins,

June 13, 1949.

1. Materials purchased by a contractor and built into or merged in the structure are an integral part of the entire contract and then disposed of as a completed work to the owner are subject to the payment of a sales or use tax (*Craftsman v. Carpenter*, 111 Colo. 1).

2. Sec. 15, Ch. 144, 1935 C.S.A., provides for sales tax exemptions or refunds. Exemptions are obtained by those entitled thereto by purchasing in such a manner as to clearly indicate to the taxing agency that the purchaser of the goods named in the invoice is the exempted person. In case a refund is claimed, and it appears that "the same person who purchased the goods and paid the tax thereon, as shown in the invoice of the sale thereon," is the claimant and comes within the class named in Sec. 15a of said Chap. 144, then refund may be made of the sales or use tax collected.

**STATE BOARD OF HEALTH—AGRICULTURE
DEPARTMENT****Opinion No. 1539-49**

Dr. Roy L. Cleere,

June 13, 1949.

(Licensing authority of Board of Health and Agriculture Department)

1. The licensing authority for plants operating milk and milk products for fluid consumption is in the Board of Health.

2. The licensing authority for plants featuring strictly manufactured products is in the Department of Agriculture.

3. The licensing authority for combination plants, that is, plants which feature manufactured milk products and milk or milk products for fluid consumption is in the Department of Health.

4. The Department of Health is empowered to establish sanitary regulations for all types of plants but should cooperate in enforcement procedures with the Department of Agriculture.

5. Rules and regulations for dairy plants of all types should be adopted by the Board of Health.

6. Licenses for fluid milk and manufacturing plants should be issued on a fiscal year basis.

7. A regulation which purports to prevent raw milk from being sold after June 1, 1949 is valid, if reasonable, and it bears direct relation to the problem of Health.

8. Both the Agriculture Department and the Department of Health should issue *permits* for temporary operation and *license* for permanent operation after inspection.

COMMISSIONER OF AGRICULTURE

Opinion No. 1540-49

Mr. Homer Pearson,

June 15, 1949.

1. The mill levy funds authorized by Sec. 143, Ch. 160, 1935 C.S.A., remove the funds of the State Board of Stock Inspection Comms. (Sec. 1, Ch. 183, S. L. 1943; Sec. 9(g), H. B. 1000, S. L. 1949; Sec. 12, H. B. 777, S. L. '49).

All fees, fines and other income derived from State Veterinary services shall be deemed to belong to the State Department of Agriculture on and after April 1, 1949. (Sec. 9(g), H. B. 1000, S. L. 1949).

2. Where veterinary inspection fees are not fixed by statute the Department of Agriculture has the power to annually fix reasonable inspection and license fees. (Sec. 4(5), H. B. 1000) and to dispose of said fees pursuant to Section 13 of said H. B. 1000.

3. Sec. 9(d), H. B. 1000, S. L. 1949, transfers to the Department of Agriculture all powers and duties imposed by Ch. 74, S. L. 1943, limited by the requirement that all seed samples taken by the Department of Agriculture are to be tested by the seed testing laboratory in the Experiment Station at Fort Collins and paid for by the Department out of funds appropriated for the purpose.

4. Fees collected by the Department are to be disposed of pursuant to Sec. 13, H. B. 1000, S. L. 1949, and in the event fee funds are inadequate to meet appropriation, recourse must be had to Sec. 5, Ch. 2, S. L. 1941 and Sec. 12(a)(9), Ch. 118, S. L. 1947.

**COLORADO STATE HOSPITAL—HOME FOR MENTAL
DEFECTIVES AT RIDGE OR GRAND JUNCTION—
PSYCHOPATHIC HOSPITAL**

Opinion No. 1541-49

Mr. Myron C. McGinley,

June 15, 1949.

Procedure for collecting claims at institutions for care of mental defectives outlined as follows:

Colorado State Hospital

1. Claims at the Colorado State Hospital are to first be paid from the estate of the insane or mentally incompetent person.
2. If no individual estate, other than by relatives and next of kin in the rank listed in Sec. 2, Ch. 124, 1935 C.S.A.
3. On failure of 1 and 2, the State assumes the liability for care of its insane ward.

Home for Mental Defectives at Ridge or Grand Junction

1. The estate of the inmate is first liable. (Secs. 9 and 52, Ch. 105, 1935 C.S.A.)
2. The parents, if financially able, are next liable for the payment of the account. (Section 52, Ch. 105, 1935 C.S.A. as amended).
3. The county from which committed is next liable (Sec. 9, Ch. 105, and Sec. 3, Ch. 124, 1935 C.S.A.).

Psychopathic Hospital

1. Voluntary patients shall pay in advance. (Secs. 69, 71, and 75, Ch. 105, 1935 C.S.A.).
2. Voluntary public patients, committed public patients, and part pay patients to be paid from Psychopathic Fund. (Sections 70, 71, 75 and 82, Chapter 105, 1935 C.S.A.).

SCHOOLS

Opinion No. 1542-49

Hon. Herrick S. Roth,

June 15, 1949.

(Teachers' Retirement)

H. B. 243 concerning pensions to teachers applicable to School District No. 1, City and County of Denver.

1909 S. L., as amended, Secs. 250-254, Ch. 146, 1935 C.S.A.

Sec. 251, Ch. 146, 1935 C.S.A., as amended by Sec. 1, Ch. 285, S. L. 1947.

NEWSPAPERS**Opinion No. 1543-49**

Mr. Mansur Tinsley,
June 16, 1949.

A newspaper published in one county and printed in another complies with Section 3, Chapter 130, 1935 C.S.A., and is a legal publication.

PUBLIC UTILITIES**Opinion No. 1544-49**

Mr. Ralph C. Horton,
June 16, 1949.

1. Highway ton mile tax (under Commercial Carrier Act) applies to property processed before sale.
2. Owners-haulers transporting their own property to a plant for processing before re-sale are subject to the Commercial Carriers Act.

STATE BOARD OF EXAMINERS IN BASIC SCIENCES**Opinion No. 1545-49**

Mrs. Esther B. Starks,
June 20, 1949.

1. In order to permit reciprocity to waive examination in the Basic Sciences, the statute must be strictly construed.
2. Board of Basic Science Examiners may deny reciprocity if qualifications for taking and passing the Basic Science Examination in the state seeking reciprocity are less than those of the State of Colorado.

INTOXICATING LIQUORS—SECRETARY OF STATE**Opinion No. 1546-49**

Mr. George Baker,
June 20, 1949.

(Wholesale discount on beer)

Rebates which are not given upon the understanding or agreement to deal exclusively with one specific wholesaler would not violate the Colorado Liquor Code, Chapter 8, Sections 7, 8 and 14, 1935 Colorado Statutes Annotated.

STATE PENITENTIARY**Opinion No. 1547-49**

Roy Best, Warden,

June 20, 1949.

When a prisoner secures his liberty through an illegal or void order, it is to be treated as an escape, and such escaped prisoner may be re-arrested and be compelled to serve out his original sentence, even though the time in which the original sentence he should have served has expired.

DISTRICT ATTORNEY—COSMETOLOGY BOARD**Opinion No. 1548-49**

Ms. Norma Moon,

May 17, 1949.

It is the duty of the district attorney in the district in which a violation of the act has occurred to consider and file a criminal prosecution thereunder. Therefore, interested persons or law enforcement officers having knowledge of violations of the act, such as performing beauty services without a license, should present such facts to the local district attorney. Then if a criminal prosecution is filed the question of "conviction" would be determined by a judge or jury, subject to the right of appeal.

ABSTRACTER'S BOARD**Opinion No. 1549-49**

Donald B. Graham, Secretary-Treasurer,

June 20, 1949.

Finding under H. B. 584 by Board of Abstracter's Examiners as to the public convenience and necessity for issuance of an abstracter's license is conclusive as to the board. No opinion as to constitutionality of the act expressed.

INTOXICATING LIQUORS—RESTAURANTS**Opinion No. 1550-49**

Mr. Leon H. Snyder,

June 23, 1949.

1. There is no statute prohibiting County Commissioners from granting a liquor license to a person who is not already engaged in the liquor business but who anticipates installing restaurant equipment if he obtains a liquor license—final decision, how-

ever, contingent upon final inspection by the Secretary of State immediately prior to the restaurant's opening for business.

2. Person holding a restaurant license cannot restrict patronage to members of a private club but must serve to all seeking service unless said person or persons are drunk or disorderly or otherwise conduct themselves in such a manner as to be detrimental to the health and welfare of other patrons.

COUNTY CLERKS—PUBLIC RECORDS—COURTS

Opinion No. 1551-49

Mr. C. B. Hawley,
June 27, 1949.

The word "sealed" as used in S. B. 604 and S. B. 605 should be construed in its ordinary sense as meaning to be fastened so that the seal, or the band, wrapper, envelope or file must be torn or broken to remove the contents thereof and does not require that the Court seal the file by placing upon it a wafer, wax or some other substance upon which the Judge must impress a seal.

CITIES AND TOWNS—POLICE

Opinion No. 1552-49

Mr. Maurice W. Konkel,
June 29, 1949.

(Police jurisdiction inside public parks)

The powers and duties of city police officers extend throughout the entire city, *including public parks*.

PUBLIC UTILITIES

Opinion No. 1553-49

Ralph C. Horton,
June 1, 1949.

(Interpretation of Section 346, Chapter 16, 1935 C.S.A. concerning transportation of farm products in vehicles owned by farmer).

Chicks and poults are farm products and a hatchery which buys eggs and poults, then transports poults to its consumers in its own vehicles, would not be required to have a PUC permit.

INTOXICATING LIQUORS—CITIES AND TOWNS CONSTITUTIONAL LAW

Opinion No. 1554-49

Mr. Fred E. Sisk,
July 11, 1949.

1. Since the state statute (Section 17(d), Chapter 89, 1935 C.S.A.) sets forth the hours during which liquor may be sold, a

city of the second class may not prohibit the sale of intoxicating liquors on Sunday in contravention of said statute.

2. Final determination of constitutionality of existing ordinance or statute rests solely with the courts of the state.

STATE BOARD OF COSMETOLOGY

Helen M. Scott,
July 11, 1949.

Opinion No. 1555-49

The State Board of Cosmetology may renew the certificate of a cosmetology school proprietor who, because of circumstances beyond her control, has been forced out of business and remains out for a period of seven months, providing said applicant is still qualified to operate a school. Section 26, Chapter 42, 1935 C.S.A., as amended by H. B. 863, 37th General Assembly.

GAME AND FISH

Mr. George A. Dove,
July 12, 1949.

Opinion No. 1556-49

Age limits for hunting and fishing licenses are provided for by Chapter 73, Section 175(1), and no exemption is given to adults over the age of 70.

DEPARTMENT OF EMPLOYMENT SECURITY

Mr. Bernard E. Teets,
July 12, 1949.

Opinion No. 1557-49

(Employer—contribution refunds)

Under Section 14(c) of the Colorado Employment Security Act, where there is a specific provision of two years in which an employer may recover refunds for contributions erroneously paid to the Unemployment Compensation Fund, he may recover such refund if he applies within the specific provision of the two-year statute of limitation.

AGRICULTURAL DEPARTMENT

Mr. Paul W. Swisher,
July 12, 1949.

Opinion No. 1558-49

(Marketing Orders)

If a properly promulgated order is not terminated as is provided by statute and a subsequent marketing order is promulgated which purports to supersede portions of the former order, the first order would remain in effect. It would be unnecessary to terminate the subsequent order since it would be void from the beginning.

EMPLOYEES' RETIREMENT FUND**Opinion No. 1559-49**

Mr. James A. Noonan,
July 12, 1949.

Since the Legislature—through H. B. 154, S. L. 1949—included judges of district courts within the Retirement Act but failed to appropriate funds to match deductions for same—the Retirement Board could make salary deductions from judges only when expressly authorized so to do. The funds could be turned over to the Retirement Fund only upon express condition that until such times as the Legislature sees fit to contribute by proper appropriation, the fund must be treated as a trust fund. In the event the Legislature fails to appropriate, funds must be returned.

AUDITOR—GAME AND FISH DEPARTMENT**Opinion No. 1560-49**

Mr. Myron C. McGinley,
July 12, 1949.

(Claims for telephone calls from private residences)

Under provisions of Chapter 73, 1935 C.S.A., as amended, the Game and Fish Commission, or in the interim between meetings, the Director, has wide discretion in management of the department and expenditure of funds appropriated thereto. Determination as to whether or not certain telephone calls from private residences were made in line of official state business would come within such discretionary powers.

PARDONS AND PAROLES—EXECUTIVE**Opinion No. 1561-49**

Hon. Lee Knous,
July 12, 1949.

The Governor can commute a life sentence to any amount ten years and above, but the prisoner will not be eligible to discharge or parole until he has served at least ten calendar years.

GAME AND FISH

Mr. Gilbert N. Hunter,
July 13, 1949.
(Claims)

Opinion No. 1562-49

Claimant must file within thirty days proof of loss on forms prescribed by the Commission, and notify the Commissioner within 10 days of his loss and claim for damages. Sec. 2, Ch. 98, 1931 S. L. Right to damage is a matter of legislative grace.

SCHOOLS

Doris R. Plummer,

Opinion No. 1563-49

July 13, 1949.

Consolidation of school districts does not require a majority in each of the original school districts. In consolidation the whole proposed district vote as a unit. H. B. 900 "The School District Reorganization Act of 1949."

SCHOOLS

Messrs. Tarbell and Tarbell,

Opinion No. 1564-49

July 13, 1949.

(Bond Election)

Where title to real or personal property is held in name of husband, both husband and wife may vote at school bond elections if the property is, in fact jointly owned by both husband or wife, otherwise only the husband may vote. It is always a question of fact.

Payment of specific ownership tax on motor vehicle will not entitle a person to vote at school bond election.

COSMETOLOGY BOARD

Helen M. Scott,

Opinion No. 1565-49

July 13, 1949.

1. The determination as to what length of time an examination remains valid in the event operator does not secure a license immediately upon receipt of notice of passing examination—is an administrative question and should be determined by the board.

2. A fee of five dollars must be paid for a limited or general certificate to practice the occupations of cosmetology regardless of the limited time involved before a renewal certificate is required. Sections 12(c)-1, 13(c)-2, 12(c)-3, H. B. 863, 37th General Assembly.

AGRICULTURAL DEPARTMENT

Mr. Paul Swisher,

Opinion No. 1566-49

July 13, 1949.

Commissioner of Agriculture has the authority to set aside certain moneys to be used in cooperation with state or federal agencies in any manner helpful to agriculture. The Market News Service of the U. S. Department of Agriculture would qualify as such. Provisions of Section 1, Article XI of the Constitution of the State of Colorado prohibit payment of moneys in advance, however.

*** MOTOR VEHICLES—TAXATION—UNIVERSITY
OF COLORADO**

Opinion No. 1567-49

Mr. Robert I. Hislop,

July 13, 1949.

(Automobile license tax)

Motor vehicles are trucks operated by the University of Colorado and are not exempt from the payment of registration fees. Such fees are privilege and not property taxes and hence do not come under the provisions of Article X, Section 4 of the Colorado Constitution.

GAME AND FISH

Opinion No. 1568-49

Mr. Elton K. McQuery,

July 14, 1949.

The Fish and Game Commission may make agreements, provide places and access to areas not heretofore provided where the public may hunt and fish. Expenditures for such purposes can rightfully be charged to the Hunting and Fishing Rights Fund.

**UNFAIR PRACTICES ACT—STORE LICENSES
REVENUE DEPARTMENT**

Opinion No. 1569-49

Mr. W. F. Perkins,

July 14, 1949.

The issuance of licenses under the Unfair Practices Act should be governed by the terms and conditions under which store licenses are issued.

CITIES AND COUNTIES

Opinion No. 1570-49

Hon. Harry F. Anderson,

July 14, 1949.

(Contribution to erection of Denver stockyards stadium)

Under authority of H. B. 1107 and Section 36, Chapter 45, 1935 C.S.A., the Board of County Commissioners of Elbert County may make a contribution to help defray the expenses of cost of erection of the new Stockyard Stadium in Denver, Colorado. Such a contribution would not violate the provisions of Article XI, State Constitution.

COUNTIES—HOSPITALS**Opinion No. 1571-49**

Mr. Ben L. Garman,
July 14, 1949.

Appropriations up to five per cent may be appropriated from the General Fund by the Board of County Commissioners for improvements and remodeling of county (public) hospitals.

DEPARTMENT OF AGRICULTURE—VETERINARIAN**Opinion No. 1572-49**

Paul W. Swisher,
July 15, 1949.

In view of the fact that all powers, duties and functions of the State Board of Stock Inspection Commissioners and the State Veterinarian relating to the provisions and eradication of livestock disease are transferred to the State Department of Agriculture, all necessary laboratory equipment formerly belonging to the State Livestock Commission for the Control of Livestock diseases would necessarily be transferred to the Department of Agriculture. Also, the cash fund set up by the Livestock Commission to purchase serum and identification tags for operating the laboratory should be transferred from the Livestock Commission to the State Agricultural Department.

NEWSPAPERS**Opinion No. 1573-49**

Mr. Edwin A. Bemis,
July 15, 1949.

(“The Golden Outlook”)

The provision in the statute that the “newspaper must be printed and published in whole or in part in the county” is met by said newspaper which is made up entirely in Golden except for actual running of the paper presses.

AGRICULTURAL DEPARTMENT**Opinion No. 1574-49**

Mr. Paul W. Swisher,
July 18, 1949.

The assessment collected from all producers for the advertising, promotion, inspection and for the over all benefits of the agricultural product is neither collected by or for the Department of Agriculture or any of its subdivisions. The ten per cent should not be allocated to the General Fund but should be used for the benefit of agricultural product for which said assessment was set up.

COUNTY OFFICERS—FEES AND SALARIES

Mrs. Josephine Elliott,
July 18, 1949.

Opinion No. 1575-49

Concerning officials collecting salaries for the months of November and December, 1948, under the Extraordinary Session Laws of 1948; salaries paid to the Clerks of the County Court and public officials holding more than one office—individuals holding more than one political office.

**AGRICULTURAL DEPARTMENT
SOIL CONSERVATION**

Mr. Paul W. Swisher,
July 19, 1949.

Opinion No. 1576-49

(Premiums at stock show)

1. Where legislature transfers the duty and responsibility of offering and awarding premiums on livestock at the National Western Stock Show from the State Board of Agriculture to the State Department of Agriculture, it is a reasonable conclusion that any funds set up for the purpose should also be transferred to the State Department of Agriculture so that the function can be properly carried out.

2. Legislature delegated responsibility to State Department of Agriculture to assist State Soil Conservation Board in administration of Soil Conservation Act. Opinion that if there is sufficient funds in general appropriation fund, commissioner may allocate sum for this purpose.

SCHOOLS

Mrs. Ruth M. Mathias,
July 25, 1949.

Opinion No. 1577-49

The rule relating to bonded indebtedness of consolidated school districts applies to reorganization of districts under House Bill No. 900.

Section 32, School District Reorganization Act of 1949, provides for payment of bonded indebtedness of any district in the manner provided by sections 71 and 72 of Chapter 146, 1935 C.S.A. These sections indicate that in cases of consolidation of school districts, in whole or in part, or by annexation, the property subject to bonded indebtedness at time of creation of debt, remains subject thereto until the bonds are paid and taxes for the payment thereof must continue to be levied therefor, regardless of changes in school district boundaries.

It is not allowable to tax additional territory for old building bonds, nor is there any type of refunding of bonds which would make such taxing possible after reorganization has been effectuated.

FEES AND SALARIES—COURTS**Opinion No. 1578-49**

Ms. Bernice E. Sweitzer,

July 25, 1949.

H. B. No. 842 approved May 20, 1949 amends Section 92 of Chapter 46, 1935 C.S.A., providing that shorthand reporters of courts of record shall receive 30¢ per folio of one hundred words for transcribing shorthand notes into typewritten form and repeals Section 194, supra.

Ch. 190, S. L. 1945, which amended Section 6, Chapter 66, 1935 C.S.A., permits, under amended section 6, charging of only 20¢ per folio or 50¢ per page for photographic copies for preparing records on appeal or error to higher court, or for copy of any record, proceeding, or paper on file where copy is not furnished by party ordering same.

Old rate of 20¢ per folio is to be charged for preparing certified copies of court records on appeals and not new rate of 30¢ per folio, since that applies only to transcription of shorthand notes into typewritten copy.

SCHOOLS**Opinion No. 1579-49**

Mrs. Nettie S. Freed,

July 25, 1949.

1. The periods to be used in the determination of the apportionment under Sections 247, 26 and 15 of Chapter 146, 1935 C.S.A., are the semi-annual periods ending June 30th and December 30th of each year.

2. The calculation of apportionment cannot be made upon basis that net result will allow disbursement of entire amount available to be apportioned, except where the apportionment under section 247, Ch. 146, 1935 C.S.A., is equal to or greater than amount in fund available for distribution.

3. For counties wherein amount of supplies received exceeds amount to which they are entitled by apportionment, such amounts should be credited to such counties at time of semi-annual apportionment and disbursement and the balances should be carried forward as charges against such counties for settlement at end of next accounting period.

SCHOOLS**Opinion No. 1580-49**

Mrs. Nettie S. Freed,

July 25, 1949.

(Reorganization Act)

The periods to be used in the determination of the apportionment under Sections 247, 26 and 15, as amended, Chapter 146, 1935 C.S.A., are in semi-annual periods ending June 30th and December 30th of each year.

The calculation of the apportionment cannot be made upon a basis that the net result will allow the disbursement of the entire amount available to be apportioned except when the apportionment under Section 247, supra, is equal to or greater than the amount in the fund available for distribution.

For counties wherein the amount of supplies received exceeds the amount to which they are entitled by apportionment, such amounts should be credited to such counties at the time of the semi-annual apportionment and disbursement and the balances should be carried forward as charges against such counties for settlement at the end of the next accounting period.

The procedure followed from 1921 to 1933 in making such apportionments appears to have been correct and should be followed whenever there is a balance remaining in the fund after the deficiencies under Section 247, supra, are accounted for.

**EXECUTIVES—EMPLOYEES—OFFICERS
PUBLIC WELFARE****Opinion No. 1581-49**

Mr. Elton K. McQuery,

July 27, 1949.

Dollar a year or similar contracts may be entered into by departments with employees for the good of the state.

COUNTIES—HOSPITALS**Opinion No. 1582-49**

Mr. Ben L. Garman,

July 27, 1949.

The statute permitting the establishment of post war improvement fund, is Section 151(8), Sections 231-241, Chapter 45, 1935 C.S.A. and is another method of providing funds for hospital improvements.

STATE BOARD OF LAND COMMISSIONERS**Opinion No. 1583-49**

The State Board of Land Commissioners,
July 28, 1949.

Pertaining to the right of lessee to assign a lease or to use property under lease for any other purposes or uses than as provided for in the lease, and the right of renegotiating an existing lease.

TAXATION—ASSESSOR**Opinion No. 1584-49**

Mr. John R. Seaman,
July 28, 1949.

Assessor should exclude six cent state motor fuel tax in computing average of moneys invested in inventories by wholesalers and distributors of motor fuel.

**POLITICAL PARTIES—LEGISLATURE
GOVERNOR****Opinion No. 1585-49**

Hon. Lee Knous,
July 29, 1949.

In appointing committees where law requires bipartisan balance, Governor may rely upon the committee members' party affiliations at the time of appointment as a basis in making an appointment to fill a vacancy. It is not incumbent upon him to determine after the original appointment has been made whether any member or members have changed, re-changed or otherwise expressed a party affiliation.

FEES AND SALARIES—COURTS**Opinion No. 1586-49**

Mr. L. A. Ruark,
July 29, 1949.

The docket fee for appellants to the County Court shall be \$7.50. Chapter 66, Section 5, as amended, supersedes Section 165, Chapter 96, 1935 C.S.A.

SCHOOLS**Opinion No. 1587-49**

Mr. R. J. Carroll,
August 4, 1949.

It is lawful for a board of education of a first or second class school district to build an addition to an elementary school building without a vote of the people when it has the money for such building

and no bonds are required to be issued. Sec. 75, Ch. 146, 1935 C.S.A. School Directors in such districts have the same power as electors in third class districts.

It is not necessary for a school district to pay a sales tax on labor and materials since a school district is a political subdivision and hence exempt from the sales tax under Section 15, Ch. 144, 1935 C.S.A.

COUNTY OFFICERS—LIQUORS

Opinion No. 1588-49

Mrs. Montana F. Smith,

August 8, 1949.

1. County Commissioners are not precluded from ownership of a liquor license by virtue of their public office.

2. County Commissioners may re-district the county by following the procedure outlined in Section 15, Chapter 45, 1935 C.S.A. They may re-district in any manner for the purpose of election of commissioner by properly following the procedure outlined.

3. There are no special qualifications for appointment of a county road supervisor as per Section 3, Chapter 143, 1935 C.S.A. Such supervisor is appointed by the Board of County Commissioners.

COMMISSIONER OF MINES

Opinion No. 1589-49

Mr. Fred Jones,

August 8, 1949.

The Commissioner of Mines having jurisdiction over clay pits as set out in the statutes does not have jurisdiction over the plants producing products manufactured from the clay.

SCHOOLS

Opinion No. 1590-49

Ms. Irma Kjosness,

August 8, 1949.

Whenever any new school district is created under the provision of H. B. 900, the School District Reorganization Act of 1949, such new district shall be a school district of at least the second class; or as is now provided by law, that is, it may be a school district of the first class if it has a school population of 1000 or more.

The correct status and title of the Superintendent of Public Instruction elected at the General Election in 1948 is "Commissioner of Education" pursuant to Section 1 of Article 9 of the Constitution of the State of Colorado as amended at the General Election in 1948. The State Department of Education Act, House

Bill No. 837, also provides that the head of the department shall be known as the "Commissioner of Education." The five members of the board of Education will be elected at the next general election in 1950 and when constituted, will appoint a Commissioner of Education who will not be under Civil Service.

SCHOOLS

Opinion No. 1591-49

Mrs. Nettie S. Freed,

August 8, 1949.

A school board is not required by law to deposit the proceeds of the sale of school bonds with the county treasurer but may deposit such funds in any safe depository which it may select, provided the requirements of Section 86, Chapter 146, 1935 C.S.A., relative to the giving of a surety bond are complied with.

Funds derived from the sale of school bonds may be deposited with the county treasurer but he cannot be compelled to accept such funds and he may not charge the usual 1% as in the case of other school funds on deposit with him.

POLICEMEN—ATTORNEYS

Opinion No. 1592-49

Mr. George D. Stapleton,

August 11, 1949.

There is no prohibition in the statutes against a duly licensed attorney also retaining a special police commission.

GAME AND FISH

Opinion No. 1593-49

Mr. James B. McDonald,

August 12, 1949.

(Transfer of appropriations)

1. An appropriation made in the General Appropriation Bill to the Department of Game and Fish for hunting and fishing rights may not be transferred and expended under any other appropriation for that department.

2. An appropriation made to the Department of Game and Fish for the collection of revenue in anticipation of the passage of a bill authorizing the same may not be used for any purpose in view of the facts that the bill relating to the collection of revenue did not pass.

ABTRACTOR'S BOARD

Abstractors Board of Examiners, **Opinion No. 1594-49**
August 12, 1949.

As to whether an abstractor applying for a license prior to July 1st, 1949, is subject to provisions of H. B. 584, passed by the 1949 Session of the Colorado Legislature, particularly in respect to the public convenience and necessity clause as set forth in Section 1 of said bill. The board may, upon finding that the application was pending at the time of enactment of H. B. 584, proceed under statutes in effect prior to enactment of said act.

As an alternative procedure, the board could make finding of public convenience and necessity and license could be issued or denied subject to such findings and applicant's ability to meet requirements of law.

FAIR TRADE LAW—REVENUE DEPARTMENT

Mr. James A. Noonan, **Opinion No. 1595-49**
August 12, 1949.

Funds accruing by virtue of the license fees in the Department of Revenue Administration Fund may be used by the Department of Revenue in the administration and enforcement of the Unfair Practices Act until such time as the Legislature convenes and has an opportunity to act with respect to an appropriation in the regular manner for the administration of said act.

**STATE BOARD OF FUNERAL DIRECTORS
AND EMBALMERS**

Mr. R. Paul Horan, **Opinion No. 1596-49**
August 17, 1949.

Applicants for funeral directors or embalmers licenses who prior to April 30, 1945 possessed the qualifications as outlined in Section 12(a) through Section 12(c), Chapter 105, 1935 S. L., need not have the additional qualifications required by Section 12(a) through Section 12(c), Chapter 60 of the 1935 C.S.A.; but only if the applicant possessed those qualifications prior to April 30, 1945.

COMMISSIONER OF AGRICULTURE

Paul W. Swisher, **Opinion No. 1597-49**
August 17, 1949.
(Marketing Orders)

Producers and handlers must pay the assessment as agreed upon and set up in Marketing Order.

Assessment agreed upon is for benefit of specific agricultural product as a whole and can not be considered as affecting inter-

state commerce directly, substantially, or to be a burden on it in any way. The most it would only affect interstate commerce slightly, indirectly or remotely, as was quoted from 75 C. J. Secundum.

CITIES AND TOWNS—HEALTH BOARD

Mr. Henry Rolfes, Jr.,
August 17, 1949.

Opinion No. 1598-49

By virtue of Chapter 48, Section 258, Section 8, Chapter 163, Subsections 7 and Section 21(5), Chapter 78 of the 1935 C.S.A., and by virtue of *Mach v. Craig*, 68 Colo. 337, municipalities may be sued for stream pollution or failure to remedy the same.

SCHOOLS—CONSTITUTIONAL LAW

Rev. Edward A. Leyden,
August 18, 1949.

Opinion No. 1599-49

1. The utilization of the state's tax supported public school system and its machinery for compulsory public school attendance to enable sectarian groups to give religious instruction to public school pupils in public school buildings violates the first amendment of the Constitution of the United States made applicable to the states by the Fourteenth Amendment and is likewise contrary to the provisions of Section 8 of Article 9 of the Constitution of the State of Colorado which provides in part that "No sectarian tenants or doctrines shall ever be taught in the public school." The released time plan of religious instruction in public schools is not lawful in this state.

2. Upon the basis of the laws of this state requiring compulsory school attendance, the necessary school regulations to facilitate attendance, the requirements which would be involved in the establishment of such a "released time plan" and upon the authority of the *McCullum* case, *supra*, any use of pupil's school time for religious instruction, whether that use is on or off the school grounds, is prohibited.

STATE HIGHWAY DEPARTMENT AUDITOR—PURCHASING AGENT

State Highway Department,
August 18, 1949.

Opinion No. 1600-49

It is the duty of the State Purchasing Agent to prescribe and enforce the keeping of perpetual inventories of the stocks, property and equipment of the Highway Department. It is the complimentary duty of Highway Department to keep the same in the form prescribed by the Purchasing Agent until such time as the State Auditor by and with the approval of the Governor shall otherwise prescribe.

CITIES AND TOWNS

Mr. R. E. Heisler,
August 18, 1949.

Opinion No. 1601-49

Monies derived from sale of real estate, title to which city had obtained through pavement assessment default may be used to retire bonds. "General municipal funds may be used, applied or expended for any lawful municipal purpose." 44 C. J., page 1160, Section 4116.

JUDGES RETIREMENT ACT

Mr. Philip S. Van Cise,
August 19, 1949.

Opinion No. 1602-49

1. The limitation of the application of the Judges Retirement Act (H. B. 154, 37th General Assembly) applies only to juvenile judges and to county judges.

2. The population of counties determined by the last federal census.

3. The service of judges who become members of the system, rendered as such prior to the retirement system is to be counted in computing the retirement benefits as well as services after becoming such member.

**GAME AND FISH
AUDITOR**

Mr. Myron G. McGinley,
August 19, 1949.

Opinion No. 1603-49

Licensed agents are obligated to remit all fees collected or the unsold licenses upon demand of the Game and Fish Commission, together with such stubs as have been issued upon demand of the Game and Fish Commission. Otherwise, the Game and Fish Commission must make demand upon the bonding company for payment of the account.

**COURTS—FEES AND SALARIES
LEGISLATION**

Hon. Willard J. Allen,
August 22, 1949.

Opinion No. 1604-49

Sections 4, 5 and 6, Ch. 66, 1935 C.S.A., as amended repeals by implication former sections, and Sec. 6, Ch. 66, 1935 C.S.A., repeals by implication those parts of Section 8 inconsistent therewith.

Rule: Where two inconsistent statutes are carried into codified law, the last one passed, which is the declaration of the legislative will should prevail.

OLD AGE PENSIONS**Opinion No. 1605-49**

Mr. Clifford J. Gobble,
August 23, 1949.

Whether or not the regulation set forth in the Public Welfare Manual, Vol. IV, Sec. 2414, limits the income of the spouse of a pensioner to the amount both would receive if on a pension, conflicts with the provisions of the Old Age Pension Act, and in particular, Sec. 28(2)(b), Ch. 191, Vol. 4, Accumulated Supplement of the 1935 Colorado Statutes Annotated.

Held that the regulation is not in conflict or inconsistent with any of the provisions of the act.

**PUBLIC HEALTH—AGRICULTURAL DEPARTMENT
DAIRIES****Opinion No. 1606-49**

Dr. R. L. Cleere,
August 26, 1949.

1. By virtue of the Health Act of 1947 and the Agricultural Act of 1949 complete jurisdiction over licensing and inspection of all dairies and manufacturing plants is vested in the Health Department and the Department of Agriculture.

2. The former Dairy Commissioner Act allowing inspection contracts to be drawn up by the Dairy Commissioner and municipalities was merely permissive legislation and is not mandatory upon the present Departments of Health and Agriculture.

AGRICULTURAL DEPARTMENT—MARKETING**Opinion No. 1607-49**

Mr. Fred Ley,
August 29, 1949.

The word "by product" is not given its usual definition in the marketing order. However, rules and regulations must be given a reasonable interpretation. It is quite clear, therefore, that potatoes shipped for manufacturing purposes, for conversion into potato chips, shoe string potatoes, french fried potatoes, etc., would be recognized as being converted into by-products and would hence be exempt from the provisions of Section 2a of the regulation and exempt from the provision of any regulation issued pursuant to Section 4(c) thereof.

**CIVIL SERVICE EMPLOYEES—CONTROLLER
DEPARTMENT OF HEALTH**

Opinion No. 1608-49

Mr. James A. Noonan,
August 29, 1949.

There is no statute in contravention of the right of a civil service employee to receive additional compensation as salary, provided, the additional compensation is from private grant or federal government. The funds thus involved are not state funds in the same sense as other funds obtained by the usual means such as taxation, and consequently may be drawn on proper warrant and voucher through the treasurer and controller.

DEPARTMENT OF EMPLOYMENT SECURITY

Opinion No. 1609-49

Mr. Bernard E. Teets,
August 29, 1949.

The contract entered into between the American Stencil Manufacturing Company and its salesmen was one of employment rather than Independent Contractor.

The three-fold test used by the Federal Government and many of the states, controlled in this case, and such test is as follows:

“Services performed by an individual shall be deemed employment unless and until it is shown to the State Administrative Agency that:

“1. The individual performing such services has been, and will continue to be, free from control or direction over the performance of his services both under his contract of service and in fact.

“2. Such service is either outside the usual course of the business for which the service is performed, or such service is performed outside of the place of business of the enterprise for which it is performed; and

“3. The individual is customarily engaged in an independently established trade, occupation, profession or business.”

**FIREMEN'S PENSION
CONTROLLER**

Opinion No. 1610-49

Mr. James A. Noonan,
August 25, 1949.

Firemen's Pension Fund created under Section 473, Chapter 163, 1935 C.S.A., is limited to tax on foreign fire insurance companies arising solely out of fire risks. Funds should be withheld by the State Controller until judgment can be brought.

SCHOOLS—TAX COMMISSION**Opinion No. 1611-49**

Mrs. Jack Herrin,
August 29, 1949.

It is necessary to obtain the permission of the Colorado Tax Commission when a school district, which has made no tax levy for a number of years, resumes its levy.

SCHOOLS**COLORADO STATE COLLEGE OF EDUCATION****Opinion No. 1612-49**

Mrs. Nettie S. Freed,
August 29, 1949.

(Tuition) (H. S. Training school)

A Board of Education of a School District cannot use the tuition charge of a non public school as a basis on which it will be remunerated for tuition where high school pupils of that district are attending non public school, since the provisions of Chapter 282, S. L. 1947, apply only where such pupils of one district attend a public high school in another district, or fail to do so.

The college training high school of the Colorado State College of Education at Greeley is not a high school operated by a public school district. Therefore, legally constituted boards of education would not be within the law when they designate the Colorado Training High School as a high school for attendance in another district for their qualified high school pupils and, hence, may not take the \$45 charged for tuition by that school as their liability for tuition under interpretation 4 of a memorandum dated October 6, 1947 by the Superintendent of Public Instruction in re Senate Bill 518 and House Bill 391, or otherwise.

SCHOOLS**TAX COMMISSION****Opinion No. 1613-49**

Mrs. Nettie S. Freed,
August 29, 1949.

When a school district has made no special tax levies for a period of more than one year, it is necessary for it to obtain the permission of the Colorado Tax Commission.

REVENUE DIRECTOR—INCOME TAXES**Opinion No. 1614-49**

Mr. W. F. Perkins,

August 30, 1949.

It is not necessary for the Director of Revenue to file a claim against an estate in order to collect income taxes due. The Director of Revenue may proceed to collect said taxes without the filing of the claim by the ordinary enforcement powers of assessment, distraint and the filing of liens on property.

MOTOR VEHICLES—CITIES AND TOWNS**Opinion No. 1616-49**

Mr. Max Snyder,

August 31, 1949.

(City trucks)

House Bill 403, passed by the 37th General Assembly, provides for liability to municipalities for all negligently and tortiously operated municipal motor vehicles.

SCHOOLS**Opinion No. 1617-49**

Mr. Jerome A. Paul,

September 1, 1949.

Moneys obtained by a school under Chapter 224, Session Laws of Colorado 1945, providing for the creation of a post war reserve fund by school districts may not be used by the School District for the payment of the purchase price of a school bus purchased by the district since that law was designed to create a fund for the purpose of paying all or part of the costs of a long range post war and other planned future programs of buildings, improvements, betterments, and added facilities, that is, capital outlays and not for the purchase of other types of property such as school busses.

STATE AUDITOR—STATE PURCHASING AGENT**Opinion No. 1618-49**

Mr. Myron C. McGinley,

September 1, 1949.

(Inventories)

The inventory required in Sec. 38, Ch. 158, 1935 C.S.A., is a physical inventory which the State Auditor is required to annually make in order to correct the perpetual inventory required

of the State Purchasing Agent by Sec. 20, Ch. 2, S. L. 1941. The requirement of the State Auditor to take a physical inventory under Sec. 38 is not in conflict with the perpetual or accounting inventory required under said Sec. 20, but same are complimentary to each other. The State Auditor does not need the approval of the Governor to take the physical inventory required by said Sec. 38, but does need such approval before making any changes in the type of inventory required to be kept under Sec. 20 of Ch. 2, S. L. 1941.

LIVESTOCK

Opinion No. 1619-49

Mr. Ed Paul,

September 2, 1949.

The State Board of Stock Inspection Commissioners in the exercise of its powers under the Livestock Sales Ring Act, may adopt, publish and enforce rules and regulations to place a reasonable hold order to a Sales Ring Auction for the net proceeds on all unbranded small calves not to exceed 30 days, or hold the calves from sale until proof of ownership is established by the consignor; and can hold the carcass from unbranded calves together with the hides from unbranded calves brought to the locker plants for slaughter and storage until satisfactory proof of ownership is established, provided all such livestock have been consigned and delivered on the premises of any licensed sales ring, offered for sale or sold there.

STATE PLANNING COMMISSION

Opinion No. 1620-49

Mr. W. M. Williams,

September 2, 1949.

The State Planning Commission retains powers granted to them under Chapters 16, 17 and 18, S. L. 1945, but in the absence of an appropriation, said powers remain idle to the commission.

STATE PLANNING COMMISSION—STATE PENITENTIARY

Opinion No. 1621-49

Roy Best, Warden,

September 2, 1949.

It is the duty of the State Planning Commission to work out a long range building program or master plan for the State Penitentiary. It is the warden's duty to furnish such information

to the Commission as he has available. The warden may not assume the functions and prerogatives of the Commission in planning a long range program for the Penitentiary.

However, the Warden may prepare plans for a building or buildings and submit same to the Planning Commission before starting construction thereof. If the Planning Commission fails or neglects to report in writing within 45 days, the Warden may proceed with construction or acquisition of property.

In the event the Warden and the Commission do not agree, and the Warden finds reasons for departing from the advice of the Commission, the matter is left to the forum of public opinion.

COUNTY JUDGES—FEES AND SALARIES

Honorable A. Prax Ortega,
September 8, 1949.

Opinion No. 1622-49

Salary of county judges in counties of the fourth class should be paid from the general fund of the county. The fees of the county judges having been eliminated and in view of the provisions of Section 22, Article 6, salaries of county judges are now payable from the general fund of the county. Any question as to possible violation of Section 15, Article 14, supra, has been disposed of by reason of the repeal of Section 20, Chapter 66, which eliminates the statutory provision prescribing fees for county judges.

INSURANCE

Hon. Luke J. Kavanaugh,
September 12, 1949.

Opinion No. 1623-49

Fraternal Benefit Societies organized under the laws of the State of Colorado are limited to one year and an additional year's extension granted at the discretion of the Commissioner of Insurance to perfect its organization under the Fraternal Benefit Society Laws of the State of Colorado. A Mutual Benefit Society which has not completed its organization within two year period would apply for new articles of incorporation under the corporate laws of the State of Colorado at which time the Commissioner of Insurance shall issue a new certificate.

SCHOOLS

Mr. W. H. Hatcher,
September 13, 1949.

Opinion No. 1624-49

A school district may not even in the summer months permit church groups to use the school buildings and equipment to hold religious education classes, unless a reasonable charge is made by the district for heat, light and janitor services.

**STATE CONTROLLER—DIRECTOR OF
REVENUE—AERONAUTICS**

Opinion No. 1625-49

Mr. James A. Noonan,
September 15, 1949.

Section 16(a), Chapter 121, S. L. 1949, does not make a lawful appropriation to the Director of Revenue, therefore, the Director of Revenue may not deduct from the Aircraft Registration Funds a "sum sufficient to pay the expenses of aircraft registration" since there is no specific appropriation against which vouchers may be drawn, but all funds received from the Director of Revenue under said act must be paid over intact to the State Treasurer and by him in turn distributed in accordance with said Section 16(a).

SCHOOLS

Opinion No. 1626-49

Hon. Robert Delaney,
September 16, 1949.

Joint school districts which maintain accredited high schools may avail themselves of provisions of Sections 205 and 206 of Chapter 146, 1935 C.S.A., and thereby be exempt from payment of county high school taxes in any other school district, whether a county high school district, union high school district or otherwise.

Sections 160 and 161 and in Sections 205 and 206, 1935 C.S.A., include joint districts as well as other types of districts as were heretofore assumed.

WATER—PUBLIC FUNDS

Opinion No. 1627-49

Mr. James A. Noonan,
September 16, 1949.

(Colorado River Commission expenses)

Moneys spent from the appropriation made for Colorado's share of the expenses of the upper Colorado River Commission and the expenses and compensation of the Colorado member and that Commission are withdrawable from the state treasury upon the treasurer's warrant drawn upon the voucher of the Governor and the Director of the Colorado Water Conservation Board as the "proper officer in pursuance thereof." The matter of passing upon the sufficiency of the data supporting the vouchers is within the jurisdiction of the Governor and the Director of the Colorado Water Conservation Board,—not the State Controller.

SCHOOLS**Opinion No. 1628-49**

Hon. Myron C. McGinley,
September 19, 1949.

1. The constitutionality of Chapter 225, S. L. 1949, "An Act Concerning School Districts," must be presumed. Therefore, no opinion is expressed as to its constitutionality.

2. Since the substantive provisions of the act, as set forth in Sections 1, 2, 3, do not become effective until January 1, 1951 as to Sections 2 and 3, and January 1, 1952 as to Sections 1, the repeal of Section 175, as amended, and 176 and 177, Chapter 142, 1935 C.S.A. do not take effect until January 1st, 1951, hence Sections 175, 176, and 177, supra, remain in full force and effect until that time.

**COLORADO STATE HOME FOR DEPENDENT AND
NEGLECTED CHILDREN****Opinion No. 1629-49**

Mr. John C. Stoddard,
September 20, 1949.

Section 71(1), Chapter 153, 1935 C.S.A., clearly and unrevocably makes mandatory use of coal mined in the State of Colorado in all state institutions. The Superintendent's home is considered such a portion of the institution and must comply with the law.

JUSTICE OF PEACE—HIGHWAY PATROL**Opinion No. 1630-49**

C. R. Cotton,
September 20, 1949.

(Drunken driving, plea of guilty)

Held that when the defendant in a case comes into J. P. court, pleads guilty to drunken driving, is fined and pays fine, he cannot come back and appeal his case to a higher court because he has changed his mind and feels he can trifle with the judicial processes of the court.

**DEPARTMENT OF AGRICULTURE—STATE
VETERINARIAN****Opinion No. 1631-49**

Mr. Paul W. Swisher,
September 20, 1949.

There is no procedure whereby the Department of Agriculture or the State Controller can establish a revolving fund for the

State Veterinarian in the Division of Animal Industry to take care of health certificates necessary in the case of interstate shipments of livestock; vaccines furnished to federal veterinarians for the purpose of Bangs Control and for ear tags and other identification marks used in the control of livestock diseases. Chapter 100, S. L. 1949. Section 78, Chapter 153, 1935 C.S.A. repealed by Section 9(e), Chapter 118, Session Laws 1947, was reenacted and amended by Section 3 of Chapter 232, Session Laws 1949 to provide that all collected funds must be deposited with the State Treasurer with certain exceptions. The revolving fund would not be within such exceptions.

STATE BOARD OF EQUALIZATION

Opinion No. 1632-49

Mr. W. M. Williams,

September 21, 1949.

(Mill levy)

State Board of Equalization may reconvene on or before September 26, 1949 and give consideration to provisions of Chapter 236, S. L. 1949.

SCHOOLS

Opinion No. 1633-49

Mr. Robert A. Theobald,

September 22, 1949.

1. The Board of Education of a new district which pursuant to the plan of organization duly approved under the provisions of the School District Reorganization Act, Chapter 224, Session Laws of Colorado 1949, House Bill 900, calls for the termination of a school in a school district and the disposal of the property of that school district, is not forever bound by that portion of the plan insofar as not maintaining a school at the location of an eliminated school. The Board of Education of the new district from and after its organization has the powers of a district of its class and may act within the scope of its powers which may require the reestablishment of a school at the location which had been abandoned.

2. If the reorganization plan calls for transportation from an eliminated school and the plan is approved, it would be mandatory upon the board of the new district to provide such transportation unless the situation changed so as to make such requirement unadvisable and unsound.

3. If a new district formed under a reorganization plan includes area of more than one county, it is a joint district under

the provisions of Section 65, Chapter 146, 1935 C.S.A. In such case the school census, the record of attendance at school, the assessing of property, the collection of taxes and other accounts which from their nature should be separately kept or done shall be kept and done and the reports thereof made as if each portion of the joint district belonging to each county were an entire district in the respective counties. Although there is no statutory procedure relating thereto, the procedure actually being followed is that the treasurer of each county keeps a separate account for the fund allocable to the joint district and notifies the secretary-treasurer of that district thereof. The secretary-treasurer thereafter draws warrants on the joint district funds in each of the counties just as if he were maintaining two bank accounts.

4. Where a county has a county high school district which includes all districts in the county before the adoption of a reorganization plan, and the plan adopted provides for two new districts, including the whole county, leaving one district with a high school, the other without, the plan should state whether the county high school district is abolished or retained since Section 30(1) states that "unless otherwise provided in the plan when a new district formed under this act shall embrace part of the area of a union or county high school district, such area shall be automatically withdrawn from the union or county high school district, except for the purpose of paying its portion of any existing bonded indebtedness as provided by law."

5. The reorganization plan for a proposed district may include any or all provisions relating to transportation or board and room and tuition where a high school has been eliminated and such provisions would be mandatory upon the new district so long as the same factual situation exists.

6. The term "taxpaying electors" as used in Section 22 of the reorganization act applies to such of the qualified electors of the area of the proposed district as shall have paid a school tax thereon in the year next preceding such election, including those electors who have paid a specific ownership tax upon a motor vehicle, trailer or semi trailer, but the latter part of the ruling does not apply to voting at a joint election.

7. Boards of education may depart from the reorganization plan if the circumstances and facts change so that it would be to the best interests of the people of the district to do so.

**PUBLIC UTILITIES—HIGHWAYS
CONTRACTORS**

Mr. Ralph C. Horton,
September 22, 1949.

Opinion No. 1634-49

Highway contractors buying material to be used on the roads are required to secure commercial carrier permit. Opinion of January 5, 1938 withdrawn.

PUBLICITY**Opinion No. 1635-49**

Mr. Lewis R. Cobb,
September 26, 1949.

Question: Whether it is necessary to get copyright releases to produce a copy of a large historical cartograph that was purchased out right from the artist. Held that the exchange of letters between the Director of Publicity, for the State of Colorado, and the artist did not constitute a transfer of assignment of the copyright. What was thought to be a transfer or assignment was merely the right to use the map for one publication. Held necessary for the department to get the copyright assigned and recorded pursuant to the copyright law before the department can become the owner of the copyright and entitled to its unlimited use.

STATE DEPARTMENT OF AGRICULTURE**Opinion No. 1636-49**

Mr. Paul W. Swisher,
September 27, 1949.

An inspector is a police officer while acting within the scope of his authority and if acting in that capacity, he may bring an action against a violator who refuses to comply with the statute or regulations relating to the Department of Agriculture. If the violator resists the inspector while he is trying to carry out his duties, he may bring a charge of resisting the peace officer against the violator.

SCHOOLS**Opinion No. 1637-49**

Mr. Elbie L. Gann,
September 27, 1949.

Chapter 224, Section 15, S. L. 1949 (H. B. 900) provides that boundaries of present districts may be disregarded, and whole districts and parts of districts may be included in a new district proposed to be organized. There is no limitation as to size or school population and a new district will be either a second or first class district.

If the people of a district object to being included in the first or second class district and can convince the Committee that they should be excluded, they may be organized as a third class district as provided by law.

SCHOOLS**Opinion No. 1638-49**

Mr. Carl A. Brumfield,
September 27, 1949.

The school district, the school board nor the individual members of a school board are not liable for damages resulting from an accident arising out of the operation of a school bus if such bus is being used for a school purpose. Otherwise they may be liable.

It is beyond the powers of a school district or its board to use school busses owned or run by it for other than school purposes, otherwise the members of the board may subject themselves to individual liability.

SCHOOLS—JUNIOR COLLEGE DISTRICTS**Opinion No. 1639-49**

Mrs. Nettie S. Freed,
September 27, 1949.

The fiscal affairs of Junior College Districts must be managed separately from those of any other school districts. Sections 240, 241, 242, 243, as amended, and 247, Chapter 143, 1935 C.S.A. The Otero County Junior College District may not approve a budget and levy taxes for only a part of its expenses and the La Junta District take care of the remainder.

SCHOOLS**Opinion No. 1640-49**

Hon. Herrick S. Roth,
September 28, 1949.

A teacher who has served 3 consecutive years prior to September 1, 1949 in a district covered under Sec. 2 of Chapter 230, S. L. 1949, is considered "re-elected" as of the effective date of the contract which confirmed or evidenced his re-election, provided such re-employment is subsequent to effective date of the Act, Aug. 12, 1949, and thereby acquires permanent tenure under the Act.

PLUMBING**Opinion No. 1641-49**

Irving A. Fuller,
September 29, 1949.

Section 1, Chapter 126, 1935 C.S.A., gives municipalities the right to adopt and enforce plumbing rules and regulations not inconsistent with the state law. Any dispute as to the validity or constitutionality of such an ordinance is between the applicant for a permit and the municipality.

SOLDIERS AND SAILORS HOME**Opinion No. 1642-49**

John F. Greene, Commander,
September 29, 1949.

Financial standing is not a qualification under the statute for admission to the Soldiers and Sailors Home.

STATE ENGINEERS OFFICE**Opinion No. 1643-49**

Moynihan, Hughes and Sherman,
September 29, 1949.

(Confidential information)

Relating to the Office of Division Engineer under and through the Office of the State Engineer,—not required to furnish data or information which is not disclosed in the public records or information or data which might be construed to be against the interests of the State of Colorado.

CITIES AND TOWNS**Opinion No. 1644-49**

Hon. Rodger I. Houtchens,
September 30, 1949.

1. Section 115(a), Chapter 163, 1935 C.S.A., makes mandatory the passage of an ordinance by the City Council ordering the submission of the question of adopting the city manager form of government to the electorate.

2. Section 115(2), *supra*, also makes mandatory the proclamation and publication of notice of such an election by the mayor upon the final passage of the ordinance.

3. Passage of the ordinance within the purview of the statute means upon final passage.

4. The mayor's proclamation may issue simultaneously with final passage.

SCHOOLS**Opinion No. 1645-49**

Mrs. Harriet C. Dolloff,
October 3, 1949.

School directors may, if in their opinion it is more practicable and economical, compensate each parent for transporting his own children; the vehicle which each parent drives does not become a legal school bus. Citing *Stoops v. Hale, et al.*, 91 Colo. 246, and Sec. 115, Ch. 146, 1935 C.S.A.

SCHOOLS**Opinion No. 1646-49**

Miss Violet Tipotsch,
October 3, 1949.

It would be contrary to law to incorporate into the plan for reorganization of school districts pursuant to School District Reorganization Act of 1949 a provision for division of new district into parts for purpose of electing members to school board in order to secure rural representation on the board or otherwise.

Section 75 and 76, Ch. 146, 1935 C.S.A., provide for the number of directors to be elected in school districts and does not make provisions for electing directors by subdivisions of the district, therefore, they must be elected at large. Reorganization Act makes no change in the procedure for electing school directors.

SCHOOLS**Opinion No. 1647-49**

School District No. 11, El Paso County,
October 3, 1949.

So long as members of school boards act within scope of their authority no liability attaches for torts.

SCHOOLS**Opinion No. 1648-49**

Messrs. Bulkeley and Snyder,
October 5, 1949.

Series F savings bonds may be regarded as school funds remaining to credit of district and may be credited to the new district in case of consolidation; provided, all debts against the district consolidated with the new district are paid. If bonds are moneys derived from bond levy or constitute sinking funds, the old district may not transfer bonds to new district. Sec. 66, Ch. 146, 1935 C.S.A., provides for division of funds in case of consolidation or division of school districts. Also see Sec. 64, 109 Colo. 551, 112 Colo. 319 and 113 Colo. 54.

ABSTRACTERS BOARD OF EXAMINERS**Opinion No. 1649-49**

Mr. J. J. Kruse,
September 29, 1949.

Funds accumulated in the Abstracters Board of Examiners Fund prior to the current 1949-1950 biennium and having been

turned over to the General Fund cannot be used or expended by the said board for services or expenses incurred prior to the said present biennial period.

A bill providing for relief for services and expenses due the said board at the beginning of the 1949-1950 biennium could be introduced at the 1951 session of the Colorado legislature providing funds for such relief.

SCHOOLS

Opinion No. 1650-49

Mr. A. G. Watson,

October 3, 1949.

A school board does not have the authority to authorize a superintendent of schools to dismiss the Catholic pupils to attend religious classes during the normal and usual school days nor to dismiss school for that purpose.

CIVIL SERVICE EMPLOYEES

Opinion No. 1651-49

State Civil Service Commission,

October 3, 1949.

(Deputy Water Commissioners)

Deputy Water Commissioners are within the classified civil service and are entitled to accumulated vacation and sick leave. If there are insufficient funds for the payment of vacation and sick leaves, the State Engineer must discharge sufficient employees as per the provisions of Section 7, Chapter 162, 1945 S. L., which is the procedure to be followed when the appropriation is insufficient for the payment of employees at the rate to which they are entitled.

CHIROPRACTORS

Opinion No. 1652-49

Dr. E. A. Jackson,

October 3, 1949.

The practicing of chiropractics under proper supervision of licensed chiropractors by interns in properly licensed chiropractic hospitals is not in violation of the state laws governing chiropractics and there is the same relation as interns in medical and osteopathic hospitals.

BARBER BOARD

Mr. Thomas G. Patton,
October 3, 1949.

Opinion No. 1653-49

A barber who fails to pay his statutory renewal fee annually before December 31st may be required to retake the examination as for original licensing. A barber shop which changes its location or re-opens after a period of non operation must be inspected as a new installation and is required to pay an initial inspection fee.

**STATE EMPLOYEES—CONTRACTS—STATE
BOARD OF HEALTH**

Mr. Elton K. McQuery,
October 4, 1949.

Opinion No. 1654-49

1. Contracts purporting to send regular and certified state employees out of state or away from their regular duties and which purport to pay maintenance and additional benefits are valid providing the funds used are not state funds.

2. These contracts by which the employee agrees to remain within the state for another period of time are of little or no legal efficacy, from the standpoint of forcing specific performance and collecting amounts paid out when the employee leaves the state.

3. Under no circumstances may persons not regular employees of the state be the subject of such contracts.

PUBLIC UTILITIES

Hon. Ralph C. Horton,
October 5, 1949.
(Fees for air carriers)

Opinion No. 1655-49

Air carriers must pay a reasonable fee "not exceeding 50 cents on each \$1,000 of capital to be invested" for a certificate of public convenience and necessity. The statutes do not provide for any fee on the transfer thereof. Section 36(c), Section 42, Chapter 137, 1935 C.S.A. Other fees for copies of reports and issuance of securities are as set out in Section 42.

SCHOOLS

Mr. R. J. Carroll,
October 5, 1949.

Opinion No. 1656-49

A school board may permit students who attend parochial school to ride school bus en route providing there is no additional expenditure of funds and no deviation from the regular route. Confirming former opinions of Attorney General No. 514, 1940, 1432-49, 183-1933.

CITIES AND TOWNS—HIGHWAYS**Opinion No. 1657-49**

Mr. C. H. Darrow,

October 5, 1949.

1. A municipality may not exercise the powers enumerated in Section 164, Chapter 16, 1935 C.S.A., with reference to a street which has been designated as a connecting link in a state highway system.

2. A city may adopt regulations with respect to streets under its jurisdiction not including, however, any street which has been designated a connecting link in a state highway system.

3. A connecting link in state highway system is not under the jurisdiction of local authorities and therefore no traffic control devices can be installed upon such connecting link without consent and approval of state highway department.

GAME AND FISH**Opinion No. 1658-49**

Mr. C. N. Feast,

October 7, 1949.

Every individual designated as a licensed agent by the Game and Fish Commission may issue licenses at all stores owned and operated by said agent.

SCHOOLS**Opinion No. 1659-49**

Mrs. Lucy S. Perry,

October 13, 1949.

1. The Teachers Tenure Act of Colorado (Section 243, Chapter 146, 1935 C.S.A.) does not include within its purview Superintendents of Schools but includes all classroom teachers, supervisors, assistants and all other administrative personnel employed by the school district who are required to have had teachers certificates at the time of their original employment.

2. The Teachers Tenure Act of Colorado became effective August 12, 1949.

3. The act includes all regularly elected teachers who have served three consecutive years in a district covered under Section 2 of the act, providing such employment is subsequent to the effective date of the act, August 12, 1949, and in such instances the teacher acquires permanent tenure under the act.

4. The Teachers Tenure Act of Colorado may be made applicable to school districts not subject to the act on its effective date (August 12, 1949) only by the affirmative vote of $\frac{2}{3}$ of the members of the school board of such district after notice to the qualified electors and approval by them at regular or special election.

CORPORATIONS**Opinion No. 1660-49**

Mr. Curtis White,

October 13, 1949.

(Directors, number)

Colorado certificate of incorporation must specify an exact number of directors and *may not* merely set minimum and maximum numbers. See former opinion p. 130, No. 118, Biennial Report 1931-1932.

INSURANCE**Opinion No. 1661-49**

Hon. Luke J. Kavanaugh,

October 13, 1949.

Under Section 5 of the laws relating to Mutual Benefit Association, H. B. 1319, passed April 14, 1941, the words "Mutual Benefit Association" must appear in the corporate name of such association.

The Commissioner of Insurance has authority under the Insurance Laws of the State of Colorado to require corporations to eliminate deceptive and misleading words from corporation titles.

**STATE ENGINEER—WATER AND IRRIGATION—
INTERSTATE COMPACTS****Opinion No. 1662-49**

Mr. M. C. Hinderlider,

October 14, 1949.

1. The actual administration of releases of water from the John Martin Reservoir, and the deliveries of water at the Colorado-Kansas stateline upon request of Kansas is the sole responsibility of the Arkansas River Compact Administration.

2. The Administration of the releases of water from the John Martin Reservoir, for use either in Colorado or Kansas, and the deliveries of water therefrom to the headgates of the Colorado ditches in Water District No. 67 and to Kansas at the stateline, is a function and responsibility solely of the Arkansas River Compact Administration and not of the office of the State Engineer, that is, it is not an intrastate matter. The Administration may delegate its function and responsibility to Colorado, subject to the limitations indicated above, or it may perform its function and responsibility through its own personnel, in cooperation with the State Engineer and the Water Commissioner of Water District No. 67.

**INDUSTRIAL COMMISSION—CONTROLLER—
PURCHASING AGENT**

Mr. James A. Noonan,

Opinion No. 1663-49

October 17, 1949.

(Machine purchase agreement between Colorado Industrial Commission and Remington Rand, Inc.)

Purchases contracted for prior to effective date of Controller Act—July 1st, 1947 and Reorganization Order No. 1, do not need the approval of the Purchasing Agent, Controller or Governor's Office. Such purchases contracted for after July 1, 1947 must have approval of same.

**DEPARTMENT OF AGRICULTURE—STATE
BOARD OF AGRICULTURE**

Mr. Paul W. Swisher,

Opinion No. 1664-49

October 17, 1949.

(Seed Show, Western Stock Show)

Since the Legislature saw fit to transfer the duty and responsibility for inspection and enforcement of the seed law from the State Board of Agriculture to the Department of Agriculture, funds appropriated by the Legislature to the State Board of Agriculture for the Colorado Seed Show should be transferred to the State Department of Agriculture for awarding of premiums for Seed Show at Western Stock Show, advertisement, etc.

VOCATIONAL EDUCATION—INDUSTRIAL COMMISSION

Mr. E. C. Comstock,

Opinion No. 1665-49

October 18, 1949.

An employer, or on the job trainer, is not protected from damages resulting from injuries to employees subject to epileptic seizures even though such employees have signed waivers.

SCHOOLS

Mr. Felix L. Sparks,

Opinion No. 1666-49

October 18, 1949.

It is lawful for a school district to transfer money from the special fund to the bond fund of the same district for the purpose of paying delinquent interest in order to facilitate the re-financing

of the bond issue at a lower rate of interest. The transfer of moneys from one fund to another is authorized under Sections 14 and 15 of the Local Government Budget Law, Chapter 168, Session Laws 1945, provided the provisions of that act are followed. A school board may issue warrants on a special school fund for the purpose of paying bonded indebtedness.

COLORADO PSYCHOPATHIC HOSPITAL

Opinion No. 1667-49

Mr. George M. Corlett,

October 18, 1949.

A patient of the Colorado Psychopathic Hospital committed and ordered by the Court to submit to observation, care and treatment at the hospital, and not at his own request, is in the same category as a public patient and the entire expense at the hospital should be paid out of the Psychopathic Hospital Fund.

SCHOOLS

Opinion No. 1668-49

Mrs. Nettie S. Freed,

October 19, 1949.

The general rule of law is that school districts are not liable for their torts. The transportation of pupils to public schools is a proper governmental function and therefore by the application of the common law rule, the District or the members of the Boards of Education are not liable for damages resulting from the operation of transportation facilities by the district. School boards are required to exercise reasonable care and caution in the selection of school bus drivers and equipment and to make certain that the busses are used only for school purposes. The exact coverage of an insurance policy procured with respect to the operation of school busses depends upon the terms of the insurance policy. The school district obtains legal protection by procuring insurance against damages to persons and property in accordance with the terms of the policy. See *Newt Olsen Lumber Co. v. School District No. 8 Jefferson County*, 83 Colo. 272.

SCHOOLS

Opinion No. 1669-49

Mr. Roger Q. Mitchell,

October 19, 1949.

1. The effective date of a teacher's contract is the date set forth in the contract when the period of employment begins al-

though the date of the execution of the contract between the parties is an earlier date since the contract is executory in nature.

2. A teacher who is employed under a separate contract dated April 5th, 1946 for the period beginning Tuesday the 3rd of September, 1946, ending at the day the regular school term ends, at a salary per annum payable monthly and which is continued during the years 1947, 1948 and 1949 by a continuing contract endorsement acquires permanent tenure under the teachers tenure act of Colorado since the effective date of her last employment was September 3, 1949 and she has been employed as a regularly elected teacher by a fiscal school district under the act for a period of three consecutive years.

SCHOOLS

Opinion No. 1670-49

Mr. George V. Kempf,

October 19, 1949.

County Treasurer is not authorized to register warrants under provisions of Section 52, Ch. 146, 1935 C.S.A., in case "No Funds" in anticipation of the creation of a Post-War Reserve Fund not yet duly established and for which no tax has been levied.

SCHOOLS

Opinion No. 1671-49

Mr. Burrell C. Reynolds,

October 19, 1949.

Section 52, Ch. 146, 1935 C.S.A., School District may not legally issue warrants in excess of its revenue of the current year, nor in anticipation of revenues of subsequent year under any circumstances and a county treasurer may not legally register any such warrants.

SCHOOLS

Opinion No. 1672-49

Mr. Carl A. Brumfield,

October 19, 1949.

A school district or board of education may not authorize transportation of pupils to and from parochial schools. (Secs. 114-116, Ch. 146, 1935 C.S.A.)

A board has no authority to draw warrants from public school funds in payment of transportation. (Attorney General Op. 183, Oct. 26, 1933).

DEPARTMENT OF EMPLOYMENT SECURITY

Mr. Bernard E. Teets,

Opinion No. 1673-49

October 20, 1949.

Whether building companies with interlocking directorates, common offices, and employees are operating with attempt to evade the unemployment compensation tax is a question of fact to be determined by the Department of Employment Security.

STATE BOARD OF HEALTH

Dr. R. L. Cleere,

Opinion No. 1674-49

October 21, 1949.

The State Department of Health may not delegate its authority to conduct hearings for the revocation of restaurant licenses to local boards of health. However, there is no prohibition against the State Department holding its hearing simultaneously with the local hearing if such is provided by local law.

The provisions of Chapter 81 of the 1935 Colorado Statutes Annotated must be complied with for revocation of restaurant licenses.

SECRETARY OF STATE—LOTTERIES—LIQUOR

Mr. George J. Baker,

Opinion No. 1675-49

October 24, 1949.

(Shuffleboards)

Shuffleboards may be placed and operated in restaurants where liquor is sold, provided, that the use of such shuffleboards by such patrons and customers is absolutely free and without charge to the customers, and such shuffleboards are not operated for gain or profit by such restaurant owner and licensee, or is not operated in such a manner as to make it a part of the business operations of such restaurant.

LICENSES—DISABLED VETERANS

Mr. Ira H. Spiro,

Opinion No. 1676-49

October 25, 1949.

Chapter 116, S. L. 1949, provides that no fee shall be charged for registration or re-registration of an auto owned and operated by a veteran who has established his right to benefits under provisions of Public Law 663, 79th Congress, passed March 18, 1949.

OIL INSPECTION**Opinion No. 1677-49**

Mr. John E. Cronin,

October 25, 1949.

(Gas appliances)

Chapter 184, Session Laws of Colorado 1945, relates to consumption of "Liquefied Petroleum Gas" and the rules and regulations promulgated thereunder are reasonable. Gas consuming appliances are either domestic or commercial. Gas appliances used in public buildings and schools would be deemed to be commercial.

**REVENUE DEPARTMENT—MOTOR VEHICLES—CITIES
AND COUNTIES****Opinion No. 1678-49**

Mr. W. F. Perkins,

October 25, 1949.

1. & 2. State and counties not liable for payment of registration fees on state and county owned motor vehicles.

3. In view of court decisions cities are probably exempt from payment of such registration fees but matter is debatable and should be presented to the legislature for correction at next opportune time.

4. Director of Revenue has no power to fix nominal or any other amount in lieu of registration fee or tax.

5. The exclusive power to interpret the motor vehicle registration act as well as other statutes is vested in our courts and not elsewhere.

SCHOOLS

Mrs. Nettie S. Freed,

Opinion No. 1679-49

October 26, 1949.

No legal authority to operate a public school without the boundaries of a district where the operation would include the employment and compensation of teachers who would teach in the building erected in a territory by the Federal Government, viz: Camp Carson. (Sec. 73, Ch. 146, 1935 C.S.A.).

STATE CIVIL SERVICE COMMISSION**Opinion No. 1680-49**

State Civil Service Commission,

October 27, 1949.

With reference to proper hearings before the Civil Service Commission, witness fees must be paid from the funds of the

Commission. Records of hearings must be destroyed according to the provisions of Section 9, Chapter 36, and Section 18(2) of Chapter 154 of the 1935 C.S.A., which generally provides that the officer who decides that the records are of no further value must consult with the Attorney General and the Curator of History of the State Historical Society of Colorado for approval.

Relative to enforcement procedures for witnesses properly subpoenaed, your Commission may petition the District Court for an order to the witness to appear for the hearing upon the proper showing of Commission authority to conduct hearings that the witness was properly subpoenaed and failed to appear.

FEES AND LICENSES—GAME AND FISH DEPARTMENT

Opinion No. 1681-49

Game and Fish Commission,

October 27, 1949.

No authority in law for refund for lost licenses or unused license by reason of death.

HIGHWAYS—CONTROLLER—GOVERNOR

Opinion No. 1682-49

Mr. Mark U. Watrous,

October 31, 1949.

(Funds)

1. Where facts show actual encumbrance of Highway Construction Fund of 1946-1947 by formal agreement with the Federal Government for specific projects made prior to December 31, 1947, the said funds are legally encumbered.

2. Reimbursement from the Highway Construction Fund 1946-1947 to the Highway Supplementary Fund can only be made upon the order of the Governor issued at the written request of the State Highway.

**INDUSTRIAL COMMISSION—CITIES AND TOWNS
FEDERAL**

Opinion No. 1683-49

Industrial Commission of Colorado,

November 1, 1949.

(City Boiler Inspector—Pueblo Air Base)

The City Boiler Inspector of Pueblo has jurisdiction over the inspection of boilers at the Pueblo Air Base even though the said base is outside the corporate limits of the City of Pueblo—provided title to the base is in the City of Pueblo.

COAL MINE INSPECTOR

Mr. Thomas Allen,
November 1, 1949.

Opinion No. 1684-49

The records in the office of State Inspector of Coal Mines are public records and persons are entitled to information therefrom either voluntarily or through the issuance of a subpoena.

INDUSTRIAL COMMISSION

Mr. R. E. Dill,
November 3, 1949.

Opinion No. 1685-49

Women working in packing shed grading vegetables and fruits are not processing seasonable agricultural products within the Act.

COUNTY OFFICERS—TAXATION

Mr. Mansur Tinsly,
November 4, 1949.

Opinion No. 1686-49

It is mandatory under Section 140 of Chapter 142 of 1935 C.S.A. for the County Assessor to deliver to the County Treasurer not later than the first day of January of each year the tax rolls and warrant under his official hand and seal. Failure to deliver such tax rolls and warrant not later than January 1st of each year is a breach of the County Assessor's performance of his statutory duties and the Attorney General may, under Section 140 of Chapter 142 of the 1935 C.S.A., bring action in the name of the State of Colorado against said official and his bonding company.

REAL ESTATE BROKERS BOARD

Mr. Harry C. Graham,
November 14, 1949.

Opinion No. 1687-49

Real Estate Brokers Board should not maintain outside bank accounts; all license fees, money collected on sale of primers, or other moneys, should be deposited with the State Treasurer as provided by statute.

STATE BOARD OF HEALTH—NEWSPAPERS

Dr. R. L. Cleere,
November 14, 1949.

Opinion No. 1688-49

In accordance with the provisions of Section 5(d) of Chapter 165, 1949 Session Laws, all orders, rules and regulations adopted by the Department of Health pursuant to Section 5(d), Chapter 165, 1949 S. L., shall be published once in a daily newspaper.

**TAXATION—MINERAL
RESERVATIONS****Opinion No. 1689-49**

Colorado Tax Commission,
November 14, 1949.

Mineral reserves, when assessed separately from the surface of land can be sold for taxes and the title to the same can be conveyed by Treasurer's Tax deed when such taxes as assessed are not paid. It is the duty of the Assessor to assess such mineral reserves.

**AUDITOR—JUSTICE OF PEACE
MOTOR VEHICLE FINES
STATE TREASURER****Opinion No. 1690-49**

Hon. Myron C. McGinley,
November 15, 1949.

Temporary deposit with City Treasurer of the City and County of Denver of fines by Justice of Peace is not contrary to Section 287, Chapter 16, 1935 C.S.A.

Such funds when deposited with the State Treasurer should be credited according to the provisions of Section 287, Chapter 16, 1935 C.S.A.

The State Treasurer is only authorized to transfer to the Policemen's Pension Fund such fines, forfeitures, etc., as are not otherwise specifically allocated to and appropriated to specific purposes.

MEDICAL BOARD—LEGAL RESIDENCE**Opinion No. 1691-49**

Dr. George H. Gillen,
November 17, 1949.

Determination of residence must be determined upon the facts and circumstances of each individual case. Residence is a combination of intent as well as domicile, property ownership, voting registration, payment of taxes and other factors. The burden of proof is upon him who asserts that he is a resident.

CHIROPRACTORS**Opinion No. 1692-49**

Dr. E. A. Jackson,
November 18, 1949.

In order for eligibility to become licensed as a chiropractor in the State of Colorado the applicant must have graduated from

a recognized chiropractic school or college which requires not less than 3600 sixty minute hours of class room instruction with a maximum of thirty hours per week for graduation. Merely accumulating sufficient hours in a chiropractic school which requires less than the 3600 sixty minute hours does not make the applicant eligible and is not within the purview of the statute.

STATE TREASURER—CORPORATIONS

Opinion No. 1693-49

Mr. Homer F. Bedford,
November 21, 1949.

Procedure to be taken by the American Fluorspar Corporation in paying the amounts owing the stockholders of a dissolved corporation who cannot be located, to the State of Colorado through the State Treasurer, the company should forward to the Attorney General's Office a written report giving any information it may have under oath or affirmation touching the identity of any person supposed to be entitled to said money to the end that fictitious claims thereto may be forestalled.

LIQUOR—RESTAURANTS—HEALTH DEPARTMENT

Opinion No. 1694-49

Dr. R. L. Cleere,
November 21, 1949.
(Private clubs)

Private clubs are within the meaning of Chapter 81, 1935 C.S.A., and subject to licensing by the State Department of Public Health as restaurants.

PUBLIC EMPLOYEES'—RETIREMENT ASSOCIATION SCHOOL

Opinion No. 1695-49

Mr. Raymond J. Heath,
November 22, 1949.

(Re—school districts who wish to withdraw from membership)

Once a member of the Association, school districts or other public employers stand committed to continued membership in the Association, and to the financial obligations which such membership imposes upon them. The Act (Ch. 149, S. L. 1943, as amended by Ch. 192, S. L. 1945) presupposes contractual obligations.

STATE TREASURER—COAL MINING**Opinion No. 1696-49**

Hon. Homer F. Bedford,
November 23, 1949.

The Administrative Code of 1941 transfers the power to issue coal mining licenses and to receive license fees therefor from the State Treasurer who held such power under Section 157(b), Chapter 110, 1935 C.S.A., to the Director of Revenue. Revokes Opinion No. 277-41.

CHIROPRACTORS**Opinion No. 1697-49**

Dr. E. A. Jackson,
November 25, 1949.

Section 7, Chapter 34, 1935 C.S.A., is concerned with the eligibility of applicants who have graduated from a school requiring 3660 minute hours; and it is immaterial that the applicant first graduates from the school requiring less provided he ultimately meets the requirements.

BOARDS AND BUREAUS—CIVIL SERVICE COMMISSION**Opinion No. 1698-49**

State Civil Service Commission,
November 28, 1949.

(1) Members of boards and commissions appointed by the Governor and serving for a specified term may not be paid for their services, but may receive only their actual and necessary expenses in attending sessions of such boards or commissions.

(2) Members of boards and commissions may not serve in any other capacity under such board or commission while a member thereof.

(3) Employees of boards and commissions appointed by the Governor are subject to civil service classification and appointment.

STATE HISTORICAL SOCIETY—CIVIL SERVICE**Opinion No. 1699-49**

State Civil Service Commission,
December 1, 1949.

Since the State Historical Society is an educational institution, all employees of said society are within the state classified service, except those that from the nature of their duties can claim exemption as teachers and officers in said educational institution.

UNIVERSITY OF COLORADO**Opinion No. 1700-49**

Mr. Robert I. Hislop,

December 2, 1949.

(Damages in tort)

No liability imposed upon the University of Colorado to pay for damages to a student's car caused by wind-blown paint from a University painting operation.

GAME AND FISH**Opinion No. 1701-49**

Mr. L. Hudnall,

December 5, 1949.

(Payment of claim, account damage to surveyor's transit by an employee of the department).

No authority granted under Chapter 73, 1935 C.S.A. If claim becomes a lawfully recognized claim, payment may be made pursuant to Section 2, Chapter 232, Session Laws 1949.

STATE BOARD OF LAND COMMISSIONERS**Opinion No. 1702-49**

State Board of Land Commissioners,

December 5, 1949.

(Oil Leases—bond)

It is not necessary for the Board of Land Commissioners to require lessees to give bond in issuing mineral leases until such time as the lessee enters into possession of premises.

SCHOOLS**Opinion No. 1703-49**

Mrs. Nettie S. Freed,

December 6, 1949.

(1) The only provision regarding the awarding of contracts for the construction of school buildings is contained in Sections 263 and 264, Chapter 138, 1935 Colorado Statutes Annotated, as amended, relating to the giving of preference to Colorado labor. It is the usual practice however, to award such contracts to the lowest bidder.

(2) The fifth subdivision of Section 89, Chapter 146, 1935 C.S.A., as amended, requires the approval of the voters of the school district in order to sell the real property of a school district.

SCHOOLS

Mrs. Nettie S. Freed,

Opinion No. 1704-49

December 6, 1949.

(Retirement)

Chapter 229, S. L. 1949, amends Section 251, Chapter 146, 1935 C.S.A., as amended, to provide for a minimum payment of \$50.00 per month to teachers eligible for retirement, instead of a maximum of \$65.00 per month as contained in that section prior to its amendment.

**COLORADO ADVERTISING AND PUBLICITY COMMITTEE
APPROPRIATIONS—AUDITOR**

Hon. Myron C. McGinley,

Opinion No. 1705-49

December 9, 1949.

The appropriation for the Colorado Advertising and Publicity Committee contained in section 1, Chapter 5, Session Laws of Colorado 1949, is not subject to the 15% limitation set forth in Section 6(c), Chapter 8, S. L. 1945.

The 15% limitation set forth in Section 6(c), Chapter 8, S. L. 1941, applied only to the appropriations made in that section.

**BOARDS AND BUREAUS—GOVERNOR—SECRETARY
OF STATE**

Mr. Elton K. McQueary,

Opinion No. 1706-49

December 9, 1949.

The boards included in the Division of Registrations, Department of State, Section 54, Chapter 2, S. L. 1941, the Administrative Code of 1941, of which the Secretary of State is the head, are the proper authorities charged by law with the appointment of employees of such boards, with the exception of the Secretary of State in the case of the Real Estate Brokers Board. Section 37, Chapter 15, 1935 C.S.A.

**FIREMEN'S AND POLICEMEN'S PENSION
FUNDS—AUDITOR**

Hon. Myron C. McGinley,

Opinion No. 1707-49

December 9, 1949.

1. *Policemen's Pension Funds* may lawfully be invested as follows: Interest bearing bonds of the United States; interest

bearing bonds of the State of Colorado; interest bearing bonds of any city of the first class; interest bearing bonds of any city of the second class (Ch. 166, S. L. 1939).

2. *Firemen's Pension Funds* may lawfully be invested as follows:

- (1) In cities of over 100,000 (Sec. 454).
 - a. Interest bearing bonds of the United States.
 - b. Interest bearing bonds of the State of Colorado.
 - c. General obligation bonds of cities of the first class of the State of Colorado.
 - d. Interest bearing bonds of any city in the State of Colorado having a population in excess of 100,000 people.
- (2) In cities of less than 100,000 (Ch. 166, S. L. 1939):
 - a. Interest bearing bonds of the United States.
 - b. Interest bearing bonds of the State of Colorado.
 - c. Interest bearing bonds of any city in the State of Colorado of the first and second class.

STATE BOARD OF EXAMINERS OF ARCHITECTS

Opinion No. 1708-49

State Board of Examiners of Architects,

December 10, 1949.

1. By the adoption of article 20 of the Constitution of Colorado relating to home rule, the power to declare the public policy of the state was not relinquished and all statutes of a general nature are applicable within home rule cities, except insofar as superseded by the charter of home rule cities or by ordinance passed pursuant to such charter.

2. The State Board of Examiners of Architects may not lawfully establish qualifications as to experience and education beyond that called for in the law before accepting a candidate for examination. The examination is open to all persons over 21 years of age.

COLORADO STATE HOSPITAL

Opinion No. 1709-49

Dr. F. H. Zimmerman,

December 10, 1949.

1. The "Colorado State Hospital Account" comes within the purview of Chapter 232 and 233, S. L. 1949, and must be guaranteed in an amount of 110% of the average balance.

2. The Savings Bond Account is in the nature of a quasi trust fund and comes within the purview of said Chapter 232 and 233, but is subject to the \$5000 exception set forth in said Chapter 233. Such account must be kept in a national, state bank or trust

company, doing business in the state, and who is a member of the Federal Deposit Insurance Corporation.

3. The statute provides for a \$10,000 bond for the superintendent to be approved by the State Treasurer. The statute is silent as to bonds for other employees. Good administrative practice would indicate the necessity for such bonds. This is an administrative question and not one of law.

DEPARTMENT OF AGRICULTURE

Opinion No. 1710-49

Mr. Paul W. Swisher,
December 12, 1949.

The Department of Agriculture may use portion of moneys appropriated by H. B. 77, Chapter 2, 1949 S. L., for the purpose of control of animal tuberculosis, and those appropriated by H. B. 81, Chapter 73, 1949 S. L., for the control of goat's disease (*Brucella Melitensis*), providing this money is used to maintain a laboratory for the testing of blood samples taken from these animals for the control of diseases, no other funds being set up to take care of this work. In view of the fact that said appropriations were made for the control of animal diseases and it is a necessary factor to that end to test samples of the animals' blood, held that portion of each appropriation may be used to maintain a laboratory for such purpose.

COAL MINING

Opinion No. 1711-49

Thomas Allen,
December 15, 1949.

(Number of men who may work underground without a mine foreman).

Section 34, Chapter 110, 1935 C.S.A., was approved May 16, 1931 and Section 100, Chapter 110, 1935 C.S.A., was approved April 4, 1927, which makes Section 34 supersede Section 100, if any conflict in the two statutes arises. Held that there must be a mine foreman for more than three men employed in a mine underground.

SCHOOLS

Opinion No. 1712-49

Mrs. Frances Nelson,
December 16, 1949.

The Board of Education of the new district elected pursuant to Section 28(1), Chapter 22, S. L. 1949, being the School District Reorganization Act of 1949, must be elected at large and not be geographical districts.

STATE CIVIL SERVICE COMMISSION—NATIONAL GUARD**Opinion No. 1713-49**

Hon. Myron C. McGinley,

December 16, 1949.

1. The Colorado National Guard constitutes the military force or service of the state as contrasted with the Civil Service of the state. Section 13, Article 12 of the State Constitution; Chapter 36, 1935 C.S.A. The commissioned officers appointed pursuant to law and the clerks and other force employed must be members of the National Guard and are not included in the classified civil service of the state. Section 31, Chapter 111, 1935 C.S.A. If, however, the Adjutant General employs any person who are not members of the National Guard, such persons are deemed to be civil employees and hence are subject to the classified civil service of the state.

2. If any civilian employees are employed by the National Guard, they must qualify as any other civil service employees pursuant to the pertinent laws and rules and regulations of the Civil Service Commission.

3. The Adjutant General, the members of the State Military Board, and the United States Property and Disbursing Officer are not subject to civil service. The provisions of Section 31, supra, would not prohibit the Adjutant General from employing civilian personnel, if deemed desirable, and if approved by the Military Board, provided that the duties of such personnel are civilian.

CITIES AND TOWNS—PUBLIC HEALTH**Opinion No. 1714-49**

Claussen & Hubbard,

December 19, 1949.

Under a statutory power a City Council or Town Board may pass reasonable ordinances relating to Public Health.

SCHOOLS**Opinion No. 1715-49**

Mrs. Nettie S. Freed,

December 19, 1949.

(Supplementary to Opinion 1703-49)

In answer to the second question as contained in the opinion of December 6th, 1949 (1703-49), is applicable only to third class school districts. Since School District No. 1, Fremont County, Canon City, Colorado, is a first class school district, its Board of Education may, pursuant to Section 75, Chapter 146, 1935 C.S.A., exercise all the powers given to the electors of school districts of

the third class as specified in Section 159, Chapter 146, 1935 C.S.A. School boards of the first and second class may buy or sell property without a vote of the people whereas such action may be taken in third class districts only by a vote of the electors. See also opinion dated March 28, 1946 to Walter Bain (No. 765-46).

HEALTH

Dr. R. L. Cleere,
December 20, 1949.
(Bedding law)

Opinion No. 1716-49

To determine which articles of furniture come within the statutory definition of "bedding," Section 190(a) of Chapter 78, 1935 C.S.A., each article must be considered separately in connection with that definition and in connection with Webster's definition of terms also within the statute.

AGRICULTURAL COLLEGE—PUBLIC FUNDS

Mr. Elton K. McQuery,
December 20, 1949.

Opinion No. 1717-49

Under Chapter 219, Session Laws of Colorado, 1945:

(1) Two or more buildings may be lawfully combined into one project for the combined income of all the buildings being used to pay the total funds advanced where all of such buildings will be constructed at the same time and where they are the same as would be the case of faculty apartments. A student union building addition is deemed to be a separate project to be separately financed.

2. The construction of a student union building which would include restaurant and eating facilities would be within the contemplation of Chapter 219, Session Laws of Colorado 1945.

SCHOOLS

Mrs. Nettie S. Freed,
December 23, 1949.

Opinion No. 1718-49

The Board of Education of a third class school district may not give or lease surplus buildings without approval by a vote of the electors of the district. Section 159, Chapter 146, 1935 C.S.A. If the School District is a district of the first or second class, the Board of Directors may exercise that power. Section 75, Chapter 146, 1935 C.S.A., either by gift or lease.

LIQUOR LICENSE**Opinion No. 1719-49**

Honorable George J. Baker,
 Secretary of State,
 December 23, 1949.

An application for a liquor license by an applicant who has admitted by plea of guilty to the violation of a federal law, denominated a felony, who has been sentenced and imprisoned and paid a fine should be refused a license notwithstanding the pardon of the President restoring such applicant to his civil rights. Section 25(c), Chapter 89, 1935 C.S.A. Opinion of Attorney General Byron G. Rogers 1939-1940, No. 289; Opinion of Attorney General Gail L. Ireland 1943-1944, No. 197.

SCHOOLS**Opinion No. 1720-49**

Mrs. Nettie S. Freed,
 December 23, 1949.
 (Teachers Tenure)

Where a teacher accepts employment for the fourth consecutive year under a written agreement that tenure protection will not be sought at the end of the fourth year, under the Teachers Tenure Act of Colorado, Chapter 230, Session Laws of Colorado 1949, such acceptance would not constitute a valid waiver since such an agreement would be contrary to public policy.

HIGHWAY PATROL—MOTOR VEHICLES**Opinion No. 1721-49**

Mr. Frank M. Scott,
 December 27, 1949.

Highway patrolmen may arrest only for violations of the Motor Vehicle Act or for violations of certain other state statutes and not for violations of city ordinances.

COUNTIES**Opinion No. 1722-49**

Mr. F. W. Azar,
 December 27, 1949.

A county may not purchase buildings to be used for other than strict county purposes, to incur indebtedness. The county attempting to purchase such buildings must seek an affirmative vote of the electorate.

SCHOOLS**Opinion No. 1723-49**

Mr. J. W. Stewart,
December 27, 1949.

1. A vote may be called by a Board of Education to vote bonds to build a new grade school unless the school district has reached the limit of its bonded indebtedness under Section 122, Chapter 146, 1935 C.S.A., as amended by Section 1, Chapter 14, Session Laws of Colorado Extraordinary Session, 1945, which may be as much as 10% for districts of the first and second class and 7% for districts of the third class provided the permission of the Colorado Tax Commission is first obtained. 2. If a school district should vote additional bonds for a grade school building and later consolidate with other districts pursuant to a reorganization plan, the present or former district would continue to be obligated to pay such bonds and not the new district—Sections 291-292, Chapter 224, Sessions Laws of Colorado 1949. 3. If a county unit system or other reorganization, under The School District Reorganization Act of 1949, is accomplished which includes a particular district, the members of the Board of Education of the new district are required to be elected at large from the area of the new district. Section 28, Chapter 224, Session Laws 1949.

HIGHWAYS—STATE CONTROLLER**Opinion No. 1724-49**

Mr. James A. Noonan,
December 28, 1949.

The plain implication of the State Controller Act, Chapter 118, Session Laws of Colorado 1947, is that the Controller has the authority and power to prescribe to the State Highway Department the form of the State Highway Budget in order that he may prescribe and cause to be installed a set of budgetary control account and otherwise has authority by Section 3h, Chapter 118, S. L. 1947 to carry out his duties as authorized in Section 12a and b, Chapter 118, S. L. 1947.

The State Controller should include the State Highway Budget for each of the calendar years in the biennial budget report with the appropriate notation as to years included. The financial administration and the accounting procedures of the State Highway Department are covered by and subject to the provisions of Section 12a, 9-17, inclusive, Chapter 2, Session Laws of Colorado 1941, as amended by Section 2, Chapter 118, Session Laws of Colorado 1947, and Section 3(h) supra, and the subsections referred to make no exception as to the State Highway Department. They

are enacted subsequent to the highway law of 1921 and hence are applicable.

The State Controller has authority to prescribe the accounting records and procedures relating thereto as to the State Highway Department, which he deems to be necessary. The State Controller has the authority to enter into a contract with individual accountants in the manner and form set forth in a certain contract between the State Highway Department and Ralph E. Mayo and Company. Therefore, he should withhold his approval from that contract. If he desires to have the work done in relation to the State Highway Department by individual accountants, he should enter into the contract and not the State Highway Department.

COUNTIES—ESTATES AND ESCHEATS

Opinion No. 1725-49

Mr. James F. Miller,
December 30, 1949.
(Small estates law)

Section 77, Chapter 176, 1935 C.S.A., with reference to estates under \$300.00, cannot be used to transfer title to real estate. The fact that the small estates act has been amended to include estates under \$500 is not deemed to have changed the situation. Held said section cannot be used to transfer title to real estate and any title thus transferred would not give good title.

HIGHWAYS

Opinion No. 1726-50

Mr. Mark U. Watrous,
January 3, 1950.

Where there is a conflict in rates as set by Federal and State Law, Federal law governs on Federal Aid Projects. State statutes would control on non-Federal projects.

CITIES AND TOWNS—MOTOR VEHICLES

Opinion No. 1727-50

Mr. W. F. Perkins,
December 27, 1949.

City owned vehicles not within exclusions of Section 107, Chapter 16, 1935 C.S.A., should be registered under provisions of Chapter 16 until legislative clarification or court action produces different results. See Opinion of October 25, 1949 to Director of Revenue—1678-49.

STATE BOARD OF ACCOUNTANCY—STATE AUDITOR**Opinion No. 1728-50**

Mr. Myron C. McGinley,

January 4, 1950.

(1) The making of an audit of a local government unit and the preparation and certification of a report thereof by one who is neither a certified public accountant nor a registered accountant is a violation of Section 4, Chapter 193, Session Laws of Colorado 1945, relative to audits of local governments and of paragraph D, Section 7, Chapter 76, Session Laws of Colorado, relative to the practice of accountancy. Such a person is one who assumes practice as a certified public accountant or is a registered accountant without a certificate of authority from the State Board of Accountancy under the provisions of paragraphs (E) or (F) of Section 16, supra, and is subject to the penalties therein provided.

(2) It is proper and appropriate for the Auditor of State when it comes to his attention that audit reports of local government units made pursuant to Chapter 193, supra, have been made by unlicensed persons, to report such violations to the respective district attorneys pursuant to Section 15(B), Chapter 76, supra, for appropriate action, and to require audit to be made by a licensed accountant, and further to notify State Board of Accountancy of the facts.

(3) Pursuant to Section 7(D), supra, only registered and certified public accountants may prepare or certify reports of audits, balance sheets, etc., on reports which are to be filed with any governmental agency. Section 7(E) supra further limits rendering professional assistance to clients for compensation in general, but exempts from the provisions of Chapter 76, supra, “* * * attorneys who in connection with his professional duties prepares or certifies reports to be filed in a court of law, board or other governmental agency,” etc.

(4) No restriction on the preparation of such reports to governmental agencies by the tax payer.

(5) Nothing in the Accountancy Act of 1937 restricts or limits the power or authority of any state, county or municipal officer or his appointee engaged in the examination of the accounts of any public officer, etc. Same would be true of activities of any federal officer. Nothing in the act would restrict appropriate federal or state employees from assisting persons in the preparation of income tax returns. Persons who may prepare financial reports for filing with governmental agencies listed.

**STATE BOARD OF EXAMINERS FOR ENGINEERS
AND SURVEYORS**

Opinion No. 1729-50

Mr. W. T. Blight,
January 5, 1950.

Expenditure of funds by the Board of Engineer Examiners must be clearly allowed by statute. There is no authorization in the engineering law for payment to the State Engineer's publication for space or for warning advertisements in the telephone directory.

LIQUOR.

Opinion No. 1730-50

Mr. George J. Baker,
January 4, 1950.

Question: Whether liquor license can be issued to corporation in which one of the stockholders owning 97% of the stock was convicted and sentenced to State Penitentiary for receiving stolen goods. Held within authority of licensing authority to issue license in question since Chapter 89, Section 25(d), 1935 C.S.A., applies only to convictions of an officer, director or stockholder holding over 10% of the capital stock of the corporation of any violation of any liquor law in any federal or state court of record.

STATE BOARD OF MEDICAL EXAMINERS

Opinion No. 1731-50

State Board of Medical Examiners,
January 5, 1950.

Under the Court's decision in the Lipset case, no greater educational qualifications may be demanded of an applicant for reinstatement whose license has been revoked by the medical society for failure to pay the annual renewal fee for three successive years.

STATE PLANNING COMMISSION

Opinion No. 1732-50

The Colorado State Planning Commission,
January 6, 1950.

1. Self liquidating buildings such as dormitories, faculty buildings, kitchens and dining rooms, etc., cannot be financed and built from proceeds derived from the mill levies as provided for in Chapters 116, 194, 277, 290, 291, 327 and 335, S. L. 1947.

2. The State Planning Commission cannot under the provisions of the above mentioned laws authorize the issuance of anticipation warrants against the building mill levies of the various educational institutions to finance part or all of the cost of construction of so called self-liquidating properties.

3. Self liquidating projects at state educational institutions should be financed under the provisions of Chapter 219, S. L. 1945.

CIVIL SERVICE—CONSTITUTIONAL AMENDMENTS

Opinion No. 1733-50

Civil Service Commission,

January 9, 1950.

Hiring of an attorney by Civil Service employees to revise title to a proposed constitutional amendment concerning civil service would constitute a violation of Section 7, Chapter 86, 1935 C.S.A.

COUNTY JUDGES

Opinion No. 1734-50

Hon. M. V. Kennett,

January 10, 1950.

(Clerks)

Judges of the County Court in counties of any class may appoint a clerk who shall be Clerk of said County Court; judge, with approval of county commissioners, may fix salary of clerk at an amount not in excess of, or beyond period limited by said clerk. In other words, appointive power lies solely in the judge; the fixing of salary requires the concurrent action of the County Judge with approval of Board of County Commissioners.

STATE PURCHASING AGENT

Opinion No. 1735-50

Hon. Lacy L. Wilkinson,

January 10, 1950.

(Printing contracts; union labels)

Sec. 76, Ch. 130, 1935 C.S.A., as amended by Laws of 1937, page 951, Section 11, provides contracts for printing be let to lowest responsible bidder, under conditions as prescribed by Section 72, Chapter 130, 1935 C.S.A., as amended by laws of 1937, page 949, Section 7. No requirement is made that lowest responsible bidder must be a union shop. Hence state agency without authority to require union label.

RACING COMMISSION**Opinion No. 1736-50**

Racing Commission of Colorado,

January 11, 1950.

The members of the Colorado Racing Commission may be reimbursed for any necessary expenses. The determination of what are necessary expenses is made by the State Controller and is under Section 3(a) and 3(b), Chapter 118, Session Laws Colorado 1947. What are necessary expenses would normally be the actual and necessary traveling expenses, subsistence, telephone and telegraph messages and other out of pocket expenses. Such expenses would not include the expense of taking a secretary to a convention in Mexico City, unless there was express advance authorization as required by law.

RACING COMMISSION**Opinion No. 1737-50**

Dr. James Farquharson,

January 11, 1950.

There are no legal objections to allowing the Colorado Racing Commission to indicate the present members of the Commission and their titles on printed materials supplied by the Commission where such printed materials show the prior members of the Commission.

SCHOOLS**Opinion No. 1738-50**

Mr. Herrick S. Roth,

January 6, 1950.

1. Where a school district has a salary schedule providing for automatic increases in teachers salaries, and such school district is subject to provisions of Teachers Tenure Act, any teacher employed on full time basis, not under permanent tenure, is deemed to be re-employed at salary provided by schedule, unless said teacher receives notice in writing on or before 15th day of April of term.

2. When a teacher is under permanent tenure, the salary received depends upon salary schedule applicable in the district. Reduction of said salary governed by provisions of Chapter 230, 1941 S. L.

3. School district not prohibited from notifying teacher not under permanent tenure that he or she is re-employed for coming year at lower salary.

**COLORADO GENERAL HOSPITAL—STORE LICENSE TAX
STATE INSTITUTIONS**

Colorado General Hospital,
January 13, 1950.

Opinion No. 1739-50

A store or commissary operated by a state institution or agency through its employees, where the profits or losses go to or are absorbed by the institution, is not required to obtain a store license in order to operate. Ch. 161, 1935 C.S.A.; *In re Inheritance Tax Macky Est.*, 46 Colo. 79; *People v. Miller*, 90 Colo. 269; *State v. Colo. Co.* 104 Colo. 436; 34 Am. Jur. 300, Sec. 388; Op. 1678-49.

BUREAU OF CHILD AND ANIMAL PROTECTION

Mr. Elton K. McQueary,
January 18, 1950.

Opinion No. 1740-50

While it is the opinion of the Attorney General that each and every appropriation heretofore made to the "Humane Society" has been made in direct violation of Section 34, Art. V, Colo. Const., and that the delegation of the special privilege, immunities and franchise granted to this private corporation by Ch. 151, 1935 C.S.A., were local or special laws passed in direct violation of Sec. 25, Art. V, Colorado Const., nevertheless because of the refusal of the courts to pass upon such matters *ex parte* we recommend that a proper adversary action be instituted in the courts as soon as practicable and to that end will institute an action as soon as possible for declaratory judgment.

**STATE PURCHASING AGENT—HUMANE SOCIETY
MOTOR VEHICLES**

Mr. Lacy L. Wilkinson,
January 18, 1950.

Opinion No. 1741-50

Until such time as there has been a court determination of the Humane Society's constitutional status, the State Purchasing Agent and the Revenue Department can lawfully treat the Humane Society as a state agency entitled to exemption from payment of the state motor vehicle tax.

STATE PURCHASING AGENT—HIGHWAY DEPARTMENT

Mr. Mark U. Watrous,
January 20, 1950.

Opinion No. 1742-50

In the absence of statutory authority a bidder cannot withdraw his bid or proposal, the only exception being in cases where

a bidder has made a material mistake of fact and has acted promptly to rectify the mistake. The public authority must be informed of the mistake before the opening of bids to entitle him to cancellation of the bid and a return of the deposit. A bidder may not accept the award and then insist upon correction of the mistake in bid to its corrected figure. The most a bidder can expect under any equitable doctrine is the right to withdraw the bid and the right to the return of deposit.

PUBLIC HEALTH

Opinion No. 1743-50

Martin D. Baum, D.V.M., M.P.H.,

January 23, 1950.

(Hamburger Law)

Section 1, Chapter 69 of the 1935 C.S.A., commonly known as the "hamburger law" applies and will be enforced for all ground beef products regardless of trade name.

RACING COMMISSION—STATE CONTROLLER

Opinion No. 1744-50

Mr. James A. Noonan,

January 25, 1950.

1. A voucher submitted by the Colorado Racing Commission for the payment of special counsel is not valid and therefore the State Controller may not lawfully draw a warrant against the Colorado Racing Commission expense fund where the commission has failed to comply with Section 3a, Chapter 118, Session Laws 1947, regarding the advance submission of a commitment voucher and where the members of the commission failed to obtain the consent of the Attorney General to the employment of special legal counsel at the expense of the commission or otherwise such consent is required by law.

2. The various departments, divisions, boards, bureaus and agencies of the state government cannot prosecute or defend public suits nor employ legal counsel except through the Attorney General since he is the legal counsel and advisor of all such agencies, unless they have express statutory authority to employ counsel. The Attorney General is vested by law with the authority to appear for the state, prosecute and defend all actions and proceedings in which the state is a party or interested when required to do so by the governor or general assembly.

3. The Colorado Racing Commission has no authority to employ its own attorney. Section 3, Chapter 207, S. L. 1949, amended Section 1, Chap. 208, S. L. 1949.

**PURCHASING AGENT—REVENUE DEPARTMENT
CONTROLLER—GASOLINE TAX****Opinion No. 1745-50**

Mr. Lacy L. Wilkinson,

January 26, 1950.

The State of Colorado and all of its institutions and agencies, including such public corporations as the University of Colorado (In re Macky Est., 46 Colo. 79) and the State Highway Department (*Michell v. Comms.*, 112 Colo. 582), are not required to pay the tax imposed upon the use or sale of motor fuel within the State of Colorado when used for state purposes, in state-owned vehicles (see also Op. 1452 and 1648).

**UNIVERSITY OF COLORADO
CITIES AND TOWNS—COUNTIES—SCHOOL DISTRICTS****Opinion No. 1746-50**

Robert L. Stearns,

January 27, 1950.

Notwithstanding the provisions of Section 14, Article IX of the State Constitution, the Board of Regents of the University of Colorado acted beyond the scope of its authority in making an offer of a reward for the apprehension and conviction of a person found guilty of the charge of rape and murder. Under the laws of this state, the Governor only may offer rewards in such cases. Sections 8-11, Chapter 27, 1935 C.S.A.

No officer, institution or other agency of this state may offer rewards or make payments therefor in the absence of express statutory authority.

The offer of a reward for the apprehension and conviction of an offender against the criminal laws of a state is an exercise of state power, therefore, it is foreign to the objects and purposes of a municipal corporation. Municipalities have no authority to offer rewards for the apprehension of offenders against the criminal laws of the state unless a statute or charter provision confers such powers. This principle applies to counties, cities, towns, school districts and political subdivisions of the state.

SCHOOLS—COAL—UNIVERSITY OF COLORADO**Opinion No. 1747-50**

Industrial Commission of Colorado,

January 30, 1950.

1. Public schools are not state institutions within the provisions of Section 71(1), Chapter 250, Session Laws 1937, relating

to the use of coal for heating and other purposes for state institutions and agencies.

2. The provisions of Chapter 250, Session Laws Colorado 1937 are not applicable to the University of Colorado. Section 14, Article 9, Constitution of the State of Colorado.

INDUSTRIAL COMMISSION

Opinion No. 1748-50

Hon. R. C. Anderson,
January 30, 1950.

Where a private employment agency makes a practice of obtaining from the applicants referred by state agency to positions authorization to the employer for a wage deduction for the payment of placement fee, such action is an attempt at an assignment in violation of the provisions of Chapter 113, S. L. Colorado, 1949.

SECURITIES

Opinion No. 1749-50

Mr. Curtis White,
January 30, 1950.
(Stock exchange)

Securities, exempt—Chicago Stock Exchange and successor thereto.

SCHOOLS

Opinion No. 1750-50

Mrs. Nettie S. Freed,
January 30, 1950.
(Tenure of Teachers)

If a teacher has been employed as a regularly elected teacher for three consecutive years or more and receives a written notice prior to April 15, 1950, that he will not be retained as a teacher in 1950-51 and thereafter the school board tenders and the teacher signs a contract to teach in the same school district, that teacher has attained permanent tenure under the Teacher Tenure Act of Colorado. (Chapter 230, S. L. 1949).

A teacher who has been serving as such receives notice by April 15, 1950, during her first year of service, that she is not to be retained, but subsequent to April 15, 1950 signs a contract to teach in the same school district, should be considered as a teacher teaching in her second year under the new contract and not as a new teacher, for the same reason given above.

**GAME AND FISH COMMISSION—TAXATION
IRRIGATION DISTRICTS****Opinion No. 1751-50**

Mr. James B. McDonald,
January 30, 1950.

Tax for support of irrigation district may be paid by Game and Fish Commission since taxes are in nature of a local and special improvement tax.

**SOIL CONSERVATION DISTRICT—MOTOR
VEHICLE LICENSES****Opinion No. 1752-50**

Mr. L. B. Casselman,
January 31, 1950.

A soil conservation district is not exempt from the purchase and use of license plates, except as to such vehicles as are fire-fighting vehicles, police patrol wagons and police ambulances, or farm tractors, road rolling, and road machinery temporarily operated or moved upon the highway. (Secs. 106-107, Ch. 16, 1935 C.S.A.).

CIVIL SERVICE COMMISSION**Opinion No. 1753-50**

Mr. Wayne K. Patterson,
January 31, 1950.
(Witness fees).

Witness fees and mileage must be paid by Commission to persons subpoenaed before Commission for formal hearings. Same should be paid at same rate and scale as fees paid by the District Court. There is no additional allowance for expenses, meals, loss of wages, etc. and these need not be considered by the Commission in allowing statutory fees.

HIGHWAY—NOTARIES PUBLIC**Opinion No. 1754-50**

Mr. Mark U. Watrous,
February 1, 1950.

Notaries public may now receive acknowledgments in counties other than in which bond is filed, and highway rights of way negotiators may properly receive such acknowledgments under their notarial seal, in any county within the state.

SCHOOLS**Opinion No. 1755-50**

Mr. Cecil Mullins,
February 1, 1950.

In order to vote at a school bond election a person, in addition to being a qualified elector of the district, must also have paid a school tax in the district in the year next preceding the election, that is, if he is to vote at a bond election in 1950, he must have paid a school tax, a tax on real or personal property, during the calendar year 1949.

Where the title to real or personal property is held in the name of the husband, both the husband and the wife may vote at a school bond election, if the property is, *in fact*, jointly owned by the husband and wife, otherwise, only the husband may vote. The reverse is true. Such joint ownership a question of fact to be proved.

If a school tax is paid on personal property only, the owner, if otherwise qualified, is eligible to vote at a school bond election. However, payment of specific ownership tax only on a motor vehicle does not render the owner eligible to vote at a school bond election.

Proper to instruct County Treasurer to prepare a list of those persons living in the school district who have paid school taxes in the calendar year next preceding the bond election. Any qualified elector who paid a school tax in the calendar year 1949 would be eligible to vote at any school bond election held at any time during the calendar year 1950.

Purchaser of property in January 1949 who at that time paid the 1948 property taxes as a part of the purchase price is a person who paid a school tax in 1949 and hence is, if otherwise qualified, eligible to vote at the school bond election on February 21, 1950.

DEPARTMENT OF AGRICULTURE**Opinion No. 1756-50**

Colorado Department of Agriculture,
February 1, 1950.

1. The operation of the Bang's Disease Act, Chapter 239, Session Laws of 1949, is limited to "dairy cattle" as that word is defined in Section 2, that is, to all cows "produced and kept for the production of milk for human consumption and to all heifer calves." It is appropriate for the State Agricultural Commission to designate in its rules and regulations such dairy or dairy type breeds as are recognized dairy breeds and to give the State Veterinarian the final authority to make such a determination as to whether or not a cow is a dairy or dairy type cow kept or used for the production of milk for human consumption.

2. The proposed rules and regulations respecting said Bang's Disease Act, after examination, appear to be reasonable and valid and not inconsistent with any of the provisions of the law.

3. The requirement that a "B" brand be placed on the left jaw of a cow indicating a reactor upon release from quarantine is a reasonable requirement for the furtherance and enforcement of the Brucellosis Control and Eradication Program.

SCHOOLS

Mrs. Nettie S. Freed,

Opinion No. 1757-50

February 2, 1950.

(Teachers tenure)

1. If, on or before April 15, 1950, certain teachers in the first class school district are reemployed for the third consecutive year or would be deemed reemployed for a third year on April 15, 1950 by virtue of Section 2 of The Teacher Tenure Act of Colorado, such teachers would not lose their permanent tenure status if that district becomes a part of a new district by the adoption of the reorganization plan.

2. Teachers who have gained certain rights under the local retirement and pension system will not lose such rights by reason of the formation of a new district resulting from the adoption of a reorganization plan. Such rights will become the obligation of the new district.

3. Teachers in outlying districts, that is, third class districts which are included in the new district, who have not acquired permanent tenure in such district, and who are employed for a third consecutive year by the new district, will not be under permanent tenure in the new district. They will be considered as first year teachers in the new district. The Teacher Tenure Act of Colorado applies to first class districts and not to third class districts, hence the teachers in outlying third class districts could not at this time have acquired tenure unless the school boards in such districts had voted accordingly.

UNEMPLOYMENT COMPENSATION

Mr. Carlos A. Quintana,

Opinion No. 1758-50

February 2, 1950.

(Employees wage credits—seasonal and non-seasonal)

Under Section 3(f) of the Colorado Employment Security Act, an employee cannot secure wage credits for employment on a non-seasonal job, when he is on seasonal work, and he cannot secure seasonal wage credits on a non-seasonal job.

Also, an employer cannot pay seasonal wages until the employer is determined to be in seasonal employment as determined by the Industrial Commission.

COMPATIBLE OFFICES**Opinion No. 1759-50**

Mr. William Eppinger,

February 3, 1950.

(State Senator and County Attorney)

A person who is elected to the office of State Senator may be appointed and serve as a County Attorney. Since the prohibition contained in Section 8, Article V of the State Constitution is limited to the election or appointment to any civil office under the state whereas the County Attorney is a County officer and not a civil officer of the state.

JUNIOR COLLEGES**Opinion No. 1760-50**

Mrs. Nettie S. Freed,

February 7, 1950.

The Junior College at Sterling may not lawfully change its name to Northeastern College of Colorado, since Sec. 18, Ch. 94, 1935 C.S.A., provides that each Junior College established under the Act must contain the words "Junior College District."

SCHOOLS**Opinion No. 1761-50**

Mr. L. V. Simmons,

February 8, 1950.

(Property)

1. The Board of Education of a first class school district has the power to direct the sale or other disposition to be made of any school house or the site thereof, and such other property, real or personal as may belong to the district, and to direct the manner in which the proceeds arising therefrom shall be applied. Sec. 75, 89, and 159, Ch. 146, 1935 C.S.A.

2. A Board of Education may dispose of a district owned school house or site at a stipulated figure without calling for other offers or for bids since there is no law requiring public offering for bids although the Attorney General has uniformly suggested that it would be better practice for a Board to make a public offering and to accept the highest and best bidder. The whole matter is one of bona fides.

3. In case a school building or a site or both were sold at a stipulated price without calling for other offers or bids, and an offer were made at a higher price after the sale, the individual making the offer or some tax-payer or elector might well obtain an injunction to prevent the Board of Education from selling at a lower figure.

SCHOOLS**Opinion No. 1762-50**

Mrs. Ruth Brazelton,

February 8, 1950.

The provisions of Subdivision 16, Sec. 89, Ch. 146, 1935 C.S.A., relative to the payment of tuition may not be ignored by the school authorities or by the people. *Duncan v. People*, 89 Colo. 149, *Knowlton v. Baumhover*, 182 Ia. 691, 726, 166 N. W. 202.

SCHOOLS—LIQUOR**Opinion No. 1763-50**

Mr. George J. Baker,

February 9, 1950.

The Interchurch Temperance Movement of Colorado cannot legally take regular classroom time of public school pupils for the teaching of private propaganda since Section 298 and 299, Ch. 146, 1935 C.S.A., provides that the nature of alcoholic drinks and narcotics, and special instructions as to their effect upon the human system shall be taught in connection with the several divisions of the subject of physiology and hygiene in the same manner as other required branches are taught in the schools by the use of text-books. Instruction by outside groups would be contrary to these provisions of the law and also that portion of Section 8, Art. IX of the Constitution of the State of Colorado prohibiting the teaching of sectarian tenets or doctrines in the public schools.

PROBATION LAWS—JUSTICE OF THE PEACE**Opinion No. 1764-50**

Judge J. E. Palermo,

February 6, 1950.

Chapter 195, Session Laws 1949, Sections 3, 6 and 11. Justice of the Peace in counties of over 20,000 people may grant probation as provided by this chapter. If, however, the person applying for probation has been twice convicted of a felony he is not eligible for probation.

The Court has the power to suspend the imposition or execution of sentence for such period upon such terms and conditions in conformity with this chapter as it may deem best.

COSMETOLOGY**Opinion No. 1765-50**

Helen M. Scott, Executive Secretary,

February 9, 1950.

(Hair stylists)

Any person who can qualify for Instructor of Cosmetology can qualify to teach advance work as hair stylists and teach their methods in hair styling to licensed operators.

In setting up this advance teaching of hair styling the Board of Cosmetology must necessarily have the power to set up reasonable rules and regulations to control such schools.

COUNTY FUNDS**Opinion No. 1766-50**

Mr. Herbert Gordon,

February 15, 1950.

(Proceeds from U. S. Government Bonds)

When U. S. Government bonds purchased under authority of Section 126(1), Chapter 176, 1935 C.S.A., are redeemed or otherwise disposed of, the proceeds, including interest, must be returned to the various funds from which the bonds were originally purchased.

SOIL CONSERVATION**Opinion No. 1767-50**

Mr. Kenneth W. Chalmers,

February 17, 1950.

1. The Board of Soil Conservation District which has carried over its officers from year to year by reason of the fact of the difficulty in obtaining a quorum should proceed pursuant to Sec. 7, Ch. 241, Session Laws of Colorado, 1937, as amended by Sec. 5, Ch. 231, Session Laws of Colorado 1949, to determine by lot which members of the board shall hold office for one year, two years and three years respectively, and at the annual meeting on March 27, 1950, it should then elect one man for three years to replace the designated one year term member. Thereafter at each annual election a member of the board shall be elected for a three year term to replace the member whose term has expired.

2. The other two members of a Soil Conservation Board are appointed by the State Board for terms of one year and two years respectively at the beginning and thereafter the terms of such appointed members of the Board for two years as provided by Section 7, supra, as amended.

SCHOOLS**Opinion No. 1768-50**

Miss Martha Savage,

February 20, 1950.

1. Under the provisions of the School District Reorganization Act of 1949 (Ch. 224, S. L. of Colorado, 1949) where a proposed joint district is to be organized from three counties, one of the counties may proceed to hold a special election with respect to the proposed plan of reorganization, providing the other two counties are cooperating with the one county and agreed as to the boundaries of the new joint district so that the two counties will not include those areas in their Reorganization Plan.

2. The assessment and distribution of assessment to counties for livestock raised in two or more counties is set forth in Sec. 295, Ch. 142, 1935 C.S.A. When the tax is paid it is then distributed to the counties affected, pro-rata.

INSPECTION FEES—SEED ANALYSIS**Opinion No. 1769-50**

Mr. F. Herbert Gates,

February 20, 1950.

1. Unless there is clear legislative authority for the charging of inspection and license fees and service charges, they may not be made by an administrative agency.

2. The applicable laws relative to the inspection, sampling and analysis of seeds as to the legality in collecting fees therefor examined, and the authority for the charging of such fees may be found by the construction of the various acts, together and pursuant to the administrative interpretation heretofore made with respect thereto.

SCHOOLS**Opinion No. 1770-50**

Mrs. Lilius P. Stafford,

February 21, 1950.

(Funds)

Sec. 130, Ch. 134, 1935 C.S.A., requires the Forest Reserve money to be placed in the Old County General School Fund and not the General School Fund provided for minimum salaries. It would be improper to place any of the Forest Reserve money in any other fund than the Old County General School Fund.

FORT LEWIS SCHOOL

Opinion No. 1771-50

Charles Dale Rea,

February 15, 1950.

1. The State Board of Agriculture in consultation with the State Controller can arrange pursuant to Sec. 3, Ch. 232, S. L. 1949, as amended by Ch. 233, S. L. 1949, for the handling of the school's funds and accounts.

2. The Ft. Lewis School cannot purchase property off the school campus and erect buildings thereon without receiving legislative authority to do so.

MOTOR VEHICLES

Opinion No. 1772-50

Preston B. Jones,

February 8, 1950.

Red Cross is not included within the classes enumerated within Section 101, 54 Stat., P. 1178, 76th Congress, and is therefore required to purchase and use auto registration plates and pay taxes the same as any other person domiciled within the State of Colorado.

INSURANCE

Opinion No. 1773-50

Hon. Luke J. Kavanaugh,

February 9, 1950.

A dividend received on a participating policy of life insurance, if used to purchase additional insurance, is a "premium" collected and contracted for and taxable as such under Section 14, Chapter 87, 1935 C.S.A.

CHIROPRACTORS

Opinion No. 1774-50

Hon. Neal Bishop, D. C.

February 23, 1950.

1. A chiropractor may not lawfully sign a death certificate since chiropractors are not physicians within the meaning of Section 110, Chapter 78, 1935 C.S.A.

2. Whether or not a deceased person may be autopsied is discretionary with the chief health officers or coroner in the county or district where the death occurs (Sec. 111, Ch. 78, 1935 C.S.A.).

3. Chiropractors are not included within the purview of Sec. 173, Ch. 78, 1935 C.S.A., and are therefore not entitled to use the facilities of the State Laboratory. Other sections such as Sec.

170(1), Ch. 78, 1935 C.S.A., provide for serological tests by every physician licensed to practice medicine. Therefore, such tests can be performed by the State Laboratory only for those required by law to take them, thus excluding chiropractors.

4. Chiropractors are required to submit reports of communicable diseases to the county, district or state department of health.

AGRICULTURE DEPARTMENT

Mr. Paul Swisher,
February 28, 1950.

Opinion No. 1775-50

A plan suggested by the Colorado Department of Agriculture with respect to the handling of its various funds may not be carried out since the fiscal provisions of the State Department of Agriculture Act of 1949, Ch. 100, S. L. 1949, and particularly those provisions in Section 13 thereof, are so complex and to some extent contradictory, and since the appropriation and accounting procedures are set for the current biennial fiscal period, the remedy appears to be solely legislative.

SCHOOLS (Organization)

Mrs. Lucy Perry,
February 28, 1950.

Opinion No. 1776-50

The provisions of Section 13, Chapter 224, Session Laws of Colorado 1949, the School District Reorganization Act of 1949, requires a majority vote of the members of committee for approval of the plan; a majority being more than one half of any total.

SCHOOLS

Mrs. Nettie S. Freed,
March 3, 1950.

Opinion No. 1777-50

1. The Teacher Tenure Act of Colorado, Chapter 230, S. L. 1949, applies to all first class school districts and certain other named school districts. The school districts of the second and third class may avail themselves of the provisions of the Act by the affirmative vote of two thirds of the members of the school board.

2. The clear purpose of the General Assembly in the passage of the Act was to throw around the teacher of more than three years service the safeguard of permanent tenure. Hence if a first class school district, after the enactment of the act, becomes for any reason a second class district, the teachers in that district who have acquired tenure will retain such tenure, the privileges of tenure having become an integral part of their contracts, the obligation may not be impaired.

SCHOOLS**Opinion No. 1778-50**

Mrs. Willa Zick,

March 6, 1950.

1. The term "tax paying elector" as used in the School District Reorganization Act of 1949, Section 22, has the same meaning as that term is defined in Section 17, Chapter 59, 1935 C.S.A., that is, "shall have paid a tax, or be liable for the payment of such tax upon real or personal property assessed to them and owned by them in the county where such vote is offered."

2. A person who has paid a specific ownership tax on a motor vehicle only is eligible to vote at an election held under the School District Reorganization Act of 1949, but not at a school bond election. If the title to the motor vehicle is in the husband's name only, only the husband may vote, and vice versa.

3. Only the lawful and record owner of real and personal property is a tax paying elector within the meaning of that term. If real property is held jointly as tenants in common, joint tenancy or otherwise, by husband and wife, both of the record owners may vote.

4. The judges of the election may require proof of eligibility as a taxpaying elector of a person offering to vote at an election under the Reorganization Act.

**HOSPITALS—PHARMACY LAWS—STATE
† INSTITUTIONS—COUNTIES—CITIES AND TOWNS**

Opinion No. 1779-50

Mr. Ralph E. Kemp,

March 6, 1950.

1. Until such time as the Legislature expressly requires the Colorado State Hospital and similar state institutions to obtain a pharmacy license under the pharmacy law, Section 13, Chapter 151, 1935 C.S.A., such state institutions are excluded from the provisions of that law.

2. Counties being political subdivisions of the state, have the same exemption as the state as to compliance with the Pharmacy Law regarding pharmacy license.

3. The same rule applies to all publicly owned and operated hospitals such as those owned and operated by municipal corporations.

PHARMACY LAW**Opinion No. 1780-50**

Mr. Ralph E. Kemp,

March 6, 1950.

(Sale of prophylactics)

Whenever the Board of Pharmacy issues a license to a drug store, pharmacy, drug department, or drug dealer, the licensee shall then be entitled to sell prophylactics to an ultimate consumer.

**STATE BOARD OF AGRICULTURE
FORT LEWIS****Opinion No. 1781-50**

Mr. E. Ellison Hatfield,

March 9, 1950.

The State Board of Agriculture on behalf of the Fort Lewis School may not accept a donation of a site by the City of Durango, or otherwise, for use in the erection of buildings for the school without further legislative approval. The school may take no action without the approval of the board. Sections 90, 91 and 93, Chapter 38, and Section 21, Chapter 38, 1935 C.S.A.

COLORADO STATE HOSPITAL—CITIES AND TOWNS**Opinion No. 1782-50**

Mr. C. C. Dowling,

March 13, 1950.

There is no legal objection to paying the cost of construction of a sanitary sewer from the property line of the Colorado State Hospital through the streets of Pueblo in order that it may discharge into a main sewer approximately fourteen blocks distance, provided, (1) funds are available; (2) an appropriate contract is entered into by the state and the City of Pueblo, and (3) that the required approvals are obtained.

BANKS AND BANKING**Opinion No. 1783-50**

Honorable Frank E. Goldy,

March 13, 1950.

(Examination)

Section 21, Ch. 18, 1935 C.S.A., as amended, does not require examinations of State Banks to be made personally by the Directors. Such examinations may be made by Certified Public Accountants or Examining Committees of local clearing houses at the request of such directors.

CIVIL SERVICE**Opinion No. 1784-50**

Mr. Gilbert R. Carrel,

March 17, 1950.

Section 7, Ch. 86, 1935 C.S.A., as applied to the persons named in the statute, is prospective in operation and prohibits the preparation, circulation or influencing of the signing or not signing of petitions while being circulated by other persons, and does not apply to a situation where the petitions have been prepared and circulated by other persons, and signed and filed or tendered for filing with the Secretary of State by such other persons. See also Attorney General's Opinion 1733-50 and Sec. 6(5), Ch. 86, 1935 C.S.A., as amended by S. L. 1941.

SCHOOLS**Opinion No. 1785-50**

Mrs. Nettie S. Freed,

March 22, 1950.

Under Section 5, Chapter 221, S. L. 1949, relating to state aid for the education of physically handicapped or mentally retarded children where the fee for enrollment is in excess of \$300 per annum in the school district in which the child is to receive education, it is incumbent upon and an obligation of the district which is sending the child to supply the difference in an amount not in excess of the cost of instruction and services of ordinary classes maintained in the sending district.

SCHOOLS**Opinion No. 1786-50**

Mrs. Nettie S. Freed,

March 25, 1950.

Under the Teachers Tenure Act of Colorado, Chapter 230, Session Laws of 1949, when the directors of a third class district by the affirmative vote of two-thirds of the members make the teachers of the district subject to the provisions of the act pursuant to the authorization contained in the last sentence of Section 2 thereof, the teachers who have heretofore been employed as regularly elected teachers for three consecutive school years and are re-elected after the passage of the act, have without further election stable and continuous tenure of their positions during efficiency and good behavior. Such teachers are not required to be employed for a period of three consecutive years if the directors have made the teachers of the district subject to the act.

**COUNTY COURTS AND JUDGES—MENTAL
INCOMPETENTS
COLORADO STATE HOSPITAL**

Judge Harry L. McGinnis,
March 27, 1950.

Opinion No. 1787-50

Section 3, Chapter 105, 1935 C.S.A., is not the authority for commission of a mental incompetent to the Colorado State Hospital until a judicial determination has been made for commitment in accordance with Section 7, supra. In Section 3 the words "hospital or other safe place" do not mean the Colorado State Hospital.

UNIVERSITY OF COLORADO—MEDICAL BOARD

Mrs. Beulah H. Hudgens,
March 27, 1950.

Opinion No. 1788-50

The making of house calls by the Junior and Senior medical students of the University of Colorado even though such calls would be subject to administrators, teachers, and doctors of medicine who are licensed to practice in this state would none the less be a violation of Section 17, Chapter 109, 1935 C.S.A., commonly referred to as the Medical Practices Act.

DENTISTS

Dr. William D. McCarthy,
April 4, 1950.

Opinion No. 1789-50

1. Dental hygienists may treat patients other than those of their employers within the limitations imposed by Section 15, Chapter 52, 1935 C.S.A., and provided the dental hygienists register properly with the Colorado State Board of Dental Examiners as per Section 16, supra.

2. Nothing in the Dental Practices Act prohibits dental hygienists from sending out announcements to patients of a former employer. Such acts are governed by the general law as to principal and agent, employer and employee.

HIGHWAYS—PURCHASING DEPARTMENT

Mr. Mark U. Watrous,
March 31, 1950.

Opinion No. 1790-50

(Bids, changes in deposit)

Authority for making change in requirements of deposit or the amount thereof in proposals to bid by the State Highway Department is vested in the State Purchasing Agent who has the sole authority to procure the change.

SOIL CONSERVATION**Opinion No. 1791-50**

Mr. Kenneth W. Chalmers,

March 1, 1950.

Defense to injunction suits.

SCHOOL OF MINES**Opinion No. 1792-50**

Mr. Gurnett Steinhauer,

March 28, 1950.

(Funds)

1. Unobligated portions of the School of Mines Tax Fund with the exception of that part of the fund earmarked for the Experiment Station may be transferred to the proposed dormitory account, without payments.

2. Unobligated portions of the Mineral Leasing Account, the Tuition and Miscellaneous Account and from the Special Biennial appropriation accounts may be so transferred without repayment.

3. The unobligated accumulation in the Building Levy Fund may be loaned temporarily under appropriate approvals, and for a short period only.

4. The erection of the dormitory at the School is not of such emergent importance as to justify the issuance of anticipation warrants to assist in the financing of the dormitory.

CITIES AND TOWNS—PUBLIC RECORDS—NEWSPAPERS**Opinion No. 1793-50**

Mr. E. A. Thaxton,

April 11, 1950.

Section 20, Chapter 127, 1935 C.S.A., the law governing police magistrates in cities of less than 25,000 population states the said magistrate shall be appointed by the City Council and jurisdiction over him is in that council. Therefore, the mayor is not empowered to suppress records of the Police Magistrate.

STATE BOARD OF ACCOUNTANCY**Opinion No. 1794-50**

Mr. Herman I. Arenson,

April 12, 1950.

1. As per Chapter 2(a) of the 1935 C.S.A., the State Board of Accountancy has complete regulatory power over the practice of public and registered accountancy.

2. Violations of the act brought to the attention of the board should be referred by it to the District Attorney.

3. Board members themselves may sign complaints of violations of the act.

SOIL CONSERVATION

Mr. Kenneth W. Chalmers,

Opinion No. 1795-50

April 13, 1950.

(Notice to offending landowner)

When land is blowing, the notice to the offending land owner *must be sent by registered mail*, not by telegraph.

INDUSTRIAL COMMISSION OF COLORADO

Mr. R. C. Anderson,

Opinion No. 1796-50

April 14, 1950.

The Industrial Commission is within its powers in refusing to renew a license for employment agency when applicant has been convicted of having used his employment agency to conduct a gambling business.

INDUSTRIAL COMMISSION OF COLORADO

Mr. R. C. Anderson,

Opinion No. 1797-50

April 14, 1950.

1. In establishing minimum wage rates, the Commission proceeds either directly or by the indirect method. If it selects the direct method, the Commission establishes the minimum wage rates. If it adopts the indirect method, the Commission shall establish a wage board.

2. Within the discretion of the Industrial Commission to determine that an order should apply to several occupations. If the Commission establishes a uniform minimum wage for four industries, it makes separate orders for each industry, if for no other purpose than clarification.

INDUSTRIAL COMMISSION OF COLORADO

Mr. R. C. Anderson,

Opinion No. 1798-50

April 14, 1950.

(Women's Eight Hour Law)

Women employed in vegetable and fruit packing sheds are not under the Women's Eight Hour Law since they are not employed in a mercantile establishment where goods, wares, etc., are offered for sale.

ELECTIONS—LEGISLATURE

Mr. John Johnson,
April 14, 1950.

Opinion No. 1799-50

If a person meets the qualifications to be a representative or senator under the provisions of Section 4, Article 5 of the Constitution of Colorado, at the time he presents himself to take his oath of office, he may serve as a member of the General Assembly. The constitutional provision does not require that such person shall have attained the age of 25 years at the time he is designated at the time of the primary election, or at the time of the General Election, but he must have attained that age in order to serve as a representative or a senator.

SCHOOLS

Mr. John A. Grant,
April 17, 1950.

Opinion No. 1800-50

1. Under Section 2, Chapter 230, S. L. 1949, the Teachers Tenure Act of Colorado, any teacher who was at the time of the passage of the act, or is thereafter employed as a regularly elected teacher for three consecutive school years in any of the enumerated school districts and is re-elected after the passage of the act acquires permanent tenure.

2. Under Section 3 of said act, no teacher who has been or shall hereafter be employed for three consecutive years in any district subject to the act may be dismissed or retired, therefore, it appears that a teacher in her third year has, in fact, obtained permanent tenure.

3. Principals and supervisors are subject to the provisions of the Tenure Act but not superintendents.

4. If the dismissal of a teacher were done to prevent the teacher from obtaining tenure and with the expectation that he would be hired in the fall, there would be an evasion of the Tenure Act and if he were reemployed in the fall, such teacher would have tenure. If the teacher were dismissed even without the expectation of being re-hired, but was in fact re-hired in the fall, the period of service would, likewise, not be broken.

GAME AND FISH

Mr. C. N. Feast,
April 17, 1950.
(Beavers)

Opinion No. 1801-50

Beavers are not subject to Co-operative agreements with land-owners for conserving and propagating purposes, under the provisions of Section 275, 1935 C.S.A.

SCHOOL OF MINES

Mr. Gurnett Steinhauer,

Opinion No. 1802-50

April 18, 1950.

In the absence of express statutory authority, no moneys credited to the School of Mines Tax Fund may be spent for travel, equipment, or guarantees in support of the intercollegiate athletic programs of the School of Mines for the reason that such expenditures are not for public purposes since such programs are non-essential extra curricular activities.

LIBRARIES

Mrs. Lucille Dean,

Opinion No. 1803-50

April 18, 1950.

Public libraries may be financed only as provided by Section 67 of Chapter 99 of the 1935 C.S.A. The old Section 26 of Chapter 99, supra, providing for transfer of police fines for the use of public libraries has been repealed.

STATE AUDITOR

Mr. Myron C. McGinley,

Opinion No. 1804-50

April 19, 1950.

The Auditor of State has the full power and authority to make an independent post audit of the accounts and financial transaction of all spending agencies of the state through the Department of Auditing of which he is the chief executive officer, including any and all funds derived from any source, control of which is administered by or in the custody of any state department, institution or agency of the state, or of any officer or employee thereof in his official capacity. Any and all types of funds referred to as "non-state funds," as well as general revenue funds, are subject to the provisions of Sections 3 and 4, Chapter 23, S. L. 1949, which re-enacted and amended Sections 78 and 80, Chapter 153, 1935 C.S.A., relative to the deposit of collected funds with the State Treasurer and withdrawals therefrom.

COUNTIES—PSYCHOPATHIC HOSPITAL

Mr. Felix L. Sparks,

Opinion No. 1805-50

April 20, 1950.

The County is not responsible for bills for the care and treatment of patients committed by county court order to the Colorado Psychopathic Hospital at Denver, the entire expense at the hospital

being payable out of Psychopathic Hospital Fund. This, however, is not the case where a defendant, in a criminal case, is committed to the Colorado Psychopathic Hospital after entering a plea of not guilty by reason of insanity at the time of the alleged commission of the crime. In such cases the board of county commissioners must issue their warrant on the treasurer of the county in payment of such account.

**COMMISSIONER OF AGRICULTURE
DAIRY PRODUCTS**

Mr. Paul W. Swisher,
April 21, 1950.

Opinion No. 1806-50

The words "Frosty Kreme" cannot be used for a product that is a substitute for a dairy product under provisions of Chapter 49, Sec. 4, regardless of how the word "Cream" is spelled. It still signifies that it is a dairy product and as such no imitation dairy product can make such an implication. To use such a term is obviously misleading and contrary to Section 4.

No imitation product can be called "Ice Cream" because the statute, Chapter 49, Section 11, 1935 C.S.A., requires that ice cream shall contain not less than 12 per cent butterfat, except Chocolate nut or fruit ice cream, which shall contain not less than 10 per cent butterfat.

The Commissioner of Agriculture by the authority of Chapter 100, Section 4, 1949 S. L., has the power to make reasonable rules and regulations for the labeling or advertising for sale of dairy products including imitation dairy products.

SCHOOLS

Mrs. Nettie S. Freed,
April 24, 1950.

Opinion No. 1807-50

A superintendent is not a teacher within the purview of the Teachers Tenure Act of Colorado, (Chapter 230, S. L. 1949). Therefore, Section 3(c) of the act has no application to the contractual relationship between a superintendent and the Board of Education.

**STATE PENITENTIARY—GOVERNOR—DISTRICT COURT—
CRIMINAL LAW**

Warden Roy Best,
April 26, 1950.

Opinion No. 1808-50

1. In view of *Klink v. People*, 16 Colo. 467; *Saleen v. People*, 41 Colo. 307; *People v. Dist. Ct.*, 89 Colo. 78; *Hart v. Best*, 119

Colo. 569; *People v. Floram*, 121 Colo. 100, 212 P. (2d) 1007, District Courts have no jurisdiction upon motion to review criminal convictions after the expiration of the term in which judgment is made and sentence imposed. Order vacating judgment and sentence after the expiration of the term is void and should not be recognized by the Governor or Warden of the State Penitentiary, (*People v. Dist. Ct.*, 89 Colo. 78) in considering the revocation of a prisoner's parole.

GAME AND FISH COMMISSION

Mr. C. N. Feast,
April 26, 1950.

Opinion No. 1809-50

Question. Is Game and Fish Commission empowered to exchange lands with the City of Colorado Springs, the Commission conveying 15 acres approximately and tentative valued by the City at \$1,000 per acre in return for the City of Colorado Springs conveying to the State of Colorado for use and benefit of the Game and Fish Commission, a parcel of land of like value so situated as to be of more value to the Game and Fish Commission than the 15 acre plot.

Question depends on interpretation of Sec. 242, Ch. 73, 1935 C.S.A., and 1949 Cumulative Supplement. Subsection (d) of Section 242 does not give Commission power of disposition of state lands, the power of disposition or conveyance being limited to the proviso of said sections which described the lands that may be sold. Power to dispose of specific tract must be granted by legislative action.

COUNTY

Mr. Robert A. Theobald,
April 26, 1950.

Opinion No. 1810-50

1. The corporate powers of counties are broad, (Section 1, Chapter 45, 1935 C.S.A.) as are the powers of the Board of County Commissions. (Section 25, *supra*). County expenditures, however, are limited to appropriations (Section 40) and no liability against the county may be created unless an appropriation has previously been made (Section 41). These general provisions are supported by Section 13, Chapter 168, Session Laws 1945, the Local Government Budget Act which prohibits expenditures in excess of the appropriation and Section 18 of that act makes violations thereof malfeasance of office which subjects convicted officer to removal therefrom.

2. The claim of an attorney for legal services based upon his purported employment by a single member of the Board of County Commissioners is an invalid claim which may not lawfully be paid by the board.

SOIL CONSERVATION**Opinion No. 1811-50**

Mr. Kenneth W. Chalmers,

April 27, 1950.

(Blow lands)

Action for damages adjoining land owner may sue using theories of negligence, nuisance and trespass.

SECURITIES**Opinion No. 1812-50**

Mr. Curtis White,

April 27, 1950.

"Dealer" (Securities), definition. Cities Service Co. does not become a "dealer" because forced to sell stock of its subsidiary.

SOIL CONSERVATION**Opinion No. 1813-50**

Mr. Kenneth W. Chalmers,

April 27, 1950.

Soil Conservation Districts. Withdrawal of lands from procedure to be followed is outlined in opinion.

SCHOOLS**Opinion No. 1814-50**

Mrs. Nettie S. Freed,

April 28, 1950.

1. A school district may issue warrants to the full amount of the "funds authorized by the budget" pursuant to Section 17, Chapter 168, S. L. Colorado 1945, the Local Government Budget Law, at any time within the period of the budget regardless of current money available for their payment.

2. If a school district issued warrants in the full amount of "the funds authorized by the budget" at any time within the budget period, and there were not sufficient money to pay them, it would be obligatory upon the County Treasurer to register all such unpaid warrants. The County Treasurer is bound by the provisions of Section 17 of the Local Government Law, as well as by Section 52, Chapter 146, 1935 C.S.A.

SCHOOLS

Mr. Herrick S. Roth,

Opinion No. 1815-50

May 1, 1950.

1. It is within the rights of the Board of Education of a school district to require reasonable conditions of employment since such conditions are a matter of contract between the board and the teacher and unless prohibited by law or contrary to public policy, reasonable conditions of employment may be imposed. The Teacher Tenure Act of Colorado (Chapter 230, S. L. 1949) contains nothing to the contrary.

2. It would be improper to impose as a condition of employment of a teacher that such teacher should comply with the Code of Ethics of the Colorado Education Association since it is a private organization and teachers are not required to be members thereof.

3. A document which is not a legal document may be made a part of a legal document, but it would not be proper to include such as a condition of employment of a teacher in compliance with the Code of Ethics of the Colorado Education Association or any other such private organization.

4. The inclusion in a teacher's contract or in a notice of re-election under the Teacher Tenure Act of Colorado of compliance with a code of ethics of the Colorado Education Association does not ipso facto require that teacher to become a member of that association. Such a practice is not permissible.

NEWSPAPERS—HIGHWAY DEPARTMENT

Mr. James A. Noonan,

Opinion No. 1816-50

May 2, 1950.

Approval of a voucher submitted by the State Highway Department payable from the State Highway supplementary fund to The Citizen, a newspaper furnishing exclusive news of State and Municipal employees, for postage for sending The Citizen to highway employees should be withheld for the reason that there is no authority in the highway law, or otherwise, for such payment to a private newspaper.

GAME AND FISH

Mr. C. N. Feast,

Opinion No. 1817-50

May 2, 1950.

Based on Ch. 102, Sec. 1, 1935 C.S.A., claim made for replacement of costs of lost abstracts involving the Mitchell Lakes system, otherwise known as Red Feather Lakes, against the Game and Fish Commission denied because abstracts were lost in 1942 at which time cause of action arose.

SOIL CONSERVATION DISTRICTS**Opinion No. 1818-50**

Mr. Kenneth W. Chalmers,

May 2, 1950.

Change of name of a district.

STATE CONTROLLER**Opinion No. 1819-50**

Mr. James A. Noonan,

May 3, 1950.

Wages of state employees may be assigned. Assignment must be in writing and acknowledged and a copy must be delivered to employer within five days of execution. Withholding tax and retirement not subject to garnishment. Union and Blue Cross are subject to garnishment.

HIGHWAY DEPARTMENT—CONTROLLER—GOVERNOR**Opinion No. 1820-50**

Mr. Mark U. Watrous,

May 3, 1950.

Advancements from highway funds to Boulder Toll Road project are of the same character as those considered in an opinion No. 227-35 and No. 1206-48, and may be made upon the same terms and conditions as therein expressed.

LEGISLATURE—GOVERNOR**Opinion No. 1821-50**

Honorable Walter W. Johnson,

May 3, 1950.

The powers granted by Senate Joint Resolution No. 26 adopted by the Thirty-Seven General Assembly, S. L. 1949, page 805-7, to the Commission on State Institutions are broad and absolute within their scope. Legislatures have broad powers of investigation to be performed in anticipation of further legislation and there appears to be no limitation thereon. If any expenses of the commission are to be paid from the Governor's Emergency Fund, the approval of the Governor, the State Controller and the Chairman of the Commission would be required.

COUNTY JUDGE**Opinion No. 1822-50**

James F. Miller, County Judge,
May 4, 1950.

Question. When does the money become due, in the absence of any statement on the bill rendered by the creditor to the debtor. Question based on interpretation of Sec. 2, Ch. 88, 1935 C.S.A. Debts owing on open account are due and payable on demand and in default of payment, interest may be charged. See *Patton v. American National Bank*, 15 Colo. App. 479.

SCHOOLS**Opinion No. 1823-50**

Mrs. Georgianna Kettle,
May 4, 1950.

1. When transportation has once been voted by the electors of a third class school district, at a regular school election pursuant to Section 115, Chapter 146, 1935 C.S.A., such authority continues until the electors of the district at a subsequent election revoke the authority.

2. It is not necessary to ballot upon the question of transportation of pupils in a third class district at each May school election in the following years.

BASIC SCIENCES**Opinion No. 1824-50**

Esther B. Starks, Secretary,
May 5, 1950.

A basic science certificate is automatically revoked upon revocation of license to practice medicine and the board may not certify such certificate to another state.

ADOPTION PROCEEDINGS**Opinion No. 1825-50**

Hon. Walter A. Johnson,
May 5, 1950.

Section 14, Chapter 4, 1935 C.S.A., the statute dealing with adoption provides that if personal service cannot be had, notice shall be published *as the court may order*. Nowhere does it provide that proceedings shall be secret other than the hearing itself.

SCHOOLS

Mrs. Nettie S. Freed,

Opinion No. 1826-50

May 8, 1950.

(Transportation to athletic events in private cars)

A school district, board of education or members of faculty of said district would not be acting within the scope of their authority and would therefore be liable for injuries sustained by persons or property while using privately owned automobiles the owners of which are paid on a mileage basis for transportation of students to athletic contests either inside or outside the school district assuming of necessity that negligence could be proved. There is no specific statutory authority for the transportation of children to athletic events either inside or outside the district in privately owned vehicles.

GOVERNOR—ADMINISTRATIVE CODE**Opinion No. 1827-50**

Mr. Frank L. Humphrey,

May 9, 1950.

The provisions of Section 3(e), Chapter 118, S. L. 1947, are specific requirements for the Governor or his representative to sign pertinent vouchers. The Governor, however, may pursuant to Section 8, Chapter 2, S. L. 1941, the Administrative Code of 1941, delegate his authority to sign vouchers to some person in whom he reposes confidence. This should be done by the promulgation of a rule or regulation designating a specific person or persons who may sign the Governor's name and the signature of the delegate should appear thereunder. This opinion is confined only to the signing of vouchers for the Executive Department under the code and is not to be construed to relate to the signing of many other legal documents which require the personal signature of the governor. A rubber stamp facsimile signature of the governor or his representative, or both, is not adequate for the controller's responsibility unless the rule or regulation prescribed by the governor so provides. Such use would not be advisable because of a laxness which might be involved in actual usage.

INSURANCE

Hon. Luke J. Kavanaugh,

Opinion No. 1828-50

May 11, 1950.

Sums paid in advance for future premiums not so used either because of death of the policy holder or withdrawal of advance premiums by the policy holder are premiums and hence taxable. Section 14, Chapter 87, 1935 C.S.A., as amended.

LIQUOR

Hon. E. G. Clatworthy,
May 12, 1950.

Opinion No. 1829-50

Under provisions of Chapter 89, Section 43, 1935 C.S.A., local option which was in force before the 18th Amendment is not now in force in spite of the fact that it has never been voted out by the local community. The law is specific in stating that operation of the law shall be state wide unless voted out at regular or special election called for that purpose.

STATE BOARD OF MEDICAL EXAMINERS—CHIROPODY

Mrs. Beulah H. Hudgens,
May 15, 1950.

Opinion No. 1830-50

Section 26(3), Chapter 109, 1935 C.S.A., established educational requirements for applicants for license to practice chiropody, also exceptions thereto.

Section 26(5) prohibits licensed chiropodists from maintaining office in conjunction with unrelated business, also provides exceptions thereto.

STATE OFFICERS

Hon. Walter W. Johnson,
May 16, 1950,

Opinion No. 1831-50

(Governor, Lieutenant Governor, President Pro Tempore)

From the time that the president pro tempore of the senate has been acting Lieutenant Governor, he is entitled to the salary of \$1800 per annum; in the event he serves as Governor during the Governor's disability or absence from the state, he is entitled to the additional "sum of twenty dollars per day as expenses while serving as Governor during the Governor's disability or absence from the state."

SCHOOLS

Mrs. Nettie S. Freed,
May 17, 1950.

Opinion No. 1832-50

If a school district has originally scheduled a school year of at least 170 days and contracted for services on that basis for some of its schools,—

1. Such a school district would not be eligible to apply for A.D.A. money with respect to the children in any school wherein

the Board of Education did not schedule a school term of at least 170 days.

2. Such a school district would be eligible to apply for A.D.A. money only with respect to the children in the school or schools wherein the Board of Education scheduled a school term of at least 170 days.

3. Such school district is not prohibited from obtaining state money upon the basis of A.D.A. by reason of the fact that a school within the district was not maintained for a term of at least 170 days, when there were other schools in the district which were in compliance with the law.

SCHOOLS

Mr. Earl L. Lattin,

Opinion No. 1833-50

May 18, 1950.

1. Pursuant to Section 29(1), Chapter 224, 1949 S. L., it became the duty of the County Treasurer of Hinsdale County upon notification that the school district in Hinsdale County had become a part of the new district pursuant to the reorganization plan, to transfer the funds belonging to that district to the account of the new district.

2. It became the duty of the County Treasurer to pay the warrants of the new district with respect to the obligations of the district in Hinsdale County which became a part of the new district, the major part of which was in Archuleta County.

3. Fund for the retirement of the bonded indebtedness, if any, of the school district in Hinsdale County concerned should be maintained in Hinsdale County.

SOIL CONSERVATION DISTRICTS

Mr. Kenneth W. Chalmers,

Opinion No. 1834-50

May 19, 1950.

Districts may contract to cooperate under Section 21 of the Act, but such contract must be approved by the voters of each district involved.

RACING

Colorado Racing Commission,

Opinion No. 1835-50

May 19, 1950.

In the absence of specific provision in law, the Colorado Racing Commission may promulgate a reasonable rule or regulation providing for the disposition of funds in hands of licensees because unclaimed by winners.

**APPROPRIATIONS—AUDITOR—STATE INSTITUTIONS—
CASH FUNDS****Opinion No. 1836-50**

Mr. Myron C. McGinley,

May 8, 1950.

1. There must be an appropriation or statutory authority before educational institutions may legally disburse receipts derived from tuitions, fees, contributions, rentals, sales, etc.

2. All collected funds of educational institutions are required to be deposited with the State Treasurer pursuant to Section 78, Chapter 153, 1935 C.S.A., as re-enacted and amended by Section 3, Chapter 232, S. L. 1949, except as provided therein.

3. Funds lodged with the State Treasurer pursuant to law, not creditable to the General Fund, which have been or may be designated by law for other purposes than the general revenue, and held by the Treasurer as custodian separate and apart are not deemed to be deposited with the State Treasurer. They may be withdrawn from his custody only for the purposes under the control of the officers authorized so to do subject, however, to the requirements of vouchers and warrants as provided by law. Sec. 80, Chap. 153, 1935 C.S.A., as re-enacted and amended by Sec. 4, Chap. 232, 1949 S. L.

4. The law recognizes other types of funds which may be held by an institution or agency, that is, a fund or funds in the nature of a trust fund, on which the interest, title, share or proportion of the state has not yet been determined. Such funds may, with the authorization in writing of the State Controller, be deposited by the institution locally, but quarterly reports of such deposits must be made to him. Section 78, supra.

5. It is necessary for the State Controller, upon the receipt of a commitment voucher to determine whether the warrant request is to be drawn on the General Revenue Fund or upon a particular cash or other fund pursuant to an appropriation or some other authorization. No general rule can be applied, each expenditure must receive its specific authorization. If the law is not clear, disbursement must be refused and resort had to future legislative action.

6. The State Controller Act of 1947, and the re-enactment of Sections 78 and 80, Chapter 153, 1935 C.S.A., require the greatest possible definiteness in the fiscal management and control of all state departments, institutions and agencies.

7. An examination of the laws relating to appropriations to and funds of the various education institutions other than those of the University of Colorado for the purpose of determining the legal authority for the disbursement of the money appropriated to,

collected by, or in the custody of the authorities charged with their management and control leads to the following conclusions:

(a) Tax levies of all educational institutions are specifically provided for, therefore, the General Assembly not required to make special appropriations biennially.

(b) Laws relating to Colorado State College of Agriculture and Mechanic Arts, Experiment Station and Fort Lewis School contained in Chap. 5, 1935 C.S.A. as amended provided for disbursement by State Board of Agriculture of all general revenue appropriations, tax levies, land income, etc.

(c) Laws relating to Colorado School of Mines, Colorado State College of Education at Greeley, The Western State College of Colorado, Adams State College, Colorado School for Deaf and Blind, Colorado Industries for the blind not so comprehensive. Managing authorities have adequate authority but not accepted practice to make disbursements without special appropriation or other authority.

(d) Examination of the laws relating to the State Home and Training School for Mental Defectives at Ridge, Colorado and at Grand Junction and of the Industrial School for Boys and Industrial School for Girls show obscurity as to expenditures of miscellaneous receipts.

If proper appropriations have not been authorized therefrom miscellaneous receipts are required to be credited to the General Revenue Fund of the state under the provisions of Section 73, Chapter 113, 1935 C.S.A.

Unnecessary to make specific appropriations for the expenditures of any part of the receipts received from the operation of dormitories, etc., constructed, financed and operated pursuant to Sec. 1, Chap. 219, 1945 S. L., to pay the expenses of the operation of the project from which collected. That section provides for a continuing appropriation for the payment of the operating expenses and of the net income pursuant to the trust indenture.

The net income of such projects after the retirement of the bonds may not legally be invested in or used for the support of similar projects at the institution concerned unless authorized to be by some specific or general law. The receipts from such projects are not required to be deposited with the State Treasurer but must be deposited and applied by the trust agreement. Such projects are subject to audit by the Auditor of State.

STATE HIGHWAY DEPARTMENT

State Highway Department,

Opinion No. 1837-50

May 10, 1950.

(Denver - Boulder Toll Rd.)

The powers and duties of the State Highway Department are fixed by statute and cannot be broadened or enlarged by rule.

Contracts for professional services to be performed by engineers outside of the Highway Department must recognize the superior authority of the Highway Department and must plainly come within all provisions of the Colorado laws in order to be of any force and effect.

LEGISLATURE

Opinion No. 1838-50

Senator Neal D. Bishop,

May 19, 1950.

Neither the Constitution of Colorado, nor the statutes make any specific provision for the resignation of a senator or a state representative, nor are there any Supreme Court decisions of this state covering the point. However, there appears to be no question as to the right of a member of the General Assembly to resign thus creating a vacancy. (Citations). Whenever a state senator resigns, he should file his resignation with the president pro tempore of the senate or with the secretary of state, or both, although there is no statutory procedure for such submission by a member of the senate or the house. Vacancies in the General Assembly may be filled pursuant to the provisions of Sections 8 and 9, Chapter 59, 1935 C.S.A., or Section 304, Chapter 59, 1935 C.S.A.

LIVESTOCK BOARD—CONTROLLER

Opinion No. 1839-50

State Board of Stock Inspection Commissioners,

May 25, 1950.

The State Controller, pursuant to the authority of Section 78, Chap. 153, 1935 C.S.A., as amended and re-enacted by Chap. 232 S. L. 1949, may upon application by the Board of Stock Inspection Commissioners in writing authorize the board to retain the Estray Fund in its custody and deposit the same as a trust fund or quasi trust fund in the manner and form required of the State Treasurer by law and the board shall furnish thereafter quarterly statements of said fund.

All moneys in the Estray Fund which shall have been in the possession of the board for six years or longer from the date of the sale of estray animals and for which no claim has been made for three years should be turned into the Brand Inspection Fund and be deposited with the State Treasurer, subject to appropriation or expenditure as provided by law. The case of *Alfred v. Esser*, 91 Colo. 466 is not controlling nor to be understood to mean that the Estray Fund must be kept intact forever.

EMPLOYMENT SECURITY

Mr. Bernard E. Teets,
May 25, 1950.

Opinion No. 1840-50

1. Colorado, as the agent state, has authority under the fraud provisions of Section 11(1) of the Colorado Employment Security Act to prosecute in the case of a misrepresentation made by an interstate claimant within this state for the purpose of procuring benefits from another state, and it is unnecessary to resort to a prosecution under the provisions of the General Fraud statute, Section 304, Chap. 48, 1935 C.S.A., relating to the obtaining of money by false pretenses. Pursuant to Section 17(b) of the act, either the Attorney General or the District Attorney of the Judicial District in which the violator resides may prosecute the case.

2. It is unnecessary to establish payment in order to satisfy the applicable provisions of the Colorado Employment Security Act since it would be sufficient to show that the misrepresentation was made with the intent of procuring benefits from a liable state. If the state found it necessary to use the general fraud statute, it would be necessary to establish payment. If payment has been made by the liable state and such payment was obtained by fraud, there is no authority for the Attorney General to represent the liable state in a suit against a claimant to recover such payment where payment had been made by the liable state and such payment was obtained by fraud.

RACING COMMISSION—AUDITOR—CONTROLLER

Hon. Walter W. Johnson,
June 5, 1950.

Opinion No. 1841-50

Section 12(a)(9), S. L. 1941, the Administrative Code of 1941, as amended by Section 2, Chap. 118, 1947 S. L., the State Controller Act authorizes the State Controller, upon the approval of the Governor, to transfer to the office of the Auditor of State sufficient funds in the hands of the Racing Commission from the one-fifth portion set aside for the payment of its expenses, for the purpose of allowing the Auditor of State to place an auditor on his staff to make the audits and to perform the duties required by the Racing Commission Act.

GAME AND FISH COMMISSION

Mr. C. N. Feast,
June 12, 1950.

Opinion No. 1842-50

By authority of Sec. 173, Ch. 73, 1935 C.S.A., the Commission has discretionary power in appointing individuals as agents for disposing of licenses, and may limit the number of agencies in any given community to its actual need.

CITIES AND TOWNS

Mr. Leonard B. Sutton,

Opinion No. 1843-50

June 16, 1950.

1. An incorporated town in Colorado can require its prisoners sentenced to jail for non-payment of a fine, or sentenced to jail as part of punishment for violation of an ordinance, to work for the town on the streets, in parks, etc., Sec. 7, Ch. 91, 1935 C.S.A.

2. It would not be proper and legally enforceable against such prisoners if they were requested to and did execute releases, releasing the town from any liability on account of such work or being transported to and from such work. 77 Colo. 140.

3. Physical examinations or other evidence of physical ability to work not mandatory but good practice.

4. Town is liable to the public or any individual injured by the work or actions of such prisoners while working for the town upon the maxim of respondent superior.

METAL MINING FUND**Opinion No. 1844-50**

This opinion reversed by Opinion No. 1895-50.

HIGHWAY PATROL

Mr. James H. Cole,

Opinion No. 1845-50

June 20, 1950.

Case: 15-year-old boy has car registered in his name. Loans the car to another boy 16 years old who has no operators license and who became involved in an accident.

Question: Since 15-year-old cannot get insurance, how can he have car registered in his name?

Answer: Statute does not require insurance for one to hold title to automobile.

Question: What remedy is available and are parents liable.

Answer: Relief is found in Sec. 43(1) and Sec. 43(2), Ch. 16, 1935 C.S.A., as amended.

CONTROLLER—RACING COMMISSION

Mr. James A. Noonan,

Opinion No. 1846-50

June 30, 1950.

Because of the conferences of June 20, 1949 participated in by the Governor, the Racing Commission, the Controller and the

Attorney General, and the subsequent action taken thereon, the Controller can accept certified copies of the Racing Commission's resolution as sufficient evidence to permit the encumbrance of the 1949-1950 appropriation, as made by Section 22, Chapter 30, S. L. 1949, up to but not in excess of said appropriation. However, such certified resolutions are valueless as vouchers for the payment of the individual accounts.

SCHOOLS

Opinion No. 1847-50

Mrs. Nettie S. Freed,

June 30, 1950.

The tax levy of a new district created under the provisions of Chapter 224, S. L. 1949, "The School District Reorganization Act of 1949," will be made pursuant to the procedure set forth in Sections 39 and 41, Chapter 142, 1935 C.S.A.

COAL MINE INSPECTION

Opinion No. 1848-50

Mr. Thomas Allen,

July 5, 1950.

The members of the Board of Examiners for Mine Foremen in Colorado mines, established pursuant to Section 5, Chapter 110, 1935 C.S.A., may not be paid for their services but may only receive their actual and necessary expenses in attending sessions of such board. The opinion dated November 28, 1949, No. 1698-49, is applicable.

RACING COMMISSION

Opinion No. 1849-50

Racing Commission of Colorado,

July 6, 1950.

1. In accordance with Rules 111-C, 209 and 222, of Subject 1 of the Rules and Regulations of the Colorado Racing Commission, neither a convicted felon nor his spouse may be issued an owner's license by the Commission.

2. There are no statutes or regulations which would prevent the sale of tipster sheets on private property even though adjoining the race track.

COLLECTION AGENCY BOARD**Opinion No. 1850-50**

Mr. George H. Wygant,

July 10, 1950.

1. With reference to Section 7, Chapter 37, 1935 C.S.A., each separate firm, association, or corporation under a separate name, even though owned by one company, corporation or association, must be individually licensed.

2. In situations where only parent or owning firm, corporation or association was licensed, the sub companies, corporations or associations should be treated as new licensees.

DEPARTMENT OF AGRICULTURE**Opinion No. 1851-50**

Mr. Paul W. Swisher,

July 17, 1950.

(Hope-Flannigan Act for research with potatoes and peaches)

Funds are collected by control boards and not by the Department of Agriculture. Although funds are not state money, they may be deposited with the State Treasurer as custodian with appropriate arrangements for disbursement. Persons employed by control boards would not be state employees and hence not within the provisions of the state civil service.

RIO GRANDE COMPACT**Opinion No. 1852-50**

Mr. M. C. Hinderlider,

July 20, 1950.

1. Under the provisions of Article VII of the Rio Grande Compact, the Commissioner for Colorado has the power and authority to relinquish Colorado credit water in storage in the Elephant Butte Reservoir in New Mexico at any time for the use of Texas in accordance with the proposed resolution. In so doing the Commissioner may not act capriciously or arbitrarily.

2. The Commissioner for Colorado is not required to obtain the approval of any water user or group of water users in the San Luis Valley of Colorado prior to any relinquishment he may decide to make and the Commissioner from Texas may decide to accept in accordance with the terms of a proposed resolution, although it is desirable for the Commissioners to consult such persons.

3. The terms of a proposed resolution providing for the release of Colorado's credit in the amount of 60,000 acre feet as

tentatively agreed to between Compact Commissioners on July 2, 1950, when signed by the three Commissioners, will be binding upon the states of New Mexico and Texas and the citizens thereof, as well as upon Colorado, since the resolution is amply supported by the terms of the Compact.

BANKS

Hon. Frank E. Goldy,
July 24, 1950.

Opinion No. 1853-50

(Title and Guaranty Company)

A Title and Guaranty Company organized under Article 4, Ch. 41, 1935 C.S.A., as amended, may liquidate and dissolve, provided:

1. Its policies are reinsured, with another title and guaranty company having a deposit approved by the State Bank Commission as required by Section 120 of Chapter 41, 1935 C.S.A.
2. The liability of the officers and stockholders required by Sec. 126 is assumed by such reinsuring company, and
3. That adequate safeguards are maintained for the proper servicing of policies of the liquidating company.

SCHOOLS

Mrs. Nettie S. Freed,
July 24, 1950.

Opinion No. 1854-50

A school district has the power to authorize the commencement of a suit against a committee for school district reorganization established pursuant to Chapter 224, Session Laws of Colorado 1949, the School District Reorganization Act of 1949, and to pay the cost thereof, including attorneys fees, and to pay for the same out of district school funds. A school district is a body corporate and as such has the power to sue and to be sued and to pay the costs of any suit. Such an item should be budgeted in the School Budget for the ensuing year.

SOIL CONSERVATION

Mr. Kenneth W. Chalmers,
July 24, 1950.

Opinion No. 1855-50

Transfer of land from one Soil Conservation District to another would be proper and under provisions of Soil Conservation Act if following steps are taken:

1. Transfer should be initiated by a petition signed by the landowners in question and directed to the Supervisors of two districts involved.
2. After first step, two Boards of Supervisors should petition State Board for approval, requesting State Board to certify to the

Secretary of State new maps for each of involved districts. The Secretary of State in turn should be requested to issue an amended certificate for each of districts involved.

STATE BUREAU OF CHILD AND ANIMAL PROTECTION

Opinion No. 1856-50

Mr. R. E. Hansen,

July 24, 1950.

In accordance with the language of the Forrester Will, the principal may not be invaded for employment of additional humane officers and their expenses for the reason that the work of the State Bureau of Child and Animal Protection is for human beings as well as animals.

SECURITIES COMMISSIONER

Opinion No. 1857-50

Mr. Curtis White,

July 24, 1950.

The provisions of Chapter 148, Section 19, 1935 C.S.A., provide that a "salesman" must register each time he is employed by a new and different dealer or issuer.

SECURITIES COMMISSIONER

Opinion No. 1858-50

Mr. Curtis White,

July 26, 1950.

(Investment contracts—Deposit of Securities)

How securities may be withdrawn under provisions of the Fraudulent Practice Act.

**CONTROLLER—RACING COMMISSION
APPROPRIATIONS**

Opinion No. 1859-50

Mr. James A. Noonan,

July 26, 1950.

1. The provisions of the second paragraph of Section 9, Chapter 207, S. L. 1949, the Racing Law, constitute a valid appropriation of the $\frac{1}{5}$ portion of the receipts from race meets from which the Controller may disburse funds for the administration of the act. It was clearly the intention of the Legislature that the expenses of the Racing Commission should be paid from the $\frac{1}{5}$

portion of the 5% of the gross receipts of all pari mutuel wagers which are required to be paid daily to the Commission with receipts to each race meet.

2. The General Fund appropriation in Section 22, Chapter 30, S. L. 1949, is a supplemental appropriation to be available for the payment of the expenses of the Commission from the beginning of each calendar year until funds are derived from race meets and does not constitute "other funds" mentioned in that section.

3. The administrative expenses of the Racing Commission are to be paid first from the $\frac{1}{2}$ portion of the revenue so long as they are available and until the end of the calendar year and if any such $\frac{1}{5}$ portion remains unexpended at that time, it reverts to the General Fund as provided in the last sentence of the second paragraph of Section 9 of the act. The General Fund appropriation may then be utilized from the beginning of the calendar year until moneys begin coming in to the Commission at the start of the racing season. The General Fund appropriation is a valid supplemental appropriation for use between January 1st of each year and such time as the racing season may provide sufficient operating funds.

WAR EMERGENCY—EMPLOYEES

Mr. Harry R. Barnard,

Opinion No. 1860-50

July 27, 1950.

World War II is not officially over. Section 46, Chapter 36 A, 1935 C.S.A., the statute pertaining to the rights and privileges of state employees following military service, is still in full force and effect. These rights and privileges still prevail for persons vacating their positions now or any time after September 16, 1940 until the official end of the war.

CONTRACTING

Mr. C. N. Feast,

Opinion No. 1861-50

July 27, 1950.

There is no authority in law which authorizes the State or any of its agencies to engage in the contracting business.

RACING COMMISSION

Dr. James Farquharson,

Opinion No. 1862-50

July 27, 1950.

Under the provisions of "Rules of Racing 1949, Subject 4, Section 7," the circulation of pamphlets or tipster sheets on the grounds of race tracks would be prohibited. However, the Com-

mission has authority to modify or rescind regulations as tipster sheets are not handbooks as mentioned in Section 11, Chapter 207, 1949 S. L.

COUNTIES—PUBLIC WELFARE

Opinion No. 1863-50

Mr. George Wingfield,

August 3, 1950.

1. An examination of Sections 8, 13, 17, 21, 22, 23, 24, 25 and 26, Chapter 141, 1935 C.S.A., clearly shows that the state's assumption of a portion of the welfare burden, formerly borne by the counties, is supplemental to and not in substitution for such county burden. If the counties wish to participate in the state's welfare fund, then they must comply with the applicable statutes and the State Department's rules and regulations in regard thereto. If they do not, then they can undoubtedly fall back upon their own resources, but there is no discretion left them to take one benefit and abandon the others, for example, take old age pensions and discard A.D.C.

2. The County Board composed of the Board of County Commissioners is the body vested with discretion and where any discretion is to be exercised in the County Department that Board must exercise that discretion.

SECURITIES COMMISSIONER

Opinion No. 1864-50

Mr. Curtis White,

August 7, 1950.

(Fraudulent Practice—Loans)

A loan from one corporation to another which, by agreement, is not shown on the borrower's books may be fraudulent practice.

SCHOOLS

Opinion No. 1865-50

Mrs. Nettie S. Freed,

July 25, 1950.

1. When in a joint school district the County Superintendent of Schools of one of the counties did not report the average daily attendance for three past years resulting in the joint district's failure to obtain the money from the State School Equalization Fund to which it would otherwise have been entitled, there is no way that an adjustment may lawfully be calculated to correct the errors in such reporting in view of the fact

that the State Aid Funds have been abolished and the books of the State Treasurer and other state officials have been closed.

2. The existing laws afford no remedy available whereby a joint school district may receive funds from the state to the extent of the deficiency caused by errors in reporting but the matter may be called to the attention of the next legislature with a view to enactment of a relief bill or other measure to meet the situation.

COUNTIES

Opinion No. 1866-50

Mr. James B. Garrison,

August 8, 1950.

(Liabilities)

Question: Is county legally liable for payment of expense created by peace officers in obtaining blood tests for drunken drivers or those suspected of driving under the influence of intoxicating liquor?

Statute does not provide for fee allowable to public official for laboratory tests for blood alcoholism in a case such as opinion covers; neither is a blood test for alcoholism a statutory prerequisite to the commencement of a criminal action, therefore County not liable.

STATE ATHLETIC COMMISSION

Opinion No. 1867-50

Mr. Eddie Bohn,

August 16, 1950.

The State Athletic Commission has only the duty and obligation to administer and enforce the boxing laws and its rules and regulations, and a licensed promoter must comply with the same notwithstanding any contract a licensed promoter may have with a private individual or organization.

SOIL CONSERVATION DISTRICTS

Opinion No. 1868-50

Mr. Kenneth W. Chalmers,

August 16, 1950.

Soil Conservation Districts are similar to corporations. Their creditors must look to the assets of the district and not to the assets of the individuals in a district.

INTOXICATING LIQUORS—INDIANS**Opinion No. 1869-50**

Mr. L. W. McDaniel,

August 16, 1950.

Sales of liquor to Indians were not prohibited by the Liquor Code of 1935, hence considered repealed. The Federal statute relating to the sale of intoxicating liquors to Indians has been repealed by Title 25, Sections 241 and 241(a), Cumulative Pocket Supplement of the Federal Code Annotated.

COUNTIES—PUBLIC HEALTH**Opinion No. 1870-50**

Dr. R. L. Cleere,

August 29, 1950.

The one per cent deduction for General County Administration by County Treasurer from funds received by him for public health purposes under the provisions of Section 25, Chapter 66, 1935 C.S.A., is legal and supersedes Section 25 (13) of Chapter 78, 1935 C.S.A.

A statute must specifically refer to provisions of Chapter 66 aforesaid in order to prevent such deduction under the provisions of Chapter 66.

The county treasurer may not deduct moneys received by the state which have been allotted to the state from federal sources.

CONTROLLER**Opinion No. 1871-50**

Mr. James A. Noonan,

August 30, 1950.

1. The case of *Hudson v. Annear*, supra, is still the rule of decision in this jurisdiction, and, notwithstanding membership in the legislative department, a legislator may occupy an employment in the executive or judicial department, but not an office as defined in said decision, and may receive compensation for the said employment.

2. The time spent by the legislator in attending the extra legislative session should be deducted from the payroll of the executive department where he is employed since the legislator-employee cannot work in two places at the same time.

COUNTIES—HOSPITAL**Opinion No. 1872-50**

Dr. R. L. Cleere,

September 1, 1950.

County Commissioners may not operate more than one hospital within a county under the provisions of Chapter 78, 1935 C.S.A. Section 151(1) Chapter 78, 1935 C.S.A. is the authority for the mill levy which may be used for maintenance and operation of the hospital. Separate buildings may not be considered one hospital so as to be under the jurisdiction of a single county board of trustees unless the buildings are in the same city or town or within a reasonable distance of one another. County commissioners may not lend or donate funds to voluntary non profit hospitals. Section 1, Article 11 of the State Constitution.

RACING COMMISSION**Opinion No. 1873-50**

Dr. James Farquharson,

September 5, 1950.

1. An officer, assistant or employee of any department, institution or agency of the state may not receive any compensation or fees in addition to the compensation specified for such person by law, nor receive compensation or fees from more than one department, institution, or agency of the state or in more than one capacity for services performed during the same pay period.

2. Where employees of the State A. & M. College are employed on an annual basis and the college is entitled to their services on an annual basis, they may not render services even as independent contractors to the Colorado Racing Commission and be paid by it. If, however, such employees, although paid in twelve installments, are allowed vacation time of one, two or three months, and would be permitted to accept private employment during such vacation time, they may enter into contracts with the Commission and be paid out of state's funds without violating the provisions of Section 6, Chapter 2, Session Laws of Colorado, 1941, referred to above.

3. If employees of the Colorado A. & M. College are employed on a nine months basis and the College has no right to their services during the other three months, they may serve to Colorado Racing Commission during those three months although they may receive their pay from the college in more than nine installments.

4. Contrary to the opinion of a former Attorney General, the prohibition contained in Section 6, Chapter 2, Session Laws

of Colorado, 1941, the Administrative Code, applies to all departments, institutions and agencies of the state and not only to those mentioned in the code.

STATE CONTROLLER

Mr. James A. Noonan,

Opinion No. 1874-50

September 6, 1950.

Notwithstanding the fact that Senate Bill No. 3 provides that the State Treasurer shall issue warrants against the appropriation made in that bill, such language does not supersede the general laws which authorize the State Controller to issue warrants as contained in Chapter 101, Session Laws of Colorado 1949.

GRAND JURY INVESTIGATION PRISONER

Roy Best,

Opinion No. 1875-50

September 14, 1950.

Where a person, whose attendance as a witness is desired before a Grand Jury or a Court, is in a prison or in an insane asylum, his attendance is secured by means of a writ in the nature of a writ of *habeas corpus ad testificandum* which is directed to the custodian of the witness and requires him to have the body of the witness in the court, in the instant case, where the Grand Jury investigation is being held at the time required in order that such witness may give his testimony. The power to issue such process is inherent in the Courts.

STATE TREASURER—CONTROLLER

Hon. Homer F. Bedford,

Opinion No. 1876-50

September 25, 1950.

1. Where the right of redemption is reserved in the statute authorizing the issuance of the bonds and it thereby becomes a part of the bond control, the state has the right to redeem the bonds and in so redeeming it does not violate either Section 11, Article II, Colorado Constitution or Section 3, Article II, Colorado Constitution.

2. The General Assembly after December 1, 1920 could appropriate from the General Fund to the "Fund Bonds, Series of 1910, Sinking Fund" any sum or sums necessary to redeem said bonds together with accrued interest thereon and any surplus left in the "sinking fund" must be paid to the credit of the State's General Fund (Sec. 4, Art. XI, Colorado Constitution).

NOTARIES PUBLIC—ELECTIONS**Opinion No. 1877-50**

Mr. Ernest A. Vigil,

October 3, 1950.

If a person is a duly qualified notary public, he has statutory authority to take the acknowledgments of election under Sec. 126(c), Chap. 59, 1935 C.S.A., as amended.

SCHOOLS**Opinion No. 1878-50**

Mary C. Grant,

October 3, 1950.

Section 225, Ch. 146, 1935 C.S.A., prohibits a school district from paying a teacher who does not "hold a legal certificate, appertaining to the schools or classes under his charge." This section specifically provides that the non-certificated persons forfeit "all claim to compensation out of the school fund for the time he serves without such certificate."

**JUSTICE OF THE PEACE—COUNTY
COUNTY COMMISSIONERS****Opinion No. 1879-50**

Mr. Fred Jewell,

October 5, 1950.

The legislature has classified Arapahoe County in Class II(B) and fixed the salary of Justice of the Peace at \$1300 per annum (Ch. 125, S. L. 1945), increased by 20%, effective October 21, 1948 (Sec. 3, Ch. 6, Extraordinary S. L. 1948). The County Commissioners have nothing to do with the classification of counties or fixing of statutory salaries as this is a function of the legislature. Salaries once fixed by the legislature, continue at that level until changed by statutes.

SCHOOLS**Opinion No. 1880-50**

Mrs. Nettie S. Freed,

October 6, 1950.

Chapter 221, Session Laws of Colorado 1949, concerning the enrollment of physically handicapped and mentally retarded minor in school has application only to the education of such children in the public schools and the financing thereof through local and state funds and federal aid. Therefore, the provisions of Section 3

providing for the enrollment of a child "in any school in any district, with the approval of the Board of Education of the school in which the child shall be enrolled for education" does not permit tuition to be paid to a private or parochial school for the education of physically handicapped or mentally retarded children, since Section 7, Article 9 of the Constitution forbids aid to private schools, churches, etc., and Section 34, Article 5 of the Constitution forbids appropriations "for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association."

**CITIES AND TOWNS—WORKMEN'S COMPENSATION
PRISONERS**

Opinion No. 1881-50

Colorado Municipal League,
October 1950.

Question 1. Who will be responsible in case a prisoner is injured while engaged in work on a city project?

If city acting in governmental capacity there is no liability, if in a corporate capacity, liability exists. Colorado has no decisions.

2. Can he (prisoner) sue the city and collect for injuries?

Answer to question 2 depends on holding of court in answer to question 1.

3. Does the State Compensation Insurance also cover his injuries as well as city workmen?

Colorado has no decision on the question.

ELECTIONS

Opinion No. 1882-50

Hon. John Johnson,
October 13, 1950.

1. By subsection (a) (c), Ch. 155, S. L. 1949, electors in precincts as therein defined have three ways of registering:

(a) Appear in person, either before the registration committee or County Clerk, answer the presented questions and take oath. (b) Be registered by a member of their family who is a registered voter, etc. (c) File or cause to be filed with the County Clerk a verified application.

2. Electors in precincts included wholly or in part within the limits of cities and towns which are county seats of their respective counties may be registered: (a) Appear in person before the County Clerk, answer the prescribed questions and take oath. (b) Be registered by a member of their family who is a registered voter, before the County Clerk. (c) File or cause to be filed with the County Clerk a verified application.

GOVERNOR—PUBLIC FUNDS—ADVERTISING**Opinion No. 1883-50**

Honorable Walter W. Johnson,

October 6, 1950.

Funds may not lawfully be transferred from the Governor's Emergency Fund appropriated in Art. X, Sec. 39, Chap. 30, S. L. 1949, to the Advertising and Publicity Department for the use of the 75th Anniversary Celebration Executive Committee, or directly to that committee for the reason that: (1) No extraordinary emergency appears to exist, and (2) the General Appropriation Bill can provide only for meeting charges already created against the public funds by affirmative acts of the legislature, and since the General Assembly has neither created the 75th Anniversary Celebration Committee as a state agency, nor authorized the Advertising and Publicity Department to carry on that function or activity, therefore, no public funds may at this time be used by or for it from the emergency fund or otherwise.

VETERANS—CIVIL SERVICE**Opinion No. 1884-50**

Mr. James H. Steele,

October 18, 1950.

1. A person who served in the Woman's Army Voluntary Corps (Chap. 312, 56 Stat. 278, May 14, 1942) and was honorably discharged therefrom prior to July 1, 1943 is not entitled to veterans preference under the provisions of Section 14, Article 12 of the Constitution of Colorado since such person had only a civilian status.

2. If such person became a member of the Women's Army Corps or was at any time a member of the Women's Army Corps subsequent thereto, if honorably discharged, is entitled to veteran's preference under Section 14, Article 16, Constitution of Colorado.

COMMISSIONER OF AGRICULTURE**Opinion No. 1885-50**

Mr. Paul Swisher,

October 19, 1950.

(Produce Dealers Act)

1. The Commissioner of Agriculture is authorized to receive verified complaints from producers against any licensed commission merchant, dealer, broker or agent or any person assuming or

attempting to act as such; and all other persons are exempt from the provisions of the Act.

2. Only licensed commission merchants, dealers, brokers or agents, or persons assuming or attempting to act as such are subject to the penalties for failure promptly, correctly, fully and properly to make settlement for farm products.

DENTAL EXAMINERS

Opinion No. 1886-50

Wm. D. McCarthy, D. D. S.,

October 19, 1950.

1. There is nothing in the Dental Practices Act that prohibits the listing of deceased tenants, even though it is a well settled rule of law that such licenses are personal and expire upon the death of the person to whom they are issued.

2. With respect to re-instatement of a dental hygienist, since license of person in question was never revoked by any official act, applicant held entitled to renewal upon payment of prescribed fees.

TAXATION—SCHOOLS

Opinion No. 1887-50

Mr. John R. Seaman,

October 18, 1950.

Geological summer camp of educational institution of another state located in Colorado held subject to property tax since it is not within the definition of a school as defined by the law.

CIVIL SERVICE

Opinion No. 1888-50

State Civil Service Commission,

October 20, 1950.

1. Employment of members of the boards and commissions who are appointed by the Governor and who are authorized to receive an occasional per diem pay can be deemed to be casual or temporary employment as contemplated by Sec. 13 of Art. XII, Colorado Constitution.

2. The Civil Service Commission can by rule define what shall be deemed to be "serving without pay" in the contemplation of paragraph 2, Sec. 13, Art. XI, Colorado Constitution.

**STATE HOME FOR MENTAL DEFECTIVES—
PLANNING COMMISSION****Opinion No. 1889-50**

Mr. W. M. Williams,

October 23, 1950.

The proposed expenditure for painting all of the buildings on the grounds of the State Home for Mental Defectives at Ridge and on the farm, as well as the purchase of the designated laundry equipment, are authorized by Section 4, Chapter 304, S. L. Colorado 1947.

COLORADO STATE FAIR**Opinion No. 1890-50**

Mr. W. H. Kittle,

October 23, 1950.

Commission does not have authority to lease State Fair Grounds for the erection of a permanent building thereon by a restaurant operator, or any other person.

SCHOOLS**Opinion No. 1891-50**

Nettie S. Freed,

October 24, 1950.

When a second class district resulting from a reorganization under H. B. 900, Ch. 224, S. L. 1949, includes a first class district, not reclassified, which has certain teachers subject to Tenure under H. B. 751 (Ch. 230, S. L. 1949), the new district is bound to continue the Tenure teachers under Tenure, although it has not elected to become subject to the provisions of the Tenure Act as to its other teachers. To hold otherwise would result in the impairment of the obligation of the contracts of the Tenure teachers, forbidden by the United States and our State Constitution.

GAME AND FISH**Opinion No. 1892-50**

Mr. C. N. Feast,

October 30, 1950.

By Section 158, Ch. 96, 1935 C.S.A., Justices of the Peace Courts have concurrent jurisdiction with the County Courts and District Courts in misdemeanor cases and are thereby authorized to try cases arising under Section 215, Ch. 73, 1935 C.S.A.

CONTROLLER—JUDGES RETIREMENT FUND**Opinion No. 1893-50**

Mr. James A. Noonan,

October 30, 1950.

Expenses for actuarial services pertaining to the Judges Retirement Fund under the provisions of Chapter 145, S. L. 1949, Section 3, may be paid out of that fund since the amount obtained from membership fees not declared by Section 3 of the act to be available for administrative expenses.

ELECTIONS**Opinion No. 1894-50**

Mr. George J. Baker,

November 1, 1950.

(Vacancy)

Where a party senatorial district vacancy committee filed a certificate of nomination to fill vacancy, particularly on the 6th day prior to the general election, no action is required of the Secretary of State under Section 42, Chapter 59, 1935 C.S.A., by reason of the fact any vacancy in nomination existing after the holding of any direct primary election may not be filled later than thirty-one days prior to the general election.

METAL MINING FUND**Opinion No. 1895-50**

Mr. Robert S. Palmer,

November 1, 1950.

Superseding opinion of June 19, 1950, No. 1844—"Cooperative Scientific Work with United States Bureau of Mines, United States Geological Survey, and others" contained in appropriation under Chapter 30, S. L. 1949, does not constitute a special appropriation with the general appropriation bill because of the fact that Metal Mining Fund is a part of the Executive Department and its ordinary functions are investigative as defined in Section 328, Chapter 110, 1935 C.S.A.

COUNTIES—SCHOOLS—TAXES**Opinion No. 1896-50**

Hon. Walter W. Johnson,

November 3, 1950.

A county wide tax for school purposes would be valid even where, under the legislative formula provided for the tax, the

property within certain school districts would be taxed and the district would not be entitled to share in the proceeds of the tax by the reason of the formula to be applied. There are two examples of such a county wide mill levy presently in effect, namely, the Minimum Educational Program Act, Section 60(1)-60(7), Chapter 146, 1935 C.S.A., and the Teachers Minimum Salary Law, Sections 240-248, Chapter 146, 1935 C.S.A. This type of law has been upheld in *McCartey, Superintendent of School, et al. v. School District No. 9, La Plata County*, 75 Colo. 305, and *Wilmore v. Annear*, 100 Colo. 106.

COLORADO STATE INDUSTRIAL SCHOOL FOR GIRLS

Opinion No. 1897-50

Betty Portner, Superintendent,

November 9, 1950.

Section 23, Chapter 131, 1935 C.S.A., imposes upon the counties from which inmates are sent to the Girls Industrial School, an obligation to pay "the sum of fifty cents per day for each girl so sent until such final discharge," and neither the Attorney General nor any other public official can waive the provisions of the statute. *Parry, et al. v. Colo. Board of Corrections*, 93 Colo. 589.

SCHOOLS

Opinion No. 1898-50

Mrs. Nettie S. Freed,

November 14, 1950.

1. School board does not have authority to furnish free textbooks without authorization by majority vote of electors of district.

2. No district which has authorized free textbooks can charge a "textbook fee" which is not returnable to pupils.

ELECTIONS

Opinion No. 1899-50

Honorable George J. Baker,

November 16, 1950.

(Voting machines)

Voting machines should be locked and closed without clearance of the count until expiration of the term upon which a contest could be filed. (Section 269, Chapter 59, 1935 C.S.A.).

SCHOOLS**Opinion No. 1900-50**

Mr. Ray O. Adams,
November 16, 1950.

1. Where a consolidation of school districts was made pursuant to the School District Reorganization Act of 1949, Section 66(1)-66(40), Chapter 146, 1935 C.S.A., the school building, grounds, playgrounds, furnishings and equipment of the former district becomes the property of the new district, and the Board of Directors thereof may sell the property or the building or move the building, as it sees fit.

2. If the consolidation of school districts took place under some other provision of the school laws such as Section 63 or 68, the same result would be reached. As the usual proposition when two or more school districts vote in favor of consolidation, then the consolidated school district immediately becomes the owner of, or entitled to receive, own, sue for, and claim all monies, property, real estate and assets of each of the districts which constitute the consolidation. The bonded indebtedness, however, remains with the district which has incurred the indebtedness and taxes are levied in the particular districts in order to pay the indebtedness.

ENGINEERING**Opinion No. 1901-50**

Mr. M. C. Hinderlider,
November 29, 1950.
(Public swimming pools)

The design of a public swimming pool comes within the definition of engineering as covered by Chapter 62, and designing of a swimming pool by a non-registered engineer is a violation of the said act.

SCHOOLS**Opinion No. 1902-50**

Mrs. Nettie S. Freed,
November 30, 1950.

1. Pursuant to Section 23, Chapter 224, Session Laws of Colorado, 1949, the date of certification of the results of an election for a reorganization plan, may be any date within the five day period after the date of the election.

2. Pursuant to Section 25, Chapter 224, Session Laws of Colorado 1949, if the date of certification of the results of an election for a reorganization plan to the county superintendent is at any time during the day of November 29, the first day of the sixty day period prescribed by said section begins on November 30th.

STATE CIVIL SERVICE COMMISSION

State Civil Service Commission,

Opinion No. 1903-50

November 30, 1950.

Section 2, Chapter 36, 1935 C.S.A., provides that: "Appointment and employment in and promotion to offices and places of trust and employment in the classified civil service of the state * * * * * shall be made according to merit and fitness, to be ascertained by competitive tests," etc. Where the commission has held examination and graded the applicants the one ascertained to have the highest grade must be deemed to be the most fit and of the highest excellence and is to be the one first appointed.

COUNTIES—COUNTY COMMISSIONERS

Mr. M. O. Shivers, Jr.,

Opinion No. 1904-50

December 4, 1950.

A county and its Board of County Commissioners has power to accept transfer of housing projects under Public Law 475, 81st Congress, Title VI.

TAXATION

Mr. Howard A. Latting,

Opinion No. 1905-50

December 4, 1950.

Approval of the State Tax Commission is not necessary for Fire Protection Districts to increase levies beyond the five per cent (5%) limitation in Sections 39 and 41, Chapter 142, 1935 C.S.A.

NEWSPAPERS—SALES AND USE TAX

Mr. W. F. Perkins,

Opinion No. 1906-50

December 4, 1950.

Sale of an entire newspaper plant is not subject to imposition of sale or use tax. (*Alamosa Courier, Inc. v. Pond*). Purchases by a newspaper of other than newsprint and printers ink are subject to imposition of the tax.

GAME AND FISH

Mr. C. N. Feast,

Opinion No. 1907-50

December 7, 1950.

State is not liable for damages caused by migratory birds. *Migratory Bird Treaty*, Title 16, Ch. 7, U.S.C.A.

STATE TREASURER—COUNTY COURT

Hon. Homer F. Bedford,

Opinion No. 1908-50

December 13, 1950.

Where there is a balance in an estate and the administrator is now dead, with the heirs, if any, dead or unknown, the Bank in which the funds are deposited, should follow the statutory procedure outlined in Section 230*(c), Chapter 176, 1935 C.S.A., and deposit said funds with the State Treasurer in the escheat funds of the state.

COAL MINE INSPECTOR

Mr. Thomas Allen,

Opinion No. 1909-50

December 20, 1950.

Section 100 and 162, 1935 C.S.A., contain such an admixture of torts of various degrees with criminal acts requiring the presence of wilful intent, malice and criminal negligence that it is impossible to sort the grain from the chaff in a general interpretation of the statute. Each case must stand on its own.

In the instant case the District Attorney has declined to prosecute. Decision concurred with for the reason that: (1) The facts show no wilful or malicious intent; (2) the said Section 100 is so general in character that no one could possibly determine which violation was criminal and which negligent.

COURTS

Mr. George V. Kempf,

Opinion No. 1910-50

December 26, 1950.

(Powers and jurisdiction)

It was the intention of the Legislature under the provisions of Section 11, Chapter 195, Session Laws of 1949, to provide that any Court or Juvenile Court in this state may exercise the powers provided for and granted to district courts in that act, and that only juvenile courts in any county of over 20,000 inhabitants according to the latest federal census may exercise such powers.

LIQUOR

Hon. George J. Baker,

Opinion No. 1911-50

December 27, 1950.

1. Under Section 20, Chapter 89, 1935 C.S.A., the Secretary of State as the state licensing authority has power to grant or re-

voke licenses for the manufacture and sale of malt, vinous and spirituous liquors and to suspend or revoke such license upon a violation of any law or any rule or regulation adopted by said Secretary of State.

2. Under Section 24, Chapter 89, 1935 C.S.A., the Secretary of State as the State Licensing authority has power on his own motion to suspend or revoke any license for violation of any of the provisions of the Liquor Code, or any of the rules and regulations promulgated by him. He may temporarily suspend any license without notice pending any prosecution, investigation or public hearing for a period of not exceeding 15 days.

3. Under Section 18, Chapter 89, 1935 C.S.A., the Secretary of State as the state licensing authority has the power and authority to declare any place a saloon not fully complying with the Liquor Code and the regulations thereunder.

4. A club or restaurant in a hotel is the only place where spirituous liquors may be sold by the drink except as provided by law for dining cars, club cars or parlor cars of a railroad engaged in transportation of passengers. No other business except the sale of meals, foods, drinks and tobacco may be conducted by said establishment.

5. In the enforcement of the liquor code and the regulations thereunder the Secretary of State is not required to secure an order from the Governor instructing the Attorney General, Sheriff, District Attorneys or other officers to prosecute, but he may take summary action on his own initiative in the first instance to revoke or suspend licenses and to cause further prosecution of all violators by the proper prosecuting by the Attorney General as a representative in any court of this state.

DIRECTOR OF PAROLES

Opinion No. 1912-51

Mr. Dan Diamond,

January 4, 1951.

Interpretation of proper proceeding under Chapter 192, S. L. 1949, as to processing of parole violators.

AUDITOR—CIVIL SERVICE—DIRECTOR OF REVENUE, STATE PURCHASING AGENT, DIRECTOR OF CIVIL DEFENSE

Opinion No. 1913-51

Hon. Myron C. McGinley,

January 5, 1951.

The Office of Director of Revenue, State Purchasing Agent, and Director of Civil Defense Agency are subject to the provisions

of Section 13, Article 12, State Constitution. The General Assembly has no power or authority to designate those offices as being the confidential employees of the Governor thus attempting to except them from the provisions of the Civil Service Amendment. Such an effort on the part of the General Assembly is contrary to Article 3 of the State Constitution providing for the distribution of powers into the three distinct departments—legislative, executive and judicial.

CITIES AND TOWNS—POLICE JURISDICTION

Opinion No. 1914-51

Hon. Joseph F. Little,

January 8, 1951.

(Jurisdiction of police in districts immediately outside municipal corporations).

Statutory provisions confer ample and full authority upon city and town marshals to make arrests not only within the jurisdictional limits of their cities and towns, but also to make arrests outside the immediate jurisdiction of said cities or towns.

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